VERDICTUM.IN

2026 INSC 1148

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 4894 OF 2026
(Arising out of SLP (Crl.) No.11542/2026)

KUSUMLAL SAO **...APPELLANT(S)**

VERSUS

STATE OF CHHATTISGARH **...RESPONDENT(S)**

J U D G M E N T

MANOJ MISRA, J.

1. Leave granted.

2. This appeal impugns the judgment and order of the High Court[1] in Criminal Appeal No. 1482 of 2024 whereby the appeal of the appellant was dismissed and the order of the Trial Court dated 30.03.2024 in S. T. No. 08 of 2019 convicting and sentencing the appellant under Sections 302/ 201 of the Indian Penal code, 1860[2] was affirmed.

FACTS

3. Facts in brief are as follows:

[1] High Court of Chhattisgarh at Bilaspur
[2] IPC

VERDICTUM.IN

3.1 In the morning of 09.02.2019, PW-1, PW-2, PW-7 and PW-8 found a man lying dead in an open field with a motorcycle and a yellow rope by his side. It was reported to the Police as a case of accidental death. The body was identified as one of Saurabh Panda (hereinafter referred to as the deceased). Inquest and autopsy was conducted and it was suspected to be a homicidal death. A First Information Report (for short, FIR) was registered against unknown persons. During investigation, complicity of the appellant came to light. Mobile phones of Shakrajit Patel (PW-6) and Sunil Kumar Sahu (PW-5) were seized; forensic analysis of the instruments revealed that in the intervening night of 07.02.2019 and 08.02.2019, a WhatsApp message was sent from the mobile of PW5 to mobile of PW6 revealing the hand of the appellant in the murder. The appellant was arrested. Based on his disclosure statement, the instrument of assault, namely, an iron rod and a screwdriver was seized from the appellant's house. Besides, a blood-stained shirt and blood-stained soil was seized. On completion of investigation, the chargesheet was submitted. The concerned Magistrate took cognizance and committed the case for trial. Trial Court charged the appellant for offences punishable under Sections 302/201 of IPC and co-accused Chakradhar Sao

VERDICTUM.IN

was charged for offence punishable under Section 506 Part II of IPC.

3.2. During trial, prosecution examined 26 witnesses and filed as many as 50 documents such as FIR, Inquest Report, Autopsy Report, Seizure Memorandums, Forensic Reports, etc. The appellant denied the incriminating circumstances against him and claimed innocence in his statement under Section 313 of the Code of Criminal Procedure, 1973[3].

3.3. The prosecution sought to rest its case on the following circumstances:

(i) A quarrel/ fight took place between the accused-appellant and the deceased in the house of the appellant on the night of 07.02.2019. This was witnessed/ overheard by PW-5. PW-5 informed PW-6 about the incident through a WhatsApp message stating that the deceased died during that fight.

(ii) The appellant had suffered a disclosure in the presence of PW-12 and PW-13 wherein he had confessed about killing the deceased and tying his body to a motorcycle with a rope and dumping the body in the field.

[3] CrPC

VERDICTUM.IN

(iii) Based on the confessional statement of the accused there had been seizure of iron rod and screwdriver. In addition to above, blood-stained soil and a shirt was recovered from the house of the accused-appellant.

3.4. To prove that the deceased was alive till the evening of 07.02.2019, PW-3, the mother of the deceased, was examined. She stated that at about 05:00 PM on 07.02.2019 the deceased had gone out for a walk, stating that he would return by 09:30 PM. The deceased, however, did not return home that night. On 09.02.2019, she received information that her son met with an accident. Interestingly, PW-3 did not say that the deceased was in the company of the appellant.

3.5. PW-4, the father of the deceased, deposed that the deceased had left home at 05:00 PM on 07.02.2019 and that he last spoke to the deceased on phone at 01:00 AM whereafter deceased's phone was switched off. Interestingly, both PW-3 and PW-4 admitted during cross-examination that neither there was any dispute between the accused and the deceased nor any kind of animosity existed between them.

3.6. PW-5, who allegedly sent a message to PW-6 on WhatsApp about a fight between the appellant and the deceased and

VERDICTUM.IN

possibility of the deceased being killed in that incident, in his deposition, denied having any knowledge about the incident. He also denied having sent any message on WhatsApp to PW-6.

3.7. Likewise, PW-6, in his deposition stated that he knew nothing about the incident. On being declared hostile, during cross-examination by the prosecution, he admitted the receipt of a WhatsApp message from PW-5 between 07:00 AM and 08:00 AM on 08.02.2019.

3.8. PW-7, a co-villager, also denied having any knowledge about the incident. He also denied having any knowledge about the deceased coming to the house of the accused-appellant on 07.02.2019.

3.9. PW-8, nephew of the deceased, though a witness to the inquest, stated nothing about the complicity of the appellant.

3.10. PW-9, son of the appellant, also denied having any knowledge about the incident though he admitted that the appellant and the deceased were good friends and used to visit each other's house. However, he denied that on the night of 07.02.2019, the deceased had visited the house of the accused-appellant. The prosecution sought cross-examination of PW-9 by

VERDICTUM.IN

declaring him hostile and thereby confronted the witness with his previous statement recorded during investigation. The witness, however, denied making any such statement.

3.11. PW-10 is another witness of the inquest proceeding who had no knowledge of the incident.

3.12. PW-11 is another son of the appellant. He also claimed that he has no knowledge of the incident. He also denied that on the night of 07.02.2019 the deceased had come to the house of the accused. He too was declared hostile.

3.13. PW-12 is a witness to the disclosure statement made by the accused and is also a signatory to the seizure memorandum. PW-13 is also a witness to the disclosure statement and is a signatory to the seizure memorandum. PW-14 is a witness of the seizure memorandum of mobile in which the WhatsApp message was received.

3.14. PW-15 and PW-16 are Police Personnel who prepared the spot map. PW-17, PW-18 and PW-19 are other witnesses of the Inquest Report.

3.15. PW-20 is a Police Personnel who carried the body of the deceased to the Morgue for autopsy.

VERDICTUM.IN

3.16. PW-21 is a Police Constable who had obtained the call detail records of the concerned mobile and who produced the certificate under Section 65-B of the Indian Evidence Act, 1872[4].

3.17. PW-22 is the Investigating Officer who conducted the investigation. He proved: (a) the recording of the disclosure statement of appellant; (b) seizure/ recovery of iron rod, screwdriver and blood-stained soil from the spot as well as from the house of the accused as also shirt which had bloodstains. He also stated that from PW-6 a mobile was seized and on this mobile, PW-5 had sent a message from his mobile regarding the sequence of events that occurred that night. He also stated that those messages were deleted but the Cyber Cell could extract back up of those messages as well as screenshot of the messages and those were printed and submitted along with the certificate under Section 65-B. The screenshot messages were marked as Ex. P-47 and Ex. P-48. The extraction report was marked Ex. P-49 and Section 65-B certificate was marked Ex. P-50.

[4] Evidence Act.

VERDICTUM.IN

3.18. PW-23 is a Police witness who had kept the seized articles and had delivered the same in a sealed condition for being carried to the Forensic Science Laboratory, Bilaspur.

3.19. PW-24 is a Police witness who deposited the seized articles for chemical examination by the Forensic Science Laboratory, Bilaspur.

3.20. PW-25 is the Doctor who conducted the autopsy. According to the Doctor, autopsy was performed on the cadaver on 09.02.2019 at 02:20 PM. According to him, rigor mortis was present in both lower limbs and rigor mortis had passed off in upper limbs. The injury marks found on the body were as under:

(i) Lacerated wound left occipital region 4 x 2 cm with underlying fracture of left parietal bone with brain material exposed.

(ii) Abrasion 4 x 2 cm on right side cheek.

(iii) Abrasion 3 x 2, 2 x 1 cm on left side cheek.

(iv) Lacerated wound on left side cheek in front of left ear ½ x ½ x 2 cm deep.

(v) Lacerated wound below left ear on left side face ½ x ½ x 2 cm deep and ½ x ½ x 2.5 cm deep.

VERDICTUM.IN

(vi) Lacerated wound on left side neck ½ x ½ x 3 cm and ½ x ½ x 3 cm deep.

The cause of death was due to Cardio-respiratory Arrest as a result of head injury. In the opinion of PW-25, the death was homicidal in nature and had occurred more than 24 hours before the autopsy.

3.21. The iron rod alleged to have been recovered at the instance of the appellant was shown to the Doctor. The Doctor opined that injuries on face and neck as noticed in the autopsy report could have been caused by such type of object. During cross-examination, PW-25 admitted that injuries mentioned in the autopsy report can also be caused if a person falls from a moving motorcycle.

3.22. PW-26 is a witness of receipt of a sealed packet containing clothes. During cross-examination, he admitted that the said packet was not sealed in his presence.

Trial Court's view/ finding

4. The Trial Court convicted the appellant under Sections 302/ 201 IPC and acquitted co-accused Chakradhar Sao of the charge under Section 506 Part II IPC.

VERDICTUM.IN

4.1. The Trial Court relied on Ex. P-47 and Ex. P-48 which shows that on 08.02.2019, between 02:37 AM and 02:57 AM messages were sent by PW-5 to PW-6 duly extracted from the seized mobile phone, which were placed along with extraction report Ex. P-49 and certificate, under Section 65-B of the Evidence Act, (Ex. P-50). Those messages read as under:

- At 2:00 a.m., Kusum left Saurabh Maharaj bleeding in his own home. He appears to be severely beaten. Patel is finished.
-Perhaps
-He was watching from the rooftop.
-All the household items and three phones, including a mobile phone worth fifteen thousand rupees.
-Everything is gone.
-It seems it's over.
-Who will go to them.
-We'll find out in the morning.
-A thorough investigation.
-He was killed with a sharp-edged weapon.
-Everyone in his house was crying.
-Good morning.
-I swear, it's a movie.
-Don't tell anyone right now, brother. It's just you and me.

VERDICTUM.IN

-It's all a combination of pills and syrup.
-He probably tied him to the car and went to throw him away.

4.2. The Trial Court observed that those messages prove that PW-5 had sent messages to PW-6 regarding the events that occurred that night, and therefore, it was proved that a fight had occurred between the accused and the deceased on 07.02.2019, which was overheard by PW-5 and of which a message was sent to PW-6, which also disclose that the deceased was killed in that fight. The Trial Court thereafter considered the disclosure memorandum and seizure of iron rod, screwdriver, etc.

4.3. Besides above, the Trial Court noticed the FSL Report and discussed it in Paragraphs 72 and 73 of its judgment, which are extracted below:

> "72. A perusal of the FSL Report Ex. P.45 sent by the Forensic Science Laboratory, Raipur Camp, Bilaspur, shows that the plain soil seized from the place of recovery of the dead body (Packet B) and the plain soil seized from the room of the accused (Packet D) did not contain blood. However, blood was found in the blood-stained soil seized from the place of recovery of the dead body (Packet A), the soil seized from the room of the accused (Packet C), the iron screwdriver (Packet E), the full shirt of the accused (Packet F), the iron rod (Packet G) and the clothes of the deceased (Packets H-1 to 4). Furthermore, human blood was found in the iron rod (Packet G) and the clothes of the deceased (Packets H-1 to 4). Although the blood group result could not be determined, and the stains on the

VERDICTUM.IN

> blood-soaked soil (Packet A), soil seized from the accused's apartment (Packet C), the iron screwdriver (Packet E), and the accused's full-shirt (Packet F) were decomposed, the test results for human blood were found to be negative. However, there is sufficient evidence on record regarding accused Kusumlal's involvement in the case and his conviction for the crime, which is not in a position to be contradicted by the opinion of FSL Report Ex. P.45.
>
> 73. There is no reason to distrust the seizure of the iron rod and screwdriver seized from the accused in this case. FSL Report Ex. P.45 was prepared on 30.04.2019, approximately two months after the incident. Although blood was found in the soil seized from the accused's apartment (Packet C), the stains were decomposed, thus resulting in a negative test result. Durgesh (P.W. 12) and Krishnakumar (P.W. 13), witnesses to the seizure proceedings, admitted in cross-examination that they knew accused Kusumsao from the date of the incident and that they had no acquaintance with the accused prior to the incident. Although there is no literal support in the statements of these two witnesses of the seizure proceedings, but the evidence of both these witnesses has remained unrebutted that in the present case of murder of deceased Saurabh Panda, the weapon was recovered on the instance of the accused."

4.4. The Trial Court also observed in Paragraph 77 of its judgment that on 11.02.2019 at 12:30 PM the accused was examined by PW-25 and injuries were found. Paragraph 77 of Trial Court's judgment is extracted below:

> "77. On 11.02.2019 at 12:30 pm, Dr. Sanjay Patel (P.W.25) on examination of accused Kusumlal Sao has deposed that ½ x ½ cm abrasion was found on his right index finger, little finger, ½ x 1 cm abrasion on his right thumb and 1 x 1 cm abrasion on the front parietal region and confirmed the medical report Ex.P.24. The doctor's opinion is that the injuries were caused by a hard and blunt object. Accused Kusumlal Sao has not provided any explanation for the injuries/ abrasions on his fingers."

VERDICTUM.IN

4.5. Based on those bits and pieces of evidence, the Trial Court concluded that the appellant had assaulted the deceased and had thrown his body in the field. The Trial Court also opined that the appellant tried to remove the evidence and therefore he was liable to be convicted under Sections 302 and 201 IPC.

High Court's view

5. Aggrieved by the Trial Court's order, the appellant preferred an appeal before the High Court. The High Cout opined that the evidence led by the prosecution had proved the following circumstances:

(i) the deceased died a homicidal death;

(ii) there had been a quarrel between the deceased and the accused shortly before the incident;

(iii) the deceased was last seen in the company of the accused;

(iv) the weapons of assault were recovered at the instance of the accused;

(v) accused had injuries on his body of which there was no explanation and, therefore, the chain of circumstances was

VERDICTUM.IN

complete to indicate that it was accused and no one else who committed the crime.

Based on the above analysis, the High Court dismissed the appeal.

6. Aggrieved by his conviction, and dismissal of his appeal, the appellant has preferred this appeal.

7. We have heard Mr. Yasharth Kant for the appellant; and Ms. Ankita Sharma for the respondent-State; and have perused the materials on record.

Submissions on behalf of the Appellant

8. The learned counsel for the appellant submitted that no prosecution witness in the course of trial had deposed about the presence of the deceased in the company of the accused on the fateful night. The conclusion of the High Court that the deceased was last seen alive in the company of the accused is against the evidence and is perverse.

8.1. The WhatsApp message sent by PW-5 to PW-6 cannot be read as evidence against the accused. Importantly, both PW-5 and PW-6 in their testimony have denied witnessing any incident. PW-5 has denied sending any such message. In such circumstances,

VERDICTUM.IN

who sent the message; whether the message was sent on hearsay information; or the message was sent by someone else is a question unless answered renders the message meaningless. At best, such message could be read as an evidence of conduct of PW-5, but that cannot be read against the accused and, therefore, it cannot lead to the conclusion: (i) that there was a quarrel between the deceased and the accused that fateful night; (ii) that the accused assaulted the deceased; and (iii) that the accused killed the deceased and took away his body.

8.2. The custodial disclosure is not admissible *qua* confession of guilt, though admissible to the extent it leads to discovery of fact relevant to the fact in issue. However, neither the iron rod nor the screwdriver or the clothes seized from appellant's house could be connected to the crime by FSL report. Admittedly, the blood stains on those articles could not be matched with the blood of the deceased. Besides, the investigating agency made no effort to have DNA profile of the blood-stains to match it with the blood of the deceased. In days of advancement of forensic science, lack of effort on the part of the investigating agency to get DNA profiles of the blood-stains match with DNA profile of the blood of the deceased is a serious investigational lapse and the benefit of such lapse

VERDICTUM.IN

must go to the accused, particularly when the entire prosecution case rests on circumstantial evidence.

8.3. The statement of PW-12 also creates a doubt whether the recovery of the blood-stained soil was from the room of the accused. In such circumstances, in absence of clear and cogent evidence that it carried the blood of the deceased, the benefit of doubt must enure to the accused.

8.4. Though the High Court as well as the Trial Court had found death to be homicidal in nature, the Doctor, in his testimony, did not rule out the possibility of such injuries being caused in a road accident on account of falling from a motorcycle. Admittedly, the prosecution evidence is regarding the deceased being addicted to substances. The motorcycle was found next to the body of the deceased. In such circumstances, the possibility of the deceased suffering injuries in a road accident cannot be ruled out, and it creates a serious doubt in the prosecution story.

8.5. Besides, the deceased had left his home in the evening of 07.02.2019 and was found dead in the morning of 09.02.2019. In between, there was no effort on the part of his family members to make a report. In fact, the family members and all witnesses have not disclosed about any ill will between the accused and the

VERDICTUM.IN

deceased rather they have deposed about good relations between the deceased and the accused. This also casts a shadow of doubt on the prosecution story. Although absence of motive may not result in acquittal, but absence of motive, particularly in a case based on circumstantial evidence, assumes importance and where the evidence is suspect, it adds up to benefit the accused and entitles him to the benefit of doubt.

8.6. Based on the aforesaid submissions, the learned counsel for the appellant submits that this is not a fit case where the appellant could have been convicted. Rather it is a fit case where the appellant ought to have been given the benefit of doubt.

Submissions on behalf of the Respondent-State:

9. *Per contra,* on behalf of the State it is submitted that the presence of blood in the house of the deceased, and recovery of blood-stained shirt, iron rod and screwdriver is an important circumstance of which, except denial, there is no explanation. Besides, the WhatsApp message sent by PW-5 to PW-6 is an important circumstance indicative of the fact that the accused and the deceased at the relevant time were together in the house of the accused.

VERDICTUM.IN

9.1. Presence of blood in the house of the accused is an important circumstance which not only corroborates the WhatsApp message exchanged between PW-5 and PW-6, but also proves that injuries were caused to the deceased in that house.

9.2. Further, absence of explanation of how blood was present in the room and blood-stains were there on the shirt would lead to an adverse inference against the accused, and therefore, the Trial Court as well as the High Court were justified in convicting the appellant.

9.3. Additionally, the accused had injuries on his body on 11.02.2019 i.e. the day when he was examined after arrest, just three days after the incident. Probability of those injuries being caused in the incident is strong. Absence of explanation of those injuries would indicate that the accused is hiding true facts and therefore, an adverse inference is liable to be drawn against him.

9.4. In such circumstances, it is submitted on behalf of the State, that the conviction of the appellant is justified, and the appeal is liable to be dismissed.

Analysis

VERDICTUM.IN

10. Before we set out to discuss the rival contentions and the evidence on record, we must not be oblivious of the fact that this is a case based entirely on circumstantial evidence. As to when on strength of evidence circumstantial in nature conviction can be lawfully sustained, the law is well settled - the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established; these circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; the circumstances taken cumulatively should form a chain so far complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused; the circumstances should be consistent only with the hypothesis regarding the guilt of the accused; and they must exclude every possible hypothesis except the one to be proved. Further, the circumstances from which the conclusion of guilt is to be drawn should be fully established, meaning thereby that they "must" or "should" and not "may be" established[5].

10.1. Besides, while dealing with a criminal trial, a court must not be oblivious to the most fundamental principle of criminal jurisprudence, which is, that the accused "must be" and

[5] Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116

VERDICTUM.IN

not merely "may be" guilty before the court proceeds to convict him. In ***Shivaji Sahabrao Bobade and Anr. v. State of Maharashtra***[6], this Court elaborating upon the above principle, observed that the mental distance between "may be" and "must be" is long and divides vague conjectures from sure conclusions.

10.2. In the present case, what assumes importance is that there is no evidence on record of the deceased being last seen alive in the company of the accused. All prosecution witnesses set up by the prosecution to prove that the deceased was seen in the house of the accused on the fateful night have been declared hostile and they have not supported the prosecution case. In such circumstances, the prosecution relies heavily on two circumstances namely: (i) WhatsApp communication between PW-5 and PW-6 and; (ii) presence of blood in the house of the accused as also recovery of blood-stained clothes, and iron rod/ screwdriver.

10.3. In so far as the WhatsApp messages between PW-5 and PW-6 are concerned, according to the prosecution, they are relevant under Sections 6, 7 and 8 of the Evidence Act[7]. In our

[6] (1973) 2 SCC 793

[7] **6. Relevancy of facts forming part of same transaction**.—Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

VERDICTUM.IN

Illustrations
(*a*) *A* is accused of the murder of *B* by beating him. Whatever was said or done by *A* or *B* or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.
(*b*) *A* is accused of waging war against the [25][Government of India] by taking part in an armed insurrection in which property is destroyed, troops are attacked and gaols are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though *A* may not have been present at all of them.
(*c*) *A* sues *B* for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.
(*d*) The question is, whether certain goods ordered from *B* were delivered to *A*. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.
7. Facts which are the occasion, cause or effect of facts in issue.—Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.
Illustrations
(*a*) The question is, whether *A* robbed *B*.
The facts that, shortly before the robbery, *B* went to a fair with money in his possession, and that he showed it, or mentioned the fact that he had it, to third persons, are relevant.
(*b*) The question is, whether *A* murdered *B*.
Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.
(*c*) The question is, whether *A* poisoned *B*.
The state of *B*'s health before the symptoms ascribed to poison, and habits of *B*, known to *A*, which afforded an opportunity for the administration of poison, are relevant facts.
8. Motive, preparation and previous or subsequent conduct.—Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.
The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.
Explanation 1.—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.
Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.
Illustrations
(*a*) *A* is tried for the murder of *B*.
The facts that *A* murdered *C*, that *B* knew that *A* had murdered *C*, and that *B* had tried to extort money from *A* by threatening to make his knowledge public, are relevant.
(*b*) *A* sues *B* upon a bond for the payment of money. *B* denies the making of the bond.
The fact that, at the time when the bond was alleged to be made, *B* required money for a particular purpose, is relevant.
(*c*) *A* is tried for the murder of *B* by poison.
The fact that, before the death of *B*, *A* procured poison similar to that which was administered to *B*, is relevant.
(*d*) The question is, whether a certain document is the will of *A*.
The facts that, not long before the date of the alleged will, *A* made inquiry into matters to which the provisions of the alleged will relate, that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.
(*e*) *A* is accused of a crime.
The facts that, either before, or at the time of, or after the alleged crime, *A* provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.
(*f*) The question is, whether *A* robbed *B*.
The facts that, after *B* was robbed, *C* said in *A*'s presence—"the police are coming to look for the man who robbed *B*", and that immediately afterwards *A* ran away, are relevant.
(*g*) The question is, whether *A* owes *B* rupees 10,000.
The facts that *A* asked *C* to lend him money, and that *D* said to *C* in *A*'s presence and hearing—"I advise you not to trust *A*, for he owes *B* 10,000 rupees," and that *A* went away without making any answer, are relevant facts.

VERDICTUM.IN

view, for applicability of Section 6, it would have to be proved that the fact of texting the message was so connected with the crime that it was part of the same transaction. Here the time of death has not been fixed by any substantive evidence, therefore, it is difficult to ascertain whether the message was texted at or about the time of occurrence so as to be part of the same transaction. In so far as applicability of Section 8 is concerned, in our view, it would not be applicable because it is the conduct of the parties to the suit or proceeding or the accused or the victim which is admissible. Assuming that texting is admissible under Section 7, it only indicates that on the fateful night a message had gone from PW-5's mobile to PW-6. Whether that information was based on PW-5's personal knowledge or on hearsay, or assumptions, would depend on his deposition in Court. PW-5 and PW-6 both made a

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(*h*) The question is, whether *A* committed a crime.
The fact that *A* absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.
(*i*) *A* is accused of a crime.
The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.
(*j*) The question is, whether *A* was ravished.
The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.
The fact that, without making a complaint, she said that she had been ravished is, not relevant, as conduct under this section, though it may be relevant as a dying declaration under Section 32, clause (1), or as corroborative evidence under Section 157.
(*k*) The question is, whether *A* was robbed.
The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.
The fact that he said he had been robbed without making any complaint, is not relevant, as conduct under this section, though it may be relevant as a dying declaration under Section 32, clause (1), or as corroborative evidence under Section 157.

VERDICTUM.IN

statement that they have not witnessed the incident. PW-5 goes to the extent of saying that he has not sent the message. In such circumstances, who was the author of that message; whether that message was sent on the basis of personal knowledge of the person who sent the message or it was based on hearsay information received by its author, are all questions of which there is no answer. Thus, the exchange of message between PW-5 and PW-6 does not prove that on the fateful night the deceased was present in the house of the accused and that the accused had assaulted the deceased, it, at best, creates a suspicion against the accused-appellant which by itself is not sufficient to sustain conviction.

10.4. In so far as the recovery of blood-stained soil from the house of the appellant is concerned, this is an incriminating circumstance which has been denied by the accused. Besides, one of the witnesses of the seizure makes a statement that there was recovery only from one spot and that is the place where the dead body was found. Admittedly, the dead body was found in an open field, and not in the house of the accused. Whether the blood-stained soil was recovered from the house/ room of the accused or was recovered from the open field is an aspect on which one of

VERDICTUM.IN

the witnesses of the seizure memo has created a doubt. Additionally, the blood-stains could not be connected to the deceased and, admittedly, there is no DNA profile of the blood so recovered to match it with the DNA profile of the deceased. Same is the case with the iron rod and the screwdriver.

10.5. At this stage, it would be appropriate to mention that the Investigating Officer stated that there had been seizure of blood-stained soil from a room in the house of the accused. The Investigating Officer had also disclosed seizure of a shirt from the accused. Interestingly, PW-12 and PW-13 are witnesses of the seizure proceeding. PW-12, during cross-examination, stated that he witnessed seizure of blood-stained soil from the place where the body of the deceased was lying and that in his presence blood-stained soil was not collected from any other place. He further stated that he had not gone to the house of the accused with the Police Personnel and that the Police Personnel had brought the blood-stained rod in front of him and that they had told him that they had brought it from the accused's house. He further stated that no clothes were recovered in his presence. In respect of recovery of the screwdriver, PW-12 stated that he had not gone to the place from where the Police Personnel brought the said

VERDICTUM.IN

screwdriver to the Police Station. However, PW-13, another witness to the seizure, had stated that seizure of soil was made from the accused's house. This cleavage in the testimony of two witnesses does not help the prosecution cause.

10.6. Besides above, what is important here is that the deceased was found lying dead in an open field with his motorcycle lying next to him. Though the autopsy surgeon stated that injuries were homicidal in nature, he did not rule out the possibility of such injuries being caused in a road accident while falling from a motorcycle.

10.7. Another important feature of the case is that the deceased was a person habituated to substance abuse. Such a person is prone to accident. Therefore, the accident theory set up in defence is probable and creates a doubt about the prosecution case.

10.8. The absence of explanation of his injuries by the accused found during medical examination conducted on 11.02.2019, in no circumstance could lead to an inference that he is guilty. This circumstance may have been of value if the prosecution had been successful in establishing that the accused and the deceased were seen fighting soon before the body of the

VERDICTUM.IN

deceased was found. Notably, none of the prosecution witness has deposed that the accused and the deceased were fighting on the fateful night. The only evidence in that regard is the WhatsApp message, which we have already discussed above.

Conclusion

11. In conclusion, we are of the view that there is hardly any evidence basis which the conviction of the accused could be sustained.

12. Accordingly, we allow the appeal and set aside the conviction of the appellant and acquit him of all the charges for which he had been tried. The judgment and order of the High Court and the Trial Court are set aside. The appellant is acquitted of the charges for which he had been tried. He shall be released forthwith unless wanted in any other case.

13. Pending application(s), if any, shall stand disposed of.

.....J.
(Manoj Misra)

.....J.
(Vijay Bishnoi)

New Delhi;
October 13, 2026