



ut PR
(A.)

1-APEAL-678-2014 & 2 ors.doc

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.678 OF 2014

The State of MaharashtraAppellant

Vs.

Sajjad Ahmed Abdul Aziz Mugal @PathanRespondent

WITH

CRIMINAL APPEAL NO.491 OF 2015

Sajjad Ahmed Abdul Aziz Mugal @PathanAppellant

Vs.

The State of MaharashtraRespondent

WITH

CRIMINAL REVISION APPLICATION (ST) NO.10473 OF 2022

Atanu PurkayasthaApplicant

Vs.

1. Sajjad Ahmed Abdul Aziz Mugal @Pathan
2. The State of MaharashtraRespondents

WITH

INTERIM APPLICATION NO.2904 OF 2022

IN

CRIMINAL REVISION APPLICATION (ST) NO.10473 OF 2022

Atanu PurkayasthaApplicant

Vs.

1. Sajjad Ahmed Abdul Aziz Mugal @Pathan
2. The State of MaharashtraRespondents

Mr. Manoj S. Mohite, Senior Advocate (Spl.PP) a/w Ms. Priyanka Chavan and Ms. Ilsa Shaikh, for the State.

Dr. Yug Mohit Chaudhry a/w Gaurav Bhawnani and Mr. Anush Shetty i/by Mr. Khan Abdul Wahab, for Appellant in Appeal No.491/2015 and Respondent in Appeal No.678/2014 and Revision (St) No.10473/2022.

Mr. Abhishek Yende a/w Mr. Rishikesh Y. Dube, for Applicant in Revision (St) No.10473/2022 a/w IA 2904/2022.

Mr. Mahesh Tawade, ACP, Traffic South Division.

Mr. Nitin N. Kumbhar, P.I., Unit-4, Crime Branch, Mumbai.

Mr. Sanjay B. Nikam, P.I., Unit-4, Crime Branch, Mumbai.

CORAM : A.S. GADKARI AND
DR. NEELA GOKHALE, JJ.
RESERVED ON : 14th AUGUST 2025.
PRONOUNCED ON : 10TH NOVEMBER 2025.

JUDGMENT:- (Per Dr.Neela Gokhale, J.)

For the convenience of the exposition, this judgment is divided into the following parts: -

INDEX

<u>I. FACTUAL MATRIX</u>	5
<u>II. SUBMISSIONS OF THE PARTIES</u>	13
A. Submissions on behalf of the Appellant.....	13
B. Decisions relied upon by the learned counsel for the Appellant...	25
C. Submissions on behalf of the Respondent-State.....	28
D. Decisions relied upon by the learned counsel for the Respondent.....	41
E. Submissions on behalf of Revision Applicant.....	42

III. <u>POINTS FOR DETERMINATION</u>.....	44
IV. <u>ANALYSIS</u>.....	45
A. Law laid down in cases involving evidence of circumstantial nature....	45
B. The evidence on record indicting Sajjad.....	49
C. On motive	50
D. Sajjad's presence at the spot of the crime & Law on the Last Seen theory.....	53
E. Seizure of Articles; chain of custody / absence of wax seal	59
F. On CA Report regarding DNA	62
G. On recovery of weapon.....	62
H. On recovery of other articles.....	63
I. Extrajudicial confession.....	66
J. Contradictory statements given by Sajjad and unexplained injuries on his person.....	71
K. On CCTV footage / fingerprint & footprints.....	73
L. Postmortem Report.....	74
M. On applicability of Section 464 Cr.PC.....	74
V. <u>FINAL CONCLUSION</u>	75

1. The Appellants and the Revision Applicant in the present matter assail the Judgment and Order dated 7th July, 2014 passed by the learned Addl. Sessions Judge, City Civil & Sessions Court, Greater Bombay in Sessions Case No.738/2012. By the said judgment, the Appellant-convict (“**Sajjad**”) stands convicted for offenses punishable under Sections 302, 354 and 449 of the Indian Penal Code, 1860 (for short **IPC**) and under Section 37 (1) (a) read with Section 135 of the Bombay Police Act, 1951. For the offense punishable under Section 302 of the IPC, Sajjad is sentenced to suffer rigorous imprisonment for life, to mean imprisonment for the remainder of his natural life; for the offense punishable under Section 354 of the IPC, he is sentenced to suffer rigorous imprisonment for 5 years with a fine of Rs.3,000/- and in default to suffer rigorous imprisonment of 6 months; and for the offense punishable under Section 37(1) (a) read with Section 135 of Bombay Police Act, 1951, he is sentenced to suffer simple imprisonment of 1 year with fine of Rs.5,000/- in default of which to suffer simple imprisonment for 2 months. All substantive sentences of imprisonment are directed to run consecutively.

2. The State of Maharashtra in Criminal Appeal

No.678/2014 and the Revision Applicant, the father of the deceased victim, in Criminal Revision Application (St) No.10473/2022, seek enhancement of the sentence to capital punishment. The Appellant in Criminal Appeal No.491/2015 is the sole convict assailing his conviction. Since the Appeals/Revision Application assail the same Judgment and Order, all are being disposed together by this common Judgment and Order.

I. **FACTUAL MATRIX:**

3. The facts of the case giving rise to filing of Appeals can be summarized as under:

- i) A young lady Advocate namely Pallavi Purkayastha (victim/deceased) was sharing a rented flat No.1601, 'B' wing, 16th Floor, Himalayan Height Building, Bhakti Park, Wadala (E), Mumbai with her friend Avik Alok Sengupta (informant). They were to marry. Both of them were law graduates. Pallavi was working in a company as a legal Manager. Her work timings were from 11:00 a.m. to 05:00 p.m. Avik was employed in a law firm and his work timings were not fixed. He usually left home in the morning at around 9:30 a.m. and returned at any time around

10:00 p.m. or later.

ii) On 8th August, 2012, Avik left for his job and Pallavi was at home. They spoke on the phone during the day. In the late evening, Avik told Pallavi that he will be late as he had to complete an assignment. At that time Pallavi told him that there was no electricity in the house. The lights went off intermittently. Avik asked her to inform the guard and call the electrician. After dropping his colleagues Avik returned home, at 5:30 am, next day i.e., on 9th August, 2012. When he exited the lift, he saw blood trailing outside the door of his flat and the adjacent flat. The door of his flat was slightly ajar. He entered the flat and saw Pallavi lying on the carpet, in a pool of blood. He tried to call his friends and neighbours but there was no response. Then he came to the ground floor and informed the watchman. Two persons namely Mr. Pathak and his wife came to the flat and switched on the lights. Mr. Pathak called the Police control room. All of them waited in the flat till the Police came. Thereafter, Pallavi was taken to the Sion Hospital. Pallavi was declared dead by the doctors and thus, Avik lodged a complaint with the Police. FIR

was initially registered against an unknown person. However, during the enquiry, a watchman in the society disclosed to the Police that Sajjad Pathan, another security guard of the society, had committed the offense. On 10th August, 2012, the Police arrested Sajjad, under a Panchanama (Exhibit-112).

iii) Crime No.181/2012 was registered on 9th August, 2012 at Wadala T.T. Police Station against Sajjad for offenses punishable under Sections 302 and 449 of the IPC. During the course of investigation, the crime was transferred to DCB – CID, Unit-VI which registered it as C.R. No.79/2012 adding Section 37 (1)(a) r/w Section 135 of the Bombay Police Act, 1951. The enquiry was initially conducted by the Wadala T.T. Police Station and thereafter transferred to the Crime Branch. One Mr. Kanade, was the I.O. when the investigation was being conducted by Wadala T.T. Police Station. Mr. Kanade conducted the Inquest Panchanama (Exhibit 59), Spot Panchanama (Exhibit 64) and Seizure Panchanama of the clothes of deceased (Exhibit 55) and handed over the investigation to API Mahesh Tawde of the Crime Branch (PW-39). Mr.Tawade proceeded to conduct Sajjad's

physical search, recorded Memorandum Panchanama of Sajjad's clothes, foot wear and the keys of Pallavi's house (Exhibit 68), Seizure Panchanamas (Exhibit 68A), Memorandum Panchanama of the knife (Exhibit 85) and the Seizure Panchnama (Exhibit 85A), recorded statements of the witnesses, sent samples for CA and DNA test, etc. On completion of the investigation, the charge sheet was filed before the Metropolitan Magistrate Esplanade, 37th Court, Mumbai on 3rd November, 2012.

iv) As the offense punishable under Section 302 IPC, being exclusively triable by the Sessions Court, the case was committed to the Court of Sessions by the learned Magistrate under Section 209 of the Cr.P.C. for trial.

v) The Sessions Court i.e. the trial Court framed charges on 24th April, 2013 against Sajjad for offenses punishable under Section 302, 354, 449 of the IPC and Section 37(1)(a) read with Section 135 of the Bombay Police Act, 1951.

vi) On framing charges, Sajjad pleaded not guilty and claimed to be tried.

vii) The prosecution examined 39 witnesses in support of its case. The witnesses examined by the prosecution are as under:

1. **PW-1** :Mr. Avik Alok Sengupta, the Complainant.
2. **PW-2**: Darshan Singh Dilip Singh Bamra, an independent witness.
3. **PW-3**: Mr. Yogesh Shrikrishna Rajapurkar, Nodal Officer of Airtel Company.
4. **PW-4**: Kunal Kishore Shah, Pallavi's neighbour.
5. **PW-5**: Vikas Narayan Phulkar, Assistant Nodal Officer of Vodafone India Limited.
6. **PW-6**: Sunil Subhash Chandra Tiwari, Nodal Officer of Aircel Limited.
7. **PW-7**: Rakeshchandra Ramdujh Prajapati, Nodal Officer of Loop Mobile Company.
8. **PW-8**: Shekhar Vinayak Palande, Nodal Officer of Tata Tele Services Maharashtra Limited.
9. **PW-9**: Sadashiv Lingayya Shetty, Panch witness of seizure panchanama of Pallavi's clothes.
10. **PW-10**: Mr. Ahmed Ismail Shaikh, Driver of neighbour of Pallavi.
11. **PW-11**: Ms. Jagriti Mohata, Panch witness of Inquest

Panchanama.

12. **PW-12:** Vinit Vedprakash Bakshi, Pallavi's friend's father.
13. **PW-13:** Pramila Ashrafilal Gupta, an independent witness.
14. **PW-14:** Mosas Rao Parly, Panch witness of Spot Panchanama.
15. **PW-15:** Algarson Krishnan Devendra, Panch witness of Recovery Panchanama.
16. **PW-16:** Satishkumar Tangwel Devendre, Photographer, who has taken the photographs of Pallavi's body.
17. **PW-17:** Mr. Kartik Shivaji Devndra, Panch Witness of verification of keys recovered at Sajjad's instance.
18. **PW-18:** Dr. Rajesh Chandrakant Dere, who has conducted postmortem of Pallavi.
19. **PW-19:** Shabbir Abdul Jalil Khan, Security Supervisor of Ivory Tower CHS, where Avik and Pallavi were staying.
20. **PW-20:** Mohammed Sadik Mir, Security Supervisor of Ivory Tower CHS, where Avik and Pallavi were staying.
21. **PW-21:** Rupali Suresh Vaidya, Pallavi's colleague.
22. **PW-22,** Mohammed Khalid Muneer Hussain Khan, Security Supervisor of Ivory Tower CHS, where Avik and Pallavi were staying.
23. **PW-23:** Subramaniam Muttu Devendra, Panch Witness of Memorandum Panchanama.

24. **PW-24:** HC 4887, Mr. Prakash Gulabrao Shirke, Police witness, who had published Prohibitory Order of Bombay Police Act.
25. **PW-25:** HC-50639, Mr. Sakharam Dattu Redekar, Police Witness, who had sent the articles to Kalina Forensic Lab for C.A.
26. **PW-26:** Dr. Amarsingh Anandrao Rathod, who had examined Sajjad.
27. **PW-27:** ASI Narayan Satva Suryawanshi, Police witness, who had sent articles to Kalina Forensic Lab for C.A.
28. **PW-28:** Ramsevak Surajmali Gaue, independent witness.
29. **PW-29:** PI Mr. Vinayak Bajirao Vetal, Police witness.
30. **PW-30:** Sr. PI Mr. Shirish Sudhakar Sawant, Police witness.
31. **PW-31:** Mangesh Madhukar Pathak, neighbour of Pallavi.
32. **PW-32:** Mr. Dharmesh Mewalal Gupta, wireman working in Ivory Tower.
33. **PW-33:** Dr. Kiran Sambhaji Kalyankar, who has collected blood samples of convict for DNA test.
34. **PW-34:** PSI Mr. Ganesh Madhukar Kanade, SHO in Walada T.T. Police Station and 1st I.O.
35. **PW-35:** Siddharth Deepak Desai, Avik's.
36. **PW-36:** Kannan Durai Devendra, Panch witness of Panchanama of Sajjad's physical search.

37. **PW-37:** API Mr. Dhanaji Laxman Jagdale, Police witness, who has forwarded *muddemal* for C.A., which was collected from Sion Hospital and from the spot of incident alongwith forwarding letter.
38. **PW-38:** Shrikant Hanumant Lade, Assistant Director of Kalina Forensic Lab, Kalina, Mumbai.
39. **PW-39:** API Mr. Mahesh Ramesh Tawade, the 2nd I.O.

viii) Upon conclusion of recording of the evidence, Sajjad's statement under Section 313 of the Cr.PC was recorded by the Trial Court. Upon appreciation of the oral and documentary evidence on record, the Trial Court recorded a finding of guilt of Sajjad in respect of the offenses as charged and sentenced him to life imprisonment till the end of his natural life.

ix) The State, by this Appeal and the victims' father, by the Revision Application seek enhancement of the sentence to capital punishment. Sajjad has assailed his conviction. It is in these circumstances that the parties are before us with the present proceedings.

4. Mr. Manoj Mohite, learned Senior Counsel and Special

Public Prosecutor represented the State. Dr. Yug Chaudhry represented the Appellant in Appeal No.491/2015 and Respondent in Appeal No.678/2014 and Revision (St) No.10473/2022 and Mr. Abhishek Yende represented the Revision Applicant.

II. SUBMISSIONS OF THE PARTIES:

A. Submissions on behalf of the Appellant:

5. Dr. Yug Chaudhry, learned counsel made the following submissions:-

1) The case is purely based on circumstantial evidence

1.1) Dr. Chaudhry submits that the case against Sajjad is purely based on circumstantial evidence. According to him, the prosecution's case is based on the following; i) testimony of witnesses that Sajjad was seen outside the deceased's flat immediately before her death; ii) recovery of clothes with blood stains of deceased, keys to the house of the deceased, *chappals* with blood stains, blood stained knife; extra judicial confessions of PW-10 and PW-19; iii) DNA of Sajjad on the cluster of hair found in the flat; iv) the CA and FSL reports; v) injuries found on Sajjad, etc. hence, the entire evidence is circumstantial in

nature.

1.2) Dr. Chaudhry submits that it is a well established principle of law that, in cases of circumstantial evidence, the circumstances against an accused ought to be conclusive in nature and there must be a chain of evidence so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and must show that in all human probability, the act must be done by the accused. According to Dr. Chaudhry, the chain of circumstances is far from complete against Sajjad.

1.3) According to Dr. Chaudhry, Sajjad's presence is admitted but, there were other watchmen on duty as well. There is no explanation as to why Pallavi called Sajjad. The entire sequence of CDR shows the calls between the Sajjad and Pallavi and between the other watchman and electrician, with Pallavi. In case, Sajjad had any lascivious intent towards Pallavi, Dr. Chaudhry submits that Sajjad would never convey to PW-19 of Pallavi's request and he would have gone alone to her house. Further he submits that, Pallavi was very much alive even after 1:30 am, since she and Avik were exchanging messages on their blackberry mobile phones. PW-4 witnessed the

presence of Sajjad outside their flats at 1:30 am but did not hear any screams from Pallavi. Thus, all these aspects fail to place Sajjad at the scene of crime.

2) **Failure to prove motive**

2.1) As per Dr. Chaudhry, had Sajjad wanted to take advantage of Pallavi, he would have never informed PW-32. In any case, if Pallavi was uncomfortable with Sajjad, she would have never sought his help in restoring the electricity in the flat.

2.2) Dr. Chaudhry further argued that neither PW-22 nor PW-19 disclosed an alleged remark made by Sajjad to the Police when they found Pallavi lying in a pool of blood in her flat. So also, he submits that PW-22 and Sajjad were not such great friends that he was in the habit of sharing secrets with him.

2.3) There is no material to establish that the string of shorts of Pallavi was torn in the course of the alleged incident. The string could have been torn earlier as well. Also Pallavi's body was seen at the spot by PW-1, PW-19, PW-22 and PW-34 prior to taking her to the Hospital and none of these witnesses deposed regarding the short's

string being torn.

3) **Extrajudicial confessions**

3.1) In response to the prosecution case regarding Sajjad calling PW-19 for a loan of Rs.10,000/- to travel to J&K, and also confiding in PW-10, a driver of another resident that he had murdered Pallavi, Dr. Chaudhry submits that none of these so called extra-judicial confessions inspire confidence and hence must be discarded.

3.2) Dr. Chaudhry submitted that unless an extrajudicial confession is absolutely credible and iron cast and unless the confessor had a compelling reason to confess, it is hazardous to rely on such evidence. It is also counter intuitive that Sajjad will confess to PW-10 or PW-19 when neither of them were his good friends. In fact, confessing would make it less likely that PW 10 or PW-19 would give him money, for fear of being an accomplice. Even Sajjad's passbook indicates that he had Rs.8,000/- balance in his bank account and had no need to make calls and confess for the purpose of getting money. This story of the prosecution is thus unbelievable according to Dr. Chaudhry.

3.3) The evidence of PW-19 does not inspire confidence for the reason that when he met the Police in Pallavi's flat and upon seeing Pallavi lying in a pool of blood, he informed the Police regarding Sajjad's confession on the phone. Despite this, the Police failed to act on the said information. The Investigating Officer (PW-34) admits in his cross-examination that he failed to record PW-19's statement when he made the said disclosure and recorded it only after 10 hours. Similarly, at the time of second phone call, PW-19 was at the Hospital and he disclosed the conversation with Sajjad immediately to the Police. PW-34 also failed to act on this statement. No FIR was registered for 2 hours after the disclosure. Sajjad was not initially named in the FIR. No attempt was made to arrest him nor any trap was laid to ensnare him by using PW-20. Thus, the unnatural delay in recording the statement of witnesses and the conduct of the Investigating Officer negates the theory of the prosecution.

3.4) Dr. Chaudhry submitted that even the evidence of PW-10 does not inspire the confidence. The sequence of CDR details between Sajjad and PW - 10 fail to lend credence to the prosecution story regarding the whereabouts of the said witness on 9th August, 2012.

Dr. Chaudhry insinuates that the testimony of PW-10 is made up for the reason that the CDR details show PW-10 receiving a call from the Crime Branch after which he went to the Police Station of Wadala raising a cloud of doubt on his testimony. Dr. Chaudhry has referred to PW-10 as a complete liar as he had claimed that on 9th August, 2012, he was at home and was suffering from loose motions. Despite this, the CDR of his phone calls reveal that he has traveled to the Crime Branch. Moreover, PW-10 was only a driver of another resident of Bhakti Park and did not even remember the vehicle number of his employer's car neither did he remember the model of the said car. PW-10's answers pertaining to the flat number and name of building relating to Pallavi's flat are wholly vague and evasive. Thus, according to Dr. Chaudhry, PW-10 is a got up witness and his evidence must be discarded.

4) Seizure of Sajjad's hair from Pallavi's hand

4.1) Dr. Chaudhry submitted that, the prosecution story regarding discovery of hair from Pallavi's hands, chest and back is ludicrous and is bereft of any documentary evidence, panchanama or witness. PW-1, PW-4, PW-22, PW-31 and PW-34 have not mentioned

any hair strand in Pallavi's hands, despite all of them seeing her body at the spot. Even the ADR is silent about any hair found on the body. Photographs of body taken by PW-16 at Sion Hospital do not show the hands nor the hair. The Inquest panchanama (Exhibit-59) does not mention any hair in Pallavi's hands. Contrary to this, the Inquest panchanama describes the number of injuries on Pallavi's right hand and palm. Had there been any hair in her hand, the same would have been noticed.

4.2) External injuries are detailed in column 17 of the post-mortem notes (Exhibit-77). 5 injuries are noted on Pallavi's hands including injuries on the ring and middle finger but, there is no mention of finding hair in her hands. The biological samples also do not mention hair and the medical officer's evidence is silent about finding any hair. Dr. Chaudhry thus, raises a question as to where is the hair? According to him, the chain of custody with respect to hair in hand is also not established. Thus, the prosecution is unable to prove Sajjad's culpability in commission of crime.

5) **Seizure of Sajjad's hair from the spot of the incident**

5.1) Dr. Chaudhry submitted that the prosecution's case is that a bunch of hair was found in a pool of blood leading towards Pallavi's bedroom. DNA establishes this hair to be that of Sajjad. Dr. Chaudhry complains that there was no wax seal on the hair sample. According to him, only paper labels were used to seal the same. Dr. Chaudhry has placed reliance on the Bombay Police Manual to buttress that it is mandatory to seal articles using wax and brass seal. In a matter where death sentence is sought, the State cannot seek laxity or indulgence in complying with its own procedure.

5.2) In fact, PW-39 in his testimony admits that wax seals were used to seal the knife, stated to be the murder weapon. Thus, the Police are well aware of the requirement of using wax seal. Not sealing other evidence with wax indicates lapse in investigation and no reliance can be placed on such evidence.

6) **Seizure from Sajjad under Section 27 of the Indian Evidence Act ('Evidence Act') namely i) blood stained knife, ii) blood stained clothes and iii) keys of Pallavi's flat**

6.1) According to Dr. Chaudhry, Sajjad is alleged to have made

a disclosure statement, leading the Police to a cabin between two wings of Julian Alps building in the Society. Dr. Chaudhry argued that, recoveries under Section 27 of the Evidence Act must be viewed with caution as the provision is inherently vulnerable to abuse. According to Dr. Chaudhry, it is unbelievable that Sajjad would hide such an incriminating evidence in the society itself and that too in separate locations. A natural course of action for him would be to dispose them off in a garbage dump. Dr. Chaudhry has brought to our attention that the testimony of PW-36 – the personal search panch, is silent about the *modus operandi* regarding the disclosure statement of Sajjad. When Sajjad was taken for medical examination, he allegedly confessed to the doctor that, he had entered the flat by climbing up pipeline upto the 16th floor, through the bathroom. This is contrary to the disclosure statement and hence the ensuing recovery is tarnished. The confession given to the doctor and the disclosure statement contradict each other and hence casts a doubt on the genuineness of the disclosures.

7) **Panchanamas do not inspire confidence**

7.1) The Investigating Officer (PW-39) failed to obtain

fingerprints from the knife handle and hence cannot be linked to the accused. The knife was recovered from a shoe rack on 3rd floor of the building pursuant to the disclosure statement. The ownership of the shoe rack is not established.

7.2) Panch (PW-23) is dishonest since he stated his age as 22 years in the panchanama while deposing the same to be 32 years before the Court.

7.3) Panch (PW-23) at one point of time said that, he was going to his in-laws' house to bring his mobile phone and in his cross-examination, he said that his phone was at home all day.

7.4) The keys (Art.10) appear to have been planted by the Investigating Officer. PW-1 deposed that he handed the keys over to the Investigating Officer (PW-34) on 9th August, 2012. The keys were not sealed and no panchanama was drawn. He admitted that PW-1 gave him the keys but he did not make any entry in the case diary nor deposited it in the Malkhana. Failure to so do, can only mean that the keys were taken in custody to make duplicates and misuse them to be shown as 'recovered' from Sajjad.

7.5) The clothes recovered from the box are not proved to have been of Sajjad as they were not shown to the other guards, nor any witness has stated the same to have belonged to Sajjad.

8) Injuries on the person of Sajjad

8.1) The investigation was transferred to Crime Branch on 10th August, 2012. The Investigating Officer (PW-39) stated that he read the papers and then directed Sajjad to be brought to the Police Station. Sajjad was picked up from Bhakti park at around 12:30 p.m. on 10th August, 2012. Pursuant to a personal search panchanama, he was taken for medical examination. There were five injuries found on Sajjad. In response to the prosecution case that, the said injuries were caused by the victim during a scuffle but, no amplifiable DNA was found on the nail clippings of Pallavi, Dr.Chaudhry submits that if there had been a scuffle, Sajjad's skin and blood would have been found underneath Pallavi's fingernails.

8.2) Dr. Chaudhry placed reliance on Modi's Textbook of Medical Jurisprudence and Toxicology and pointed to a table showing the age of wound and likely abrasion seen. According to him, the

injuries on Sajjad were not fresh and hence, none of them can be said to have taken place during the course of the incident.

9) Lapses in investigation

9.1) The prosecution failed to collect best evidence, thereby ruling out the hypothesis of Sajjad's guilt. No casts were prepared of the footprints. As per the fingerprint report, no fingerprints were found, which is highly unnatural. CCTV cameras were not functioning in the society despite, the society being elite up-market and occupied by lawyers from prestigious law firms, employing many security guards and private electrician. Thus, it is very unlikely that CCTVs were not in working condition. The spot panchanama shows that there was a blood stain on the wall outside the window of Pallavi's bedroom, however, no fingerprints were found near the blood stain. The CDR of PW-32 points to an SMS received by him from Pallavi at 1:45:48 on 09th August 2012. Neither Pallavi's phone nor that of PW-32 was seized. Furthermore, PW/32-electrician was accompanied by a friend, Ramesh, to Pallavi's flat. Ramesh was never examined.

10) Illegal sentence imposed by the Trial Court

10.1) Dr. Chaudhry brings to our attention a glaring illegality in the sentence. The learned Judge of the Trial Court sentenced Sajjad to life imprisonment, for remainder of his natural life, whereas on conviction under Section 302 of the IPC, a trial court can either sentence an accused to life imprisonment or death. The trial court has no jurisdiction or power to impose any other sentence, least of all to sentence him for the remainder of his natural life. Similarly, for the offense punishable under Section 354 of the IPC, the Trial Court had no jurisdiction, as per the law in force at the relevant time to impose 5 years rigorous imprisonment. The section was amended only in 2013 while the date of offense was 08th August 2012 - 09th August 2012. On this ground alone, Dr. Chaudhry says that even without advertng to the merits of the matter the Judgment and Order should be set aside.

B. Decisions relied upon by the learned counsel for the Appellant:

1. *Vikas Chaudhry v. State of Delhi*¹

2. *Manohar @ Manu v. State of Karnataka*²

3. *Hanumant v. State of M.P.*³

4. *Sharad v. State of Maharashtra*⁴

1 2023 SCC OnLine SC 472

2 (2023) 19 SCC 168

3 (1952) SCR 1091

4 AIR 1984 SC 1622

5. *Baljinder Kumar @ Kala v. State of Punjab*,⁵
6. *Thulia Kali v. State of Tamil Nadu*⁶
7. *Ganesh Bhavan Patel v. State of Maharashtra*⁷
8. *Shahid Khan v. State of Rajasthan*⁸
9. *State of Punjab v. Bhajan Singh*⁹
10. *Kalinga alias Kushal v. State of Karnataka*¹⁰
11. *Dharambir @Dharma v. State of Haryana*¹¹
12. *Heramba Brahma v. State of Assam*¹²
13. *Jaspal Singh v. State of Punjab*¹³
14. *Sandeep v. State of Haryana*¹⁴
15. *Sanjay v. State of Uttar Pradesh*¹⁵
16. *Aghnoo Nagesia v. State of Bihar*¹⁶
17. *Hanumant v. State of M.P.*¹⁷
18. *Sevantilal Karsondas Modi v. State of Maharashtra*¹⁸
19. *Imperatrix v. Pitamber Jina*¹⁹

5 2025 INSC 856

6 AIR 1973 SC 501

7 (1978) 4 SCC 371

8 (2016) 4 SCC 96

9 (1975) 4 SCC 472

10 (2024) 4 SCC 735

11 2024 SCC OnLine SC 540

12 AIR 1982 SC 1595

13 (1997) 1 SCC 510

14 (2001) 9 SCC 41

15 2025 SCC OnLine SC 572

16 (1966) 1 SCR 134

17 AIR 1952 SC 343

18 (1979) 2 SCC 58

19 (1878) ILR 2 BOM 61

20. *Rohidas Manik Kasrale v. State of Maharashtra*²⁰
21. *Madaiah v. State*²¹
22. *In re Rayappa Asari*²²
23. *Hasil v. Crown*²³
24. *Subramaniam v Public Prosecutor*²⁴
25. *Mohd. Aman v. State of Rajasthan*²⁵
26. *State of Maharashtra v. Bhagwat Bajirao Kale*²⁶
27. *Pawan Kumar v. State of Haryana*²⁷
28. *Mohd. Iqbal alias Munna v. State of Maharashtra*²⁸
29. *Arjun Rangrao Patil v. State of Maharashtra*²⁹
30. *Chandrakant Balkrishna Gadankush v. State of Maharashtra*³⁰
31. *Kiran Ashok Jadhav v. State of Maharashtra*³¹
32. *Krishna @ Barkya Mangal Rajput v State of Maharashtra*³²
33. *H.P. Administration v. Om Prakash*³³
34. *Tomaso Bruno v. State of UP*³⁴

20 2012 ALL MR (Cri) 218
21 1992 CRI. L.J. 502
22 1972 CRI. L.J. 1226
23 ILR (1943) 24 Lah 77
24 [1956] 1 WLR 965
25 1997 SCC (Cri) 777
26 2024 SCC OnLine Bom 3775
27 AIR 2003 SC 2987
28 (2016) 3 AIR Bom R (Cri) 596
29 2015 SCC OnLine Bom 184
30 2015 SCC OnLine Bom 3667
31 2014 Cri LJ (NOC 454)
32 2004 ALL MR (Cri) 609
33 AIR 1972 SC 975
34 2015 (7) SCC 178

*35. Juwarsingh v. State of M.P.*³⁵

*36. State of Punjab v. Praveen Kumar*³⁶

*37. Muluwa v. State of M.P.*³⁷

C. Submissions on behalf of the Respondent-State:

6. Mr. Manoj Mohite, learned Senior Counsel made the following submissions:-

1) Motive

1.1) PW-1 specifically deposed twice regarding Pallavi's grievance that Sajjad leered at her; two independent witnesses testified Sajjad to have seen Pallavi in shorts and crop-top in her flat on the night of the incident and commented that he desired to have one night with her and to the other witness, he stated that he murdered Pallavi as she rejected his advances. Mr. Mohite, categorically places the prosecution case that Sajjad wanted sexual pleasure from Pallavi and seizing the opportunity when confirming that she was alone at home that night, tried to fulfil his desire and when Pallavi put up a strong resistance, he killed her. Mr. Mohite submits that Pallavi was a

35 1981 SCC (Cri) 357

36 (2005) 9 SCC 769

37 (1976) 1 SCC 37

national swimming champion and was of strong build. She put up a strong fight against Sajjad which is evident from the disarray of the bedroom and splashes of blood in the flat, however, ultimately losing to Sajjad's 17 knife stabs and succumbing to the same.

2) Incriminating recoveries

2.1) There was hair found at the spot of the incident. Sajjad's DNA was amplified on this hair. Similarly, the knife which was the weapon of the murder, recovered from Sajjad, had Pallavi's DNA. The full pant recovered from Sajjad also had his DNA as well as that of Pallavi. The T-shirt and *chappals* recovered from Sajjad had his as well as Pallavi's DNA. Moreover, the keys to Pallavi's flat were also recovered at the instance of Sajjad. The hair from Pallavi's right hand also had Sajjad's DNA. Mr. Mohite submitted a detailed chart of the DNA analysis.

3) Counter of the State to the submissions of Dr. Chaudhry

i) On Delayed FIR – Dr. Chaudhry stated that there is no explanation as to why the FIR was registered after 2 hours. Mr. Mohite submits that, statement of PW-1 Avik was recorded

immediately followed by registration of an ADR at 7:30 a.m. on 09th August 2012. PW-19 informed the police regarding Sajjad's phone call. There is no evidence that this was conveyed to the police in the presence of Avik and hence the same does not appear in Avik's statement. At that time the police suspected everyone including PW-1, PW-19 along with Sajjad and hence, there is no delay in registration of FIR against an unknown person. Statements of PW-19 and PW-20 were also recorded immediately thereafter. Hence, there is no question of any manipulation.

ii) **Why did Pallavi call Sajjad despite her discomfort** – Admittedly, Sajjad was a security guard in Ivory Tower and that electricity was intermittently going off in her flat. PW-19 has testified that Sajjad was on duty at Himalayan Heights i.e., Pallavi's building and he knows the work of an electrician. PW-4 admits that residents of the society ordinarily called the electrician through the watchman. Deposition of Avik indicates that at 10:30 p.m. he told Pallavi to tell the watchman to call the electrician. Hence, she called Sajjad. This is corroborated by the CDRs. PW-19 and PW-32 corroborate that Pallavi called PW-32 at 10:30 p.m. on 08th August 2012 asking him to restore

the electricity. Pallavi called Sajjad to get the number of PW-32. Pallavi again called PW-32 at 11:30 p.m. to 11:45 p.m. Thereafter, PW-32 after checking the main switches, told Pallavi that he would come in the morning. Even Sajjad had called him regarding the electricity going off in Pallavi's flat to which PW-32 informed him that he will check in the morning. PW-19 also deposed that on the 09th of August, 2012 at 1:00 a.m., when he was on rounds with PW-22, Sajjad came to him, in his uniform and told him that electricity in Pallavi's flat was off and Pallavi was calling for PW-19 to check the same. This clearly shows that she never called for Sajjad to restore electricity but only as a conduit to call the electrician. She allowed him to enter because he was accompanied by the guard. The CDRs are exhibited and proved by the Nodal Officers of phone companies, PW-6, PW-3, PW-12 and PW-13.

iii) **Outraging Pallavi's modesty** – At 1:00 a.m. on 09th August, 2012, Sajjad told PW-22 that there was no electricity in Pallavi's flat. Hence, both went to her flat and rang the bell. She did not answer and Sajjad called her from his mobile. They both entered the flat and saw that the main switch was on. On Sajjad's query, Pallavi told them that

Avik was not at home and would return in the morning. According to Mr. Mohite, this was the time when Sajjad learnt that Pallavi was alone and in the darkness swiped the keys from the flat. Furthermore, PW-22 deposed that while coming out of Pallavi's flat, Sajjad told him that Pallavi was looking very sexy and he wanted to sleep with her for one night. There is no contradiction nor omission in the entire evidence. Infact, the lace of Pallavi's knicker was broken and torn, the string of her shorts was torn and her clothes were blood stained. All is reflected in the seizure panchanama. The spot panchanama reveals that the bed sheet and bed cover were in disarray, pillows were on the floor and there were blood stains on the bed. This indicates a scuffle on the bed.

iv) **Presence of Sajjad outside Pallavi's flat** – PW-22 stated that Sajjad was with him at 1:00 a.m. in Pallavi's flat and they left together and went down. Thereafter, PW-4-Pallavi's neighbour testified to having seen Sajjad outside her flat door at 1:30 a.m. On being asked as to what he was doing there he replied that Avik had called him. PW-4 is an independent witness and his statement was recorded immediately. It is thus, established that Sajjad came back alone after

PW-22 went towards the other building, Julian Alps and PW-4 specifically stated that he found Sajjad alone outside the flat. Considering this evidence, Mr. Mohite argues that Sajjad was last seen with Pallavi and he made a false excuse to PW-4 that PW-1 had called him to the flat, knowing fully well at that time that Pallavi was alone.

v) **Lack of CCTV footage of the incident** – PW-19 testified that CCTV cameras were installed in the society premises but were not working. PW-31, resident of society, stated that there was no CCTV in the compound of the society. PW-32 stated that CCTV was in the common area but no question was put to him as to whether they were working. PW-34 stated that the society residents did not answer as to why there were no CCTV at all and finally, PW/39-the second investigation officer testified that the CCTV cameras were not working. The lack of CCTV footage is thus not suspicious as none of the relevant CCTV cameras were working.

4) **On extrajudicial confessions**

4.1) PW-19 testified that Sajjad called him at 5:00 a.m. on 09th August, 2012, asked for Rs. 10,000/- to go to J&K as he had

murdered Pallavi. At that time, PW-19 thought he was joking but, on learning of Pallavi's murder he confided in PW-20 about the same. PW-20 stated as much. Once again at 7:00 a.m. - 7:15 a.m., Sajjad called PW-19 and asked him whether he was giving him the money. On PW-19 asking him about the murder, Sajjad switched off the phone. The statement of PW-19 was recorded on the 09th August, 2012 itself and there is no omission or contradiction in his version. The CDR also corroborates the calls.

4.2) Sajjad also called PW-10, the neighbour's driver on the 09th at 10:30 a.m. PW-10 missed the calls but called him back. Sajjad told him that 'one item did not allow him sexual favours and hence, he killed her'. When PW-10 asked him who the 'item' was, he said simply laughed and disconnected the phone. The CDRs corroborate this. Mr. Mohite submitted that PW-10's movements of the day may not match his locations, however, the CDR confirms the calls between Sajjad and PW-10 at around 10:30 a.m. on the 09th. Mr. Mohite pointed out that merely because the CDR may not match each deposition, this does not affect the witnesses's entire credibility. Mr. Mohite has also countered Dr. Chaudhry's argument regarding the

object of the Sajjad in confiding with PW-10 and PW-19 by saying that they were working in the same society and shared a camaraderie. He stressed that this knowledge is personal to Sajjad and one cannot explain the reasons of another for acting one way or the other.

5) **Recovery of incriminating DNA**

5.1) PW-19 and PW-22 deposed as to seeing hair in the bedroom. PW-1 also showed the spot from where strands of hair were seized. The articles were sealed in his presence by putting them in a brown paper packet and affixing a white paper label and signed by the panchas. PW-14- spot panchanama panch also witnessed hair seen at the spot to have been labeled and sealed. There is no cross-examination at all of any witness as to how it was sealed. Further, PW-34 testified regarding conducting spot panchanama at 11:40 a.m. and seizure and sealing of 6 articles. The sealed packet was signed by PW-34 and two other panchas. PW-34 then sent the *muddemal* to the CA, took the signature of PW-37 on the forwarding letter and sent to the CA with PW-27 in a sealed condition. The entire chain of custody is explained in the deposition leaving no room for any doubt.

5.2) The CA reports confirms the DNA of the hair which is found at the spot of the crime to be that of Sajjad. PW-38 and PW-39 have specifically testified in that regard. Moreover, Sajjad in his statement under Section 313 of Cr.P.C. has accepted that the hair found on the scene of crime and amplified by the DNA was his.

5.3) The prosecution examined PW-28 i.e., the person who sold the knife to Sajjad. He identified Sajjad as well as the knife. This knife was recovered pursuant to Sajjad's discovery statement. It was found from a shoe rack on the 03rd floor in Himalayan Heights. It was sealed as per law. Even if the ownership of the shoe rack is not established, the fact of the hidden knife was solely within Sajjad's knowledge and hence, the recovery was proved. The DNA report revealed that the knife had Pallavi's DNA and blood group. Mr. Mohite explained the chain of custody of the knife sent to the CA in sealed condition.

5.4) PW-18- Dr. Dere and the post-mortem report established Pallavi's death due to sharp side of knife and due to haemorrhage shock of a cut throat injury. On the other hand, PW-26-Dr. Rathod explained Sajjad's injury. No questions were asked to the doctors in

cross-examination and the defense only showed a text on Modi's Jurisprudence.

5.5) PW-22 testified that Sajjad used to stay in the society and keep his clothes in the cabin. PW-15-panch witnessed recovery of Sajjad's clothes and *chappals* (Art-11 and 12) and Pallavi's house keys (Art-10) from the locked tin box in the cabin. They were seized, wrapped and sealed. On Dr. Chaudhry's argument that, if the clothes were blood stained, there would have been a trail of blood left behind on the staircase, Mr. Mohite pointed out that there was blood only on the hem of the pant and the *chappals* had blood stains and were not drenched in blood to leave a trail. The recovered items were deposited in the *muddemal* room. The day being a Sunday, the *muddemal* was forwarded to the FSL on the very next day and there was no delay in that regard.

5.6) Dr. Chaudhry's argument that Sajjad's clothes were not identified by the other guards is met by the explanation that PW-4 and PW-19 testified in respect of the uniform worn by Sajjad.

5.7) Mr. Mohite submitted that, by way of a forwarding letter

dated 09th August 2012, substances other than the viscera were sent to the CA. Hair from the right hand of Pallavi is mentioned in the list. The articles were dispatched through a PC on duty and had an impression of seal and an acknowledgment from the FSL office. The mere fact that the doctor and carrier were not examined does not render the evidence invalid or point to any manipulation. PW-38- the Assistant Director of the forensic lab testified as to receiving 3 hair samples and as well as to the DNA report. The DNA found on the hair from Pallavi's right hand is that of Sajjad and Pallavi. The only lapse seems to be the description written by PW-38 referring to the hair from the hand as hair found in the hand. Nonetheless, Sajjad in his statement under Section 313 Cr.P.C has accepted that the hair found from Pallavi's right hand and the DNA was his and Pallavi's.

5.8) Mr. Mohite further explained the chain of custody of the samples collected from the spot to the CA. He says that some of the items seized on 10th were sent to the CA on the 13th, as 11th and 12th were holidays and the FSL was closed.

6) Injuries on Sajjad

6.1) PW-26, Dr. Rathod, examined Sajjad on the 10th and testified that Sajjad had 5 injuries. Injury No.1 & 2 - 4 were due to sharp object; Injury 2, possibly by nail scratches and Injury No. 5 was due to hard and rough surface. The age of injuries was stated to be within 48 hours. Sajjad in his Section 313 Cr.PC statement accepted the injuries.

7) **Fingerprint/ footprint report**

7.1) Mr. Mohite pointed out that although the defense expressed their surprise at not finding fingerprints at the spot, no question was put to any witness in that regard. The fingerprint report was found to be inconclusive by the fingerprint expert and hence, the police had no role to play. Similarly, the footprints were all mixed with those from PW-1, neighbours, watchmen and the police and hence, there was nothing to be gathered from the footprints.

7.2) Mr. Mohite thus, summarized his arguments as under:

i) Sajjad being seen outside Pallavi's flat at the relevant time by her neighbour.

ii) Text messages by and between Avik and Pallavi at 1:45 a.m. on 9th August, 2012.

iii) Post finding Pallavi's body, Sajjad fled the society and despite his duty hours to be till 8:00 a.m. in the morning, he fled from the society and was not found.

iv) Confiding in PW-10, PW-19, PW-20 and PW-22 regarding commission of the murder. Statement of PW-19 was recorded on the same day. CDR also confirms the call made by Sajjad to PW-19.

v) Sajjad admitted his presence at Pallavi's flat to PW-10.

vi) The spot panchanama was done immediately and specimen of hair was recovered from the spot.

vii) The articles collected during investigation were admittedly sealed, which is not disbelieved even by the Defense.

viii) Sajjad was arrested on the 10th August, 2012. The knife, his clothes, *chappals* and the flat keys were recovered at his behest on 12th August, 2012 itself. The hem of his pants had blood stains, the DNA of Pallavi and Sajjad was found on it. Sajjad's DNA was found on the

keys, which were inside the pocket of his pants.

ix) Sajjad's injuries were fresh and consistent with the scuffle with Pallavi. Sajjad was unable to explain the injuries.

x) Sajjad was released on parole on 23rd February 2006. he absconded and was arrested from J&K on 10th October 2017. This shows the conduct of Sajjad.

D. Decisions relied upon by the learned counsel for the Respondent:

*1. Gauri Shankar v. State of Punjab*³⁸

*2. Gagan Kanojia & Anr. v. State of Punjab*³⁹

*3. Hema v. State*⁴⁰

*4. Edakkandi Dineshan v. State of Kerala*⁴¹

*5. State of Himachal Pradesh v. Jeet Singh*⁴²

*6. John Pandian v. State*⁴³

*7. Sucha Singh and Anr. v. State of Punjab*⁴⁴

*8. Babasaheb Apparao Patil v. State of Maharashtra*⁴⁵

38 (2021) 3 SCC 380

39 (2006) 13 SCC 516

40 (2013) 10 SCC 192

41 (2025) 3 SCC 273

42 (1999) 4 SCC 370

43 (2010) 14 SCC 129

44 (2003) 7 SCC 643

45 (2008) 17 SCC 425

*9. State of U.P. v. Devendra Singh*⁴⁶

*10. Santosh Kumar Singh v. State*⁴⁷

*11. State of Andhra Pradesh v. N. Venugopal & Ors.*⁴⁸

*12. Pravin Dhondiram Chorge and Ors. v. the State of Maharashtra*⁴⁹

*13. Mustak v. State of Gujrat*⁵⁰

*14. Shatrughna Baban Meshram v. State of Maharashtra*⁵¹

*15. Nath Singh and Ors. v. State of U.P.*⁵²

*16. Surjit Singh v. State of Punjab*⁵³

*17. Bachan Singh v. State of Punjab*⁵⁴

*18. Machi Singh v. State of Punjab*⁵⁵

E. Submissions on behalf of Revision Applicant:

8) Mr. Abhishek Yende, learned Advocate appearing for the Revision Applicant, submitted that Pallavi graduated from law school in 2009, started practice in Delhi High Court, went on to join a law firm in Singapore and migrated to Mumbai in 2011. Both her parents are IAS officers. She and Avik were to marry soon. Mr. Yende supported the contentions of the State but, added a few points. He

46 (2004) 10 SCC 616

47 (2010) 9 SCC 747

48 1963 SCC OnLine SC 103

49 2017 SCC OnLine Bom 16

50 (2020) 7 SCC 237

51 (2021) 1 SCC 596

52 (1980) 4 SCC 402

53 (2011) 15 SCC 187

54 (1980) 2 SCC 684

55 (1983) 3 SCC 470

submitted that the chain of evidence against Sajjad is clearly established. His presence at the spot is proved. He highlighted the relationship of a security guard with the persons whose safety was entrusted with them, who takes advantage of his position to commit a crime. Sajjad stabbed Pallavi 17 times. There is no explanation forthcoming pertaining to the blood found on his clothes, injuries on his person, confessions to other witnesses, etc. Mr. Yende highlighted Sajjad's post incident conduct. Sajjad tried to abscond to J&K. After he was granted parole, he abused his liberty and a SIT was required to be formed to secure his presence. He was traced in Gagangiri, only 50 kms away from Pakistan border.

8.1) Mr. Yende canvassed an argument regarding the aggravating factor that Avik, the Complainant, who found Pallavi's body went in such a shock that he passed away on 14th November 2013 from inflammatory brain disorder which was caused by trauma of the incident. In fact, when Avik was required to be recalled to depose regarding his supplementary statement, he had already died by then. Mr. Yende, representing Pallavi's father, made a passionate plea that the prosecution failed to challenge the lack of offense punishable

under Section 376 read with Section 511 of the IPC that was excluded from the charges framed. In fact, the evidence of broken string of Pallavi's shorts and the condition of her bedroom strongly suggested an attempt to rape. Mr. Yende even urged this Court to convict Sajjad for the said offenses by invoking Section 464 of Cr.P.C. He submitted that in case the Court was not inclined for the same, Sajjad should be sentenced to enhanced capital punishment. He prayed for dismissal of Sajjad's Appeal as well.

9) We have heard the parties, considered the entire evidence on record minutely and perused the Judgment and Order impugned herein.

III. POINTS FOR DETERMINATION:

1. Whether the evidence on record completes the chain of circumstances from which a conclusion of guilt can be drawn and whether this evidence is sufficient to record conviction against Sajjad?
2. If the answer to above be in the affirmative, what should be the appropriate punishment to be imposed on Sajjad?

IV. ANALYSIS:

A. Law laid down in cases involving evidence of circumstantial nature:

11) Before addressing the points for determination, we consider it appropriate to revisit the law laid down by the Supreme Court in cases involving evidence of circumstantial nature. In *Hanumant Vs. State of Madhya Pradesh*⁵⁶, the Supreme Court expounded the law relating to appreciation of circumstantial evidence as under:

"12. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence

56 (1952) 2 SCC 71

so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the forceful arguments the act must have been done by the accused....."

The decision of the Supreme Court in ***Shankarlal Gyarsilal Dixit v. State of Maharashtra***⁵⁷ followed. In ***Shankarlal (supra)***, the Apex Court emphasized the importance of legal principles insofar as appreciation of circumstantial evidence is concerned by saying that legal principles are not magical incantations. The Supreme Court held that "*the circumstances on which the prosecution relies must be consistent with the sole hypothesis of the guilt of the accused.....*"

".....The simple expectation is that the judgment must show that the finding of guilt, if any, has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reasonable hypothesis."

Later in ***Sharad Birdhichand Sarda vs. State of Maharashtra***⁵⁸, laying

57 (1981) 2 SCC 35

58 (1984) 4 SCC 116

down the principles for conviction on the basis of circumstantial evidence, the Supreme Court held that the following conditions must be fulfilled, before the case against the accused can be said to be fully established:-

- “(i) The circumstances from which the conclusion of guilt is to be drawn should be fully established;*
- (ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;*
- (iii) the circumstances should be of a conclusive nature and tendency;*
- (iv) they should exclude every possible hypothesis except the one to be proved;*
- (v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”*

In paragraph 153 of the aforesaid decision, their Lordships observed that the said “five golden principles” constitute the "Panchsheel" of the proof of a case based on circumstantial evidence.

12) In addition to the above, while dealing with a criminal

trial, a Court must not be oblivious to the most fundamental principle of criminal jurisprudence that the accused ‘must be’ and not merely ‘may be’ guilty before convicting him. In *Shivaji Sahebrao Bobade v. State of Maharashtra*⁵⁹, the Supreme Court elaborating the above principle, observed that the mental distance between ‘must be’ and ‘may be’ is long and divides grave conjectures from sure conclusions. In the case of *Karakkattu Muhammed Basheer v/s State of Kerala*⁶⁰, the Apex Court followed the principles set out in the case of *Ramreddy Rajesh Khanna Reddy and Another v/s State of A.P.*⁶¹ paras 26 and 27 of the said decision read thus:-

“26. It is now well-settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well-settled that suspicion,

59 1973 (2) SCC 793

60 2024 INSC 838

61 (2006) 10 SCC 172

*however, grave may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence. [See **Anil Kumar Singh v. State of Bihar (2003) 9 SCC 67** and **Reddy Sampath Kumar v. State of A.P. (2005) 7 SCC 603**].”*

B. The evidence on record indicting Sajjad:

13) Considering the principles of law laid down by the Apex Court, relating to cases based on circumstantial evidence, we now proceed to deal with the evidence on record. The evidence indicates that Pallavi called the security guard to get the phone number of the electrician to facilitate restoration of electricity in her flat. There is a series of phone calls, made by Pallavi to the security guard, security supervisor and the electrician. Unable to get through to the electrician, Pallavi called Sajjad, requiring him to convey her distress to the electrician. In one of the visits to Pallavi’s flat, Sajjad accompanied the electrician. He learnt that she was alone and also saw her in her night wear. He commented to the accompanied, his desire to spend a night with Pallavi. When the electrician and the security supervisor gave up

on restoring the electricity for the night, Sajjad alone went to the flat. Pallavi's neighbour saw him and asked him his business to be there at that hour in the night. To this Sajjad fibbed that Avik had called him. The prosecution places Sajjad at the place of incident at the relevant time and further brings home the guilt to him on the basis of the recovery of the weapon of murder, clothes, *chappals* and Pallavi's house keys at Sajjad's instance. Sajjad confided regarding the commission of the act to the security supervisor as well as the neighbour's driver, in a bid to loan some money. His clothes, knife, the keys to Pallavi's house and hair found at the spot bear his DNA, which further indict him.

C. On Motive:

14) PW-1 deposed that Pallavi had complained to him regarding Sajjad acting smart with her by forcefully attempting to talk to her. He used to stare at her. PW-1, in his cross-examination, has re-asserted this and clearly explained that he was under stress at the time of giving the complaint due to which he forgot to inform the police regarding the same. According to the prosecution, Sajjad's motive is of a sexual nature. The witnesses relied upon by the Trial Court in this

regard are PW-1, PW-9, PW-10, PW-11 and PW-22. The indictive testimony was Pallavi's complaint to Avik about Sajjad's conduct; a lewd remark made by Sajjad to PW-22 when both of them were in Pallavi's house trying to restore the electricity; the torn string of Pallavi's shorts and the extrajudicial confessions made by Sajjad to PW-10 and PW-19. With reference to Dr.Chaudhry's objections that the Leave and License Agreement of the flat was w.e.f. November, 2011, while Pallavi's complaint to Avik was in July, 2011, the testimony of the aforesaid witnesses is crucial. PW-1 specifically stated that on his return from office, Pallavi complained about Sajjad. This indicates that PW-1 remembered the incident clearly but may have erred in stating the date of the incident. Further, PW-19, the Security Supervisor deposed that the night working time of the Security Supervisors is from 08:00 p.m. to 08:00 a.m. He along with PW-22 were always on night duty. There were 4 buildings in Ivory Towers; Himalayan Heights is where Pallavi and Avik resided. Sajjad was on duty at the time of the incident. On the relevant night, PW-32, the electrician, asked him for the key of meter room as Pallavi's flat's lights were not working. PW-19 deposed as having seen PW-32 and his friend go to Pallavi's flat to restore electricity. Thereafter, PW-22, another Security

Supervisor, corroborated the testimony of PW-19. He further deposed that at 01:00 a.m., Sajjad came to him and told him that Pallavi's lights were not working. He accompanied Sajjad to Pallavi's flat. On seeing Pallavi wearing shorts and a crop top, Sajjad, while coming out of her flat, commented that Pallavi Madam was looking very sexy and he wanted to sleep with her. This witness rebuked Sajjad. On returning to the ground floor, he deposed that he went to the other building but, saw Sajjad again heading towards Pallavi's building. Supporting this, PW-10, a driver friend of Sajjad, deposed that on the following morning, while requesting a loan from him, Sajjad clearly said that "*society main ek item ne mujhe kaam karne nahi diya isliye maine usse maar daala*". The testimonies of the above 4 witnesses in addition to Avik's testimony, establishes the motive of Sajjad in committing the offense. A mere possibility of Avik giving a wrong date, on which Pallavi complained of Sajjad's misbehavior to him, as Dr. Chaudhry argues, referring to the date of the Leave and License Agreement, does not dilute these testimonies. We are inclined to believe Sajjad's desire to physically violate Pallavi as a strong motive to commit the offense. This evidence has not been rebutted in the cross-examination of the aforesaid witnesses and thus, we find the motive to

be sufficiently established. This assumes great significance in establishing Sajjad's culpability.

15) Furthermore, PW-19 affirmed that it was Sajjad who was on duty at that time and he also has the knowledge of an electrician. PW-4 supported the prosecution and said that ordinarily the residents called the electrician through the watchman. Additionally, PW-1, Avik, deposed that he told Pallavi to tell the watchman to call the electrician. The CDR corroborates the series of calls. PW-19 and PW-20 both affirm that Sajjad was in uniform and he conveyed to them that the lights in Pallavi's flat were not working and hence, Pallavi was calling PW-19. This negates Dr. Chaudhry's arguments that as Pallavi called Sajjad, he never misbehaved with her.

D. Sajjad's presence at the spot of the crime & Law on the Last Seen Theory:

16) In order to establish Sajjad's presence in the house of the deceased, the Trial Court relied on the testimony of Kunal Shah (PW-4), Shabbir Khan (PW-19), Mohammad Khalid Khan (PW-22) and Dharmesh Gupta (PW-32). PW-19 and PW-22 were security

supervisors while Sajjad was a security guard in Pallavi's society. All three were on night duty at the time of the incident i.e. on the intervening night of 8th and 9th August, 2012. The electricity in the house was repeatedly going off. Pallavi contacted Avik (PW-1) who told her to call the electrician. She called the electrician (PW-32) at 10:30 p.m. He came there and switched on the main switch from the meter room, restoring the electricity. The same thing happened later at 11:30 p.m. and 12:30 p.m. On the second call, the electrician refused to come and hence, she called Sajjad, who went to PW-19 and informed him. PW-19 deputed PW-22 to accompany Sajjad to the flat. They switched on the mains again and informed Pallavi. Finally at 1:30 a.m., Sajjad was seen outside Pallavi's apartment by PW-4. The entire sequence of phone calls is well established by the CDRs. Furthermore, the Prosecution has also successfully placed Sajjad in Pallavi's flat at the time of her murder. Firstly, PW-4 has testified that when he returned home at 01:30 a.m., he saw Sajjad outside Pallavi's door and upon being questioned, Sajjad told PW-4 that he was there as Avik had called him. It is already established that prior to this, Sajjad had already entered Pallavi's flat with PW-22 and was well aware of Avik's absence at home. This proves that Sajjad lied to PW-4. PW-4 is

an independent witness and his statement was recorded immediately on 09th August, 2012 itself. Moreover, PW-22 also testified as to Sajjad going towards Himalayan Heights after returning from Pallavi's flat with him. This evidence clinches Sajjad's presence at Pallavi's flat post 01:00 a.m. The PW-18 i.e., Dr. Dere who conducted the Pallavi's postmortem deposed as to the approximate time of death, on the basis of the *rigor mortis*, postmortem lividity on the back and buttocks of the dead body. The time of her death was fixed from 01:20 a.m. to 03:30 a.m. There is no material on record to indicate the entry of any other person than Sajjad after 01:30 a.m. in Pallavi's flat. The prosecution's case against Sajjad, based on the last seen theory is thus, established.

17) The law in respect of the last seen theory as part of the circumstantial evidence is well settled. 'Last seen' as a link in the chain of circumstantial evidence, would suggest existence of oral testimony of at least one witness to establish that the deceased was last seen in the company of the Appellant/Accused. In this context, it is relevant to refer to the following decisions of the Apex Court. In *State of U.P. v/s Satish*⁶², the Apex Court in paragraph 22 of the said decision held as

62 (2005) 3 SCC 114

thus:-

“22. The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. ...”

(emphasis supplied)

18) This position was reiterated by the Apex Court in *Hatti Singh v/s State of Haryana*⁶³, and also in the recent decision of the Apex Court in *Krishan Kumar and Another v/s The State of Haryana*⁶⁴. Although, in *Krishan Kumar (Supra)* the accused was acquitted on the facts of that case, the legal position relating to the last seen theory is consistently followed. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the

63 (2007) 12 SCC 471

64 2023 INSC 679

accused being the author of the crime becomes impossible.

19) Returning to the evidence adduced in the present case, the testimony of atleast 4 witnesses place Sajjad at the place of the incident at the relevant time. In addition, there is also no explanation offered by the Defense as to how and when Sajjad left Pallavi's flat. Sajjad's entry in the flat is clinched when he tells PW/4 that he was outside Pallavi's flat as Avik has called him. This, reinforces the prosecution case of Sajjad having every intent to enter Pallavi's flat at or a little past 1:30 a.m. The Defense is unable to indicate his exit from the flat.

20) The principle of law in this regard is well settled. The provisions of Section 106 of the Indian Evidence Act, 1872 (IE Act) itself are unambiguous and categoric. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. If he does so, he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the IE Act. In its decision in the case of

*State of Rajasthan v. Kashi Ram*⁶⁵, the Supreme Court held that in a case resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 of the IE Act does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down a rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation as an additional link which completes the chain. In the present case, Sajjad's entry is established but the defense fails to discharge its burden to explain when he parted. There is a complete link in the chain of circumstances, which prove his guilt beyond reasonable doubt.

21) We return to the facts in the present case. The prosecution also buttressed the conduct of Sajjad in absconding from the Society even prior to completion of his shift at 08:00 a.m. None of the witnesses testified seeing Sajjad in the morning when all of them learnt of Pallavi's murder after the arrival of the police. In fact, PW-19

65 (2006) 12 SCC 254

deposed that after police came, he went downstairs to search for Sajjad but did not find him. This shows that Sajjad was not seen till his arrest.

E. Seizure of Articles; Chain of Custody /Absence of Wax Seal:

22) The Prosecution has also completed the chain of circumstances on the basis of recovery of incriminating material at the flat. PW-1 testified to articles being seized from the flat including strands of hair. The articles were put in brown paper packet and affixed with a label. The panchas signed across the label. The spot panchanama (Exhibit 64) records the hair sealed and labeled from the spot. The spot panchanama further records blood outside the lift as well as bloody footprints outside the flat. It also records blood stains outside the window, blood stained bedsheet and a blood stained blanket. There were footprints going towards the bedroom. In the pool of blood, strands of hair were found, which were seized and sealed in a brown envelope. He signed along with the two panchas. Much is being made by Dr. Chaudhry regarding the seized articles not being sealed with wax. According to him, not using a wax seal has left the seized articles vulnerable to tampering. However, there is no cross-

examination on this aspect. Nothing of any significance is elicited from the cross-examination. The further testimony records the chain of custody of the sealed articles. The articles in a sealed condition were deposited with the FSL. Fact remains that the seals found on the samples were intact when the samples were received in the FSL. More significantly, there is no evidence to indicate that the packet or the seals on them were tampered with. In the absence of anything of significance emerging in the cross-examination as well as evidence indicating any tampering with the seals or the envelopes, the said anomaly is not of much significance.

23) Dr. Chaudhry has also raised doubts about the seized *muddemal* not being deposited in the *Malkhana* at the Commissioner's office even after the investigation was transferred to the DCB – CID. However, there is evidence to indicate that the articles were kept in the *muddemal* room in Wadala T.T. Police Station. Mr. Mohite has fairly submitted that the entries of the *muddemal* being taken in the station diary and the *muddemal* register were not part of the charge-sheet. However, Mr. Mohite sought leave and tendered the *muddemal* register for our perusal to satisfy our conscience. These entries do

appear in the register, however, since they were not part of the evidence before the Trial Court, we have not relied upon the same. Even in its absence, the Defense failed bring out any suggestions in the cross-examination of PW-34 and as such, nothing is elicited in this regard. We are also satisfied with Mr. Mohite's explanation that 9th August and 10th August of the year 2012 were holidays being *Janmashthami* and *Dahi Handi* respectively and 11th August and 12th August being a weekend and the FSL being closed, the articles were sent to FSL on 13th August, 2012. The period of custody of the articles with the police was short and the FSL has received the same in a duly sealed condition. Undoubtedly, there was a delay of 4 days in sending the sealed parcels containing the articles to the FSL, but this was explained clearly as a routine delay caused on account of public holidays and nothing sinister could be read into it, unless it was shown that the police had any hostile animus or motive to implicate Sajjad falsely. There is nothing in the cross examination regarding any suggestion that the police had any motive to falsely implicate Sajjad in the case. As such the testimony of the witnesses appears untainted and hence, we are satisfied regarding the sanctity of the articles sent to FSL.

F. On CA Report regarding DNA:

24) The CA Report (Exhibit 132) dated 20th October, 2012 is on record. The DNA Report is at Exhibit 119. The DNA found on the hair at the scene of the crime is established to be that of Sajjad. PW-38 has testified in that regard. He testified that he received the controlled blood sample also in sealed condition. After receiving all the samples, he broke open the seals. The DNA on the articles was amplified by using the prevalent procedure of testing. PW-38 clearly deposed that the blood stained hair and the DNA profile of Sajjad are identical and the same were that of Sajjad. Nothing contradicting his testimony was elicited in his cross-examination. Furthermore, Sajjad affirmed in his Section 313 Cr.P.C statement that the DNA found on the hair at the scene of crime and that found on the hair held by the deceased was his.

G. On recovery of weapon:

25) PW-28 testified that Sajjad purchased the knife from him. He identified the knife as sold by him. This knife, in fact, was wrapped in a transparent plastic bag and cardboard and sealed with

wax. Insofar as the recovery of knife is concerned, the same was recovered at Sajjad's behest. The panch (PW-23) deposed that pursuant to the disclosure statement of Sajjad, the knife was recovered from a shoe rack on the 3rd floor of Himalayan Heights. Dr. Chaudhry argued that no person has claimed ownership to the shoe rack and also that Sajjad would not have time to go to his room and get the knife before committing the offense and hence, the recovery is tainted. This is mere contemplation on the part of the defense based on surmises and conjectures. There is no suggestion given to any of the witnesses in this regard and the disclosure followed by the recovery of the murder weapon fortifies the prosecution case.

H. On recovery of other articles:

26) The testimony of PW-22 has already established that Sajjad stayed at the Society and kept his clothes in his cabin in the other building called Julian Alps in the Ivory Towers Society. PW-15 deposed in respect of recovery of Sajjad's clothes, *chappals*, belt and keys to Pallavi's flat, pursuant to his disclosure statement. He affirmed that the pants and *chappals* had stains of dried blood. The memorandum panchanama at Exhibit 68 and 68-A records that, the articles were

seized, wrapped and sealed. PW-39 (2nd I.O.) deposed regarding the seizure of the articles in the presence of the panchas and depositing the same in *muddemal* room. These articles were also sent to FSL on 13th August, 2012. The objection of Dr. Chaudhry regarding delay in sending the articles to FSL is already discussed and dealt with herein above.

27) Dr. Chaudhry has doubted the chain of custody of the articles. However, on perusal of the testimony of PW-25 who deposed regarding receipt of 4 sealed parcels, one plastic parcel and one sealed bottle of blood with forwarding letter having the impression of seal and acknowledgment of the FSL office, we are satisfied that the chain of custody is unbroken. Once again, nothing is elicited from the cross-examination of either PW-39, PW-25 or PW-38 who is the Assistant Director of FSL at Kalina. PW-38's statement that the blood detected on the full pant of Sajjad matches his DNA profile as well as that of Pallavi also clinches the issue.

28) Sajjad's clothes worn on the date of incident are identified by PW-4 and PW-19, who have stated that he was wearing the society uniform, which was recovered at Sajjad's behest. The keys to Pallavi's

flat were also recovered from the pocket of Sajjad's pants recovered as aforesaid. PW-17, the panch, testified as to the seizing and the sealing of the two keys. The keys were of Pallavi's flat. Much is again raised by Dr. Chaudhry that the said keys could have been duplicate keys made by the police as Avik had already handed over the keys to his flat to the police. Admittedly, there is no panchanama or station diary entry of receipt of the said keys from Avik. In an attempt to explain this lapse on the part of the police, Mr. Mohite argued that, on 09th August, 2012, the significance of taking keys from Avik was not appreciated. It was when Avik informed the police about the assault on Pallavi and the FIR was registered that the police went to the flat to conduct spot panchanama. It was perhaps at this time that the I.O. concerned took keys from Avik to open the flat. The same were handed over to Avik as he was still living there. Admittedly, there is no record of this. However, there is no cross-examination of either Avik or the I.O. on this point. In any case, the panchas also testified to the discovery of the keys in Sajjad's pants. If we were to believe Dr. Chaudhry's theory that the keys were planted by the police, we would have to disregard the entire discovery of all the other articles recovered from the cabin in the society, which is a far cry. The keys to

the flat were found in the pocket of the recovered pants. The recovery pursuant to the disclosure is of all the articles found in the tin box in the cabin, collectively and if one is tainted, all the others follow suit. But, if the sanctity of other articles is found to be of sterling quality, that of the keys is inconsiderable. Since we are satisfied about the sanctity of the evidence relating to the recovery of clothes, *chappals* and other articles from the cabin, this theory woven by Dr. Chaudhry is unbelievable.

I. Extrajudicial confession:

29) Another aspect of the prosecution's case is regarding the extrajudicial confession made by Sajjad to PW-10 and PW-19. PW-10 deposed regarding missed calls received from Sajjad. When he called him back, Sajjad informed him that "*society main ek item ne mujhe kaam karne nahi diya isliye maine usse maar daala*". Thereafter, Sajjad cut the call and after some time called back to ask for a loan of Rs. 10,000/- to go to his native place at J&K. Dr. Chaudhry has questioned the testimony of PW-10 by saying that PW-10 is not a reliable witness since he did not remember the registration number of his employer's car and had also narrated a story that he was on leave

and at home on 09th August, 2012 as he had loose motions from the day before. However, the CDR of PW-10's mobile phone indicates that he visited the Crime Branch office. Be that as it may, nothing is elicited in the cross examination to doubt the testimony of these witnesses. The flip flop of PW-10 regarding his movements on 09th August, 2012 does not have any substantial effect on his testimony pertaining to Sajjad calling him and boasting about doing off Pallavi. In fact, the very same CDR corroborates calls received by PW-10 from Sajjad at the time that he has testified to.

30) PW-19 also deposed that at 05:00 a.m. on 09th August, 2012, he received a call from Sajjad asking for Rs. 10,000/- loan to go to his native place. At that time, he told PW-19 that he had killed Pallavi Madam. PW-19 stated that at the time, he thought that Sajjad was joking. Thereafter, upon learning of Pallavi's murder, he immediately told the police regarding the phone call from Sajjad. PW-19 deposed about receiving another call from Sajjad at around 07:00 a.m. when he was in Sion Hospital with the police. PW-19 deposed that he asked Sajjad why he killed Pallavi but, Sajjad only inquired as to whether he was ready to loan him the money and cut the call. The

testimony withstood the cross-examination. Nothing was elicited from the cross-examination in this regard. Dr. Chaudhry has raised three points in an attempt to demolish this testimony, *albeit* nothing of such kind is forthcoming in the cross-examination of either PW 19 or PW 34 (the first I.O. to whom PW 19 informed regarding the call from Sajjad). Firstly, Dr. Chaudhry muses as to why Sajjad was not arrested on the very same day on the information given by PW 19 to the I.O. regarding Sajjad's phone call; secondly, Dr. Chaudhry says that the passbook of Sajjad showed a balance of Rs. 8,000/- in his own bank account, which negates the story that Sajjad was in need of money; and thirdly, there was no reason for Sajjad to confide in his supervisor as they were not friends but PW-19 was Sajjad's senior. In answer to these surmises raised by Dr. Chaudhry pertaining to Sajjad's intent, Mr. Mohite argued that the musings of Dr. Chaudhry have not translated in cross-examination of the I.O. pertaining to why Sajjad was not arrested as soon as PW 19 conveyed receiving a telephone call from Sajjad. This aspect is raised for the very first time in the arguments before this Court. Regarding the request for money from PW 10 and 19, Mr. Mohite stated that, Sajjad probably was hesitant to go to his bank, fearing recognition by the police and he wanted money

quickly without detection. Furthermore, there was a camaraderie amongst the security personnel working in the society and hence, despite the title of supervisor of PW-19, there was really no class ranking or a formal hierarchy in the security personnel. In *State of UP v. Devendra Singh (supra, at 46)*, the Supreme Court has held that, to discard the evidence of a witness on the ground he did not react in a particular manner is to appreciate evidence in wholly unrealistic and unimaginative way. There is no set rule of natural reaction. Every person who witnesses a serious crime reacts in different ways, some are stunned, some become speechless, others run away. Different people behave differently in different situations and how a person would react in a given situation can never be predicted. It is thus difficult, nay impossible to hold with certainty as to why Sajjad called and confided in the aforesaid witnesses or why he wanted money despite having some in his bank account.

31) Per contra, Dr. Chaudhry relied upon a decision of the Supreme Court in *Kalinga alias Kushal (supra, at 10)* in which the Apex Court observed that extrajudicial confession must be accepted with great care and caution and if not supported by other evidence, it

fails to inspire confidence. It is a weak piece of evidence generally used as a corroborative link to lend credibility to other evidence on record. We have perused the said decision and analyzed its applicability to the facts in the present case. Admittedly, the standard required for proving an extrajudicial confession to the satisfaction of the Court is on the higher side, however, its acceptability depends on the voluntary nature of the confession and its contents. The CDR's exhibited in the present case establish that the calls to the witnesses were initiated by Sajjad. There is no element of force or coercion employed by the witnesses on him. The nature of the said confession is essentially in the manner of sharing a confidence with a friend. The Supreme Court in its decision in *Gagan Kanojia (supra, at 39)* held as under:

“23. Extra-judicial confession, as is well known, can form the basis of a conviction. By way of abundant caution, however, the court may look for some corroboration. Extra-judicial confession cannot ipso facto be termed to be tainted. An extra-judicial confession, if made voluntarily and proved can be relied upon by the courts.”

Admittedly, there is no suggestion in the cross-examination of these

witnesses, to even remotely suggest any coercion on their part on Sajjad. Considering the above discussion, we have no hesitation in accepting the veracity of the extra judicial confession made by Sajjad to the witnesses. The statements of the said witnesses inspire confidence.

J. Contradictory statements given by Sajjad and unexplained injuries on his person:

32) Coming to the next aspect in the matter regarding unexplained injuries on the person of Sajjad and the contradiction in his statement given to the medical doctor during examination and the disclosure statement leading to the recovery of the keys etc., PW-26 i.e., the Doctor of Nagpada Police Hospital, deposed that Sajjad had 5 injuries on his person. Age of the injuries were within 48 hours. There were nail scratches caused while resisting assault. No contradiction of any relevance is elicited in the cross examination of the doctor. However, Dr. Chaudhry has an interesting twist to the statement given by Sajjad to the Doctor. Exhibit 91 is the Medical Examination Certificate. Under the heading of Medical History given by the patient in the certificate, it is recorded that Sajjad informed the Doctor that

the injuries were caused while he climbed the pipeline from the duct of the building upto 16 floors of the building and entered the bathroom of Pallavi's flat from the window. He said that he opened the door of Pallavi's bedroom and entered the bedroom. Pallavi got up and started shouting and quarrel started between Sajjad and Pallavi. During the scuffle, Sajjad suffered the injuries on his body. On the contrary, Dr. Chaudhry pointed out that the Prosecution case is that, Sajjad flicked the keys to Pallavi's flat when he accompanied PW-22 to the flat to check the electricity on the night of 8th August, 2012. Dr. Chaudhry pointed to the discrepancy in Sajjad's statement and the case mounted by the Defense. We have perused the statement of Sajjad given to the Medical Doctor in the office of the Police Surgeon, Police Hospital, Nagpada. The recovery of keys to Pallavi's flat from Sajjad is a reliable piece of evidence and is covered by Section 27 of the IE Act. Moreover, the testimony of PW-4, who saw Sajjad outside Pallavi's flat at 1:30 a.m. supports the prosecution case that Sajjad entered the flat with the said keys. In any which way, the testimony of PW-4 and other witnesses have established Sajjad's presence at the spot of the crime hence, the discrepancy in Sajjad's statement given to the doctor is not enough to turn the case in his favor.

K. On CCTV footage / fingerprints & footprints:

33) There are few other points raised by Dr. Chaudhry to buttress his contention that there were lapses in police investigation. For e.g. according to Dr. Chaudhry, CCTV footage was not collected by the police. Similarly the finger prints and foot prints were not collected from the spot of the crime. In so far as the CCTV is concerned, the witnesses have stated that though there were CCTV cameras installed in some parts of the society, none of them were working. Thus, this cannot be a lapse on the part of the police that the societies internal CCTV cameras were not in working condition. No purpose could be served in collecting the CCTV cameras when there was no footage available. Regarding the finger prints not collected from Pallavi's flat, there were no amplifiable finger prints found at the spot. Neither was there any collectible foot prints in the house. Dr. Chaudhry's contention is that since it was alleged that Sajjad's pants were blood stained, logically there ought to have found foot prints of blood. In this regard, we have perused the testimonies of the witnesses concerned. It was only the hem of the pant on which dried blood was found, at the time of discovery. Blood found on the hem of the pants,

does not necessarily indicate that the assaulter must have left bloodied foot prints behind. In any case, there were found some foot prints but then again, they were not liftable. Lack of additional evidence does not vitiate existing cogent evidence, pointing to the guilt of the convict.

L. Postmortem report:

34) Finally, the Postmortem report at Exhibit 77 proved by Dr. Dere (PW-18) records the cause of death as 'Hemorrhage shock due to cut throat injury (unnatural)'. The evidence on record established by a number of witnesses, including the medical doctor, indicates a brutal murder of a young woman, resisting sexual assault and being repeatedly stabbed 17 times by a knife, her throat was cut to stop her from screaming and her attempts to open the window to shout for help was defeated by her assaulter.

M. On applicability of Section 464 Cr.PC (Argument of the Revision Applicant):

35) Mr. Yende argued that the string of the shorts worn by Pallavi was broken. The bedsheets in the bedroom were mangled and

in disarray. There was blood all over, pillows were strewn on the bedroom floor. Coupled with the established motive of Sajjad, it is obvious that his act amounted to an attempt to rape. The fact that the deceased resisted the attempt to rape does not make the act less serious. He submitted that the Trial Court ought to have charged and convicted the accused under Section 376 read with Section 511 of the IPC. He prayed that Section 464 Cr.PC be invoked and Sajjad be convicted for the charge of attempt to rape despite the same not being framed by the Trial Court. We have perused the statutory provision of Section 464. It is a matter of record that neither the State nor the Revision Applicant had assailed the charges framed by the Trial Court or sought framing of additional charge. We are not inclined to either direct the Trial Court to frame charge under these Sections and record evidence from the point immediately after framing of the charge or direct a new trial upon framing of the additional charge.

V. FINAL CONCLUSION:

36) An in-depth analysis of the facts in the present case and the testimony of the witnesses as substantial evidence, clearly establishes the 'Panchsheel' of the proof of the guilt of the Appellant

(Sajjad) based on established circumstantial evidence. The five golden principles laid down in the landmark case of ***Sharad Birdhichand Sarda (supra, at 58)***, including the legal distinction between ‘may be proved’ and ‘must be proved’ is bridged. The motive for commission of the offence is established. Sajjad wanted to have sexual relations with Pallavi. The witnesses established as much that Sajjad expressed his desire while in Pallavi’s flat itself. Thereafter, once the Security Supervisor left for the other building, Sajjad was seen doubling back to Pallavi’s building. At the precise time, Pallavi’s neighbour saw Sajjad outside her flat at 01:30 a.m. on the pretext that Avik had called him, when Sajjad was fully aware that Avik was not at home. Sajjad is the last person seen outside Pallavi’s flat with clear intent in entering it. The following morning, Pallavi is found dead; there is a pool of blood in the flat, outside the flat, near the lift. Sajjad is nowhere to be seen when he was supposed to be on duty. Sajjad calls up two witnesses and confesses his guilt while seeking monetary help to return to his native land. He is arrested. The knife vendor establishes purchase of knife by Sajjad, which is recovered from a shoe rack on the 3rd floor of Pallavi’s building. Similarly, Sajjad’s shirt, pant, comprising his uniform, *chappals*. etc. are recovered from the cabin in another building of the

society, which was used by Sajjad. Blood stains collected from the clothes match the DNA of Sajjad and Pallavi. Keys to Pallavi's flat are recovered from Sajjad's pant pocket. There are unexplained injuries on his person which are consistent with the scuffle he had with Pallavi. All these established facts are consistent with Sajjad's guilt and the chain of evidence is so complete as there is no reasonable ground for a conclusion consistent with his innocence. In all human probability, the act of murder of the deceased is done by the Sajjad. We thus, answer point for determination (i) in the affirmative.

37) The evidence on record, when assessed in its entirety, establishes the guilt of the Appellant beyond all reasonable doubt. The observations of the Trial Court are compelling and do not warrant any interference. The prosecution has established its case beyond all reasonable doubts based on legal, admissible and cogent evidence. In so far as the sentence imposed by the Trial Court is concerned, Dr. Chaudhry is correct to say that the Trial Court is foreclosed from imposing a sentence of rigorous imprisonment for life, which shall mean imprisonment for the remainder of his natural life, while convicting him for the offense punishable under Section 302 of the

IPC and also imposing a sentence to suffer RI for five years along with fine of Rs. 3,000/- for the offense punishable under Section 354 of the IPC, since the law for the time being in force, at the time of commission of the offense, did not prescribe the sentences as imposed. The Trial Court appears to have committed an error to the limited extent of sentencing. However, this Court, as a Constitutional Court has the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty. We, are of the view that interests of justice will be met in sentencing the convict to Rigorous Imprisonment for life, which will mean imprisonment till the end of his natural life. He will not be entitled to the grant of parole or furlough. We deem this appropriate based on the conduct of the convict who has on previous occasion absconded and was returned to prison after a period of 1 and half year from near the Pakistan border. We thus, consider it appropriate to confirm the sentence of imprisonment for life to mean the remainder of natural life, while upholding the conviction under Section 302 and 354 of the IPC. The second issue is answered accordingly.

38) In view of the aforesaid discussion, we are of the opinion that the Judgment and Order impugned herein is a well reasoned and legally sound decision. Both the Appeals and the Revision Application thus fail and are accordingly dismissed. The conviction and sentence of the Appellant (Sajjad) for the offenses as stated aforesaid stand confirmed.

39) In view of the disposal of the Appeals and Revision Application, nothing survives for consideration in the Interim Application, accordingly same is also disposed of.

(DR. NEELA GOKHALE, J.)

(A.S. GADKARI, J.)