2025:PHHC:177102

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

MRC-1-2025
CRA-D-293-2025

State of Haryana ...Appellant

Versus

Ashok Kumar …Respondent

JUDGEMENT RESERVED ON	JUDGEMENT PRONOUNCED ON	OPERATIVE PART PRONOUNCED OR FULL	UPLOADED ON
18.11.2025	22.12.2025	FULL PRONOUNCED	22.12.2025

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
HON'BLE MR. JUSTICE H.S. GREWAL

Present: Mr. Rahul Mohan, Addl. A.G., Haryana
Mr. Karan Sharma, D.A.G., Haryana
Mr. Shiva Khurmi, D.A.G., Haryana
Mr. Yuvraj Shandilya, A.A.G., Haryana.

Mr. H.S. Deol, Amicus Curiae
for Respondent/Convict in Murder Reference.

Mr. Harvinder Singh Maan, Advocate,
Ms. Gurdeep Kaur, Legal Aid Counsel,
Mr. Harnoor Singh Sidhu, Advocate, and Ms. Kirandeep Kaur,
Advocates for the appellant/Convict.

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Section
262	18.06.2020	City, Tohana	302, 457, 380, 506, 201 IPC

Criminal Case number before the Sessions Court	RBT-127-SC-2020/2021
Date of Decision	14.01.2025
Date of order on the quantum of sentence	16.01.2025
Name of the accused	Ashok Kumar
Name of convict	Ashok Kumar
Conviction under Sections	457, 506, 302, 201 IPC
Substantive Sentence imposed	**DEATH**

Sentence imposed			
Section	Sentence of imprisonment	Fine in INR	Sentence in default of payment of fine
302 IPC	To death and be hanged by the neck till he is dead	20,000	RI for one year
457 IPC	RI for five years	5000	SI for five months
506 IPC	RI for five years	5000	SI for five months
201 IPC	RI for five years	5000	SI for five months

1. Seeking confirmation of the Death Sentence, the trial Court had sent the above-mentioned reference to this Court under §407 BNSS, 2023, and challenging the conviction and the consequent sentence as captioned above, the convict came up before this Court by filing the present criminal appeal under §415(2) of BNSS.

2. The prosecution's case is that the deceased Deepak, aged 40, was one of five siblings of whom he was the youngest, and the convict was placed in the middle. Deepak's marriage broke ten years prior to 2020, and a divorce had also taken place. Around 3-4 years before 2020, due to an accident, Deepak had become physically challenged and was in a wheelchair.

3. Deepak lived in a 173-square-yard house in Tohana, which his mother, Atma Devi, had bequeathed to him on June 30, 2013, through a registered Will [Ext D-3], dated Oct 14, 2011. Feeling unhappy about the transfer of the property, his elder brother, convict Ashok, harbored a deep-seated grudge against Deepak and even threatened to kill him.

4. About 6-7 days before June 18, 2020, Deepak told his sister Sushma on a mobile phone call that Ashok was threatening to kill him and Surjeet Singh. Deepak and Sushma treated Surjeet as their godbrother; he was a frequent visitor to Deepak's house, and Sushma would also meet him whenever she traveled to see Deepak.

5. In the morning of June 18, 2020, at 10 AM, Surjeet called Sushma and informed her that at 8:45 AM, when he had gone to the house of Deepak, the door was found closed and none responded to his shouts. He then made a phone call on mobile number of Deepak i.e. 868XX-09103, and the call was answered by someone else who said that he was talking from village Kharak Punia. Surjeet Singh had also told Sushma over the phone call that on the previous night, i.e., June 17, 2020, at 8 PM, when he was present at the house of Deepak, Ashok had come there on his motorcycle, and he had started consuming liquor in the front room, and at that time, Ashok was wearing only a vest and an underwear. After that, Surjeet Singh returned home.

6. On this, Sushma Devi, along with her husband, reached Tohana. They then went to Deepak's house, but the doors were found closed, and Surjeet Singh was standing outside Deepak's residence. Sushma went to the balcony of the house in the neighborhood, from where she noticed blood on the verandah. After that, Surjeet, with the help of neighbors, opened the door of Deepak's house, and on entering the house, they found the decapitated dead body of Deepak lying in the courtyard with blood all over, and his severed head was absent from the crime scene.

7. Sushma's niece Parul, the daughter of her sibling Ramesh, also arrived at Deepak's home. There, she met Sushma and told her that five or six days earlier, Ashok had gone to Hisar to buy clothes, where Ashok met her and threatened that if she supported Deepak in the house matter, she and her family members would be murdered along with Deepak.

8. SHO Inspector Surender [PW17] got recorded Sushma's statement in writing vide Ex P1, in which she stated that Ashok had brutally murdered her brother Deepak over a dispute about the house and had also taken away Deepak's severed head with him. She also mentioned regarding conversations with Surjeet and Parul. Sushma Devi informed the police that Ashok had removed the Digital Video Recording Device [DVR] from the CCTV cameras installed in Deepak's house to hide evidence. Based on this information, the police registered the FIR mentioned above.

9. The Forensic Science Team from Karnal, Haryana, was called to the spot, and on the same day, they inspected the scene of the crime. They have annexed the printouts of the photographs to the report of the Crime Scene Visit, tendered in evidence as Ext P-64, in which the decapitated body is lying on the veranda, and injuries on the dorsal sides of the hands are also mentioned. Additionally, tyre marks were visible. Blood-stained clothes were also present at the crime scene. They also found a wheelchair and some hair, both stained with human blood, near the body.

10. During the investigation, a rough site plan of the crime scene [Ext. P-4] was also prepared, and it was noted that the DVR of CCTV installed in the room adjacent to the veranda had been removed.

11. After the inquest was completed, the dead body was sent for a postmortem examination—the postmortem report [Ext P91] noted that the neck and head of the body were completely missing, and multiple wounds were observed on the dorsal surfaces of the arms and forearms. The cause of death was identified as the severing of the head, specifically the chopping off of major vessels. As per the Forensic Science Laboratory report [Ext P113], no poison or drugs were detected in the viscera.

12. According to the arrest memo [Ext P16], the accused Ashok Kumar was taken into custody on June 19, 2020, at 2:00 PM, from a location near Railway Phatak on Jamalpur Road, Tohana.

13. Vide an application dated June 19, 2020, the physical examination of the accused was conducted by the Medical Officer, Tohana. According to the medical-legal certificate [Ext P95], the doctors noted stitched and unstitched injuries on Ashok's fingers on both hands.

14. On the next day of his arrest, i.e., on June 20, 2020, Ashok Kumar made a disclosure statement [Ext P18] to the Investigator, in the presence of two police Sub Inspectors, namely SI Rajvir Singh and SI Jagdish Chander, and confessed killing his brother Deepak and stated that he can demarcate the place from where he had thrown the head and the bag. In the disclosure statement, Ashok Kumar mentioned that he had taken away Deepak’s severed head, DVRs, and an iron Kappa in a bag on his motorcycle. He also disclosed that he had locked the room and kept the keys with him. After that, he had gone to the canal in Hisar and had thrown the bag containing Deepak's head, DVR, and Kappa, as well as the keys, into the flowing water. He also disclosed the place from where he had taken away the gold Karra from the hand of the deceased and uprooted the DVR.

15. Pursuant to the disclosure statement, Ashok Kumar identified the location vide memo Ext P21, where he threw the bag containing the head of the deceased, Kappa, and the DVR in the Bhakra canal at Fatehabad Branch, Hisar Road, Tohana Canal. Further, vide memo Ext P20, Ashok demarcated the shop of blacksmith Jeewna Ram, from whom he had purchased Kappa for Rs. 200/-. Vide memo Ext P23, the Investigator recovered the underwear which Ashok was wearing at the time of the occurrence, a gold kara, and two mobile phones, one black VIVO, another blue POCO. He also got recovered currency notes of Rs. 60,000/-.

16. The investigator also attempted to recover the bag containing the severed head, weapon of offense, DVR, etc. from the canal, but it could not be retrieved due to the heavy water flow, and a certificate [Ext P69] was obtained from the Executive Engineer, Tohana, on Sep 03, 2020. According to the Baliyala Head record, the water flow on June 18, 2020, was 1430 Cusecs, and the depth exceeded 7.5 feet.

17. On June 27, 2020, Ashok Kumar made another disclosure statement [Ext P44], in which he stated that he could show the route he took to the canal to throw the bag, and the CCTV camera installed along that route could be checked to verify the accuracy of his statement. Furthermore, Ashok also mentioned call recordings, recorded on his own mobile phone.

18. The investigation revealed that after killing his brother, Ashok made phone calls to his relatives, and the same calls were recorded on Ashok Kumar's mobile phone, which had been seized from Ashok at the time of his arrest. The phone, which had SIM no. 989XX-98260 and was marked Redmi, contained the call recordings. These recordings were retrieved, and transcripts were included with the charge sheet.

19. Vide detailed order dated June 28, 2020, [Ext P79], which remains unchallenged, Judicial Magistrate, Tohana allowed an application filed by the prosecution seeking directions to take a voice sample of the accused for comparison and investigation by observing that voice sampling of the accused was essential for comparison, investigation of the crime, and in the interest of justice.

20. During the investigation, the police produced PW8 Hemant Bharti, before the Judicial Magistrate for recording his statement under §164 CrPC, and on June 28, 2020, Hemant Bharti stated under oath before JMIC, Tohana, [Ext P10] that on June 17, 2020, at 9:30 PM, he received a phone call from Ashok, WHO IS HIS Mama (Maternal Uncle). At that time, Ashok was intoxicated and told him that he had won the battle. Because Ashok had been drinking, Hemant scolded Ashok not to call after consuming alcohol, and after insulting Hemant, Ashok ended the call. The next morning, on June 18, 2020, at 11 AM, Hemant received another call from Ashok on his mobile number 972XX 13411, in which Ashok asked if he had heard about Deepak. On enquiring what happened, Ashok replied that he had killed Deepak. When asked where he was, Ashok said he had killed Deepak at his house and had left for a distant place, and then the call was disconnected.

21. The investigator collected the forms of the mobile numbers from the telecom service providers, [Ext P80 to Ext P90].

22. In the investigation, the police also collected the ownership documents of the house and according to Ext P12, the house was initially owned by Atma Devi and was bequeathed in favor of the deceased Deepak on June 30, 2013.

23. After completing the investigation, the State launched prosecution against Ashok Kumar. By order dated Apr 02, 2021, charges were framed against the accused, to which he pleaded not guilty, and the prosecution then produced its evidence. After the examination of the prosecution's witnesses, the statement of the accused, Ashok Kumar, was recorded under §313 of the CrPC, in which he stated all the incriminating evidence to be incorrect and, in answer to the last question, stated that he was innocent. He denied making any disclosure statement or any discovery and wanted to lead defense evidence.

24. Ashok's Counsel examined defense witness DW2 Ravinder Singh, Clerk, Municipal Council, to prove that his mother had already transferred the property in question to Deepak on June 30, 2013. He also examined DW1 and DW3 to prove that there was no record regarding a verbal transmission message to CIA Hisar regarding the arrest and roundup of the accused.

25. Vide impugned judgment dated Jan 14, 2025, the Sessions Judge reproduced the transcript between the accused and his relatives in verbatim and referred to other evidence, including the last seen, and held the accused guilty.

26. We have heard Ld. Counsel for the parties and have gone through the record and its analysis, which would lead to the following outcome.

27. Ext P1, P15, and P67 mention that the police proceedings were conducted on June 18, 2020, at 3:30 PM. The information was received at the police station on June 18, 2020, at 4:26 PM, when FIR [Ext P66] was registered. The copy of the FIR was received by the concerned SDJM, Tohana, on June 18, 2020, at 5:30 PM. The distance of the place of occurrence from the police station is listed in column No. 5 of the FIR as 1 km.

28. PW1 Sushma Devi stated in her examination in chief that she along with her husband reached Deepak's residence at 10:30 AM. However, there is a slight delay in recording the FIR. The crime was noticed in the early morning, and the police station was situated at a distance of 1 km from the scene of the crime. Despite all this, the FIR was registered in the late afternoon.

29. PW15 SI Rajbir Singh stated in cross-examination that they reached the spot of occurrence at around 10:00 AM on the day after the crime, i.e., on June 18, 2020. However, this contradiction is immaterial, as the police were certainly informed immediately, and human memory naturally fades and is fallible over time. Nonetheless, since the main witnesses are the deceased's siblings or close relatives, and in cross-examination the defence did not explicitly suggest manipulation in the initial version, no prejudice seems to have been caused to the accused by the delay.

30. PW18 Dr. Joginder Singh, Senior Scientific Officer, testified to inspecting the place of occurrence as well as the decapitated dead body thoroughly vide report Ext P64, and stated that, in his opinion, the deceased Deepak Mehta might have been murdered while he was in his wheelchair.

31. Prosecution examined Dr. Javed Ahmed as PW28, who stated that he, along with Dr. Rajender Singh and Dr. Robin Kumar, had conducted a postmortem examination of the dead body of Deepak and prepared the postmortem report Ext P91, and in their opinion the probable cause of death was chopping off of the major vessels and nerves of the neck, i.e., decapitation, which was sufficient to cause death in the ordinary course of nature. Thus, the prosecution has proved the cause of death to be culpable homicide amounting to murder.

32. The prosecution examined Anil, PW6, a qualified diver, who testified that he, along with his team, attempted to search for the head of the deceased and the Kappa in the canal, but could not recover or trace them due to the strong current. Given the identification of Deepak's torso, by PW1 Sushma, the non-recovery of his cranium is insignificant.

33. The ***first circumstance*** is that the accused Ashok had a motive to kill his brother Deepak because he was nurturing a grudge against him, as their mother had transferred her house to Deepak and not to Ashok.

34. The prosecution proved the transfer of the house in favor of Deepak by his mother, Atma Devi, by examining PW9 Kamal Raj, who was working as a Tax Inspector in the Municipal Council, Tohana, and tendered the extracts from the record of the assessment register as Ext P11.

35. In his defense, the accused also tendered in evidence the Ext D3, the 'Will' of his mother, Atma Devi, in which she had stated that she had given shares of her property in favor of her sons, namely Ramesh Kumar, Ashok Kumar, and Satish, as per their entitlement, and they are living separately from her. This was done to show that there was no reason for any discord in the mind of Ashok regarding the distribution of property. The accused also tendered in evidence Ext D4, the report of the Executive Officer, Municipal Council, Tohana, dated Aug 30, 2013, as per which, upon execution of the will dated Oct 14, 2011, the house in question was bequeathed in favor of the deceased Deepak. This was done to demonstrate that there was no motive to commit the offense, as the transfer had already occurred a long time ago.

36. PW1 Sushma Devi, sister of the accused Ashok and the deceased Deepak, had stated in her complaint and also testified in the trial about the motive being that Ashok Kumar was nursing a grudge against Deepak because of the transfer of the house by their mother in favour of Deepak.

37. The portion of §8 of the Indian Evidence Act [IEA] analogous to §6 of BSA, 2023, that is relevant to the facts of this matter, reads as follows:

> **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.

38. In G. Parshwanath v. Karnataka, [2010] 10 SCR 377; 2010-INSC-525, decided on Aug 18, 2010, the Hon'ble Supreme Court holds,

> [22 B-C]. In a case when the motive alleged against accused is fully established, it provides foundational material to connect the chain of circumstances. It affords a key on a pointer to scan the evidence in the case in that perspective and as a satisfactory circumstance of corroboration. However, in a case based on circumstantial evidence where proved circumstances complete the chain of evidence, it cannot be said that in absence of motive, the other proved circumstances are of no consequence. The absence of motive, however, puts the court on its guard to scrutinize the circumstances more carefully to ensure that suspicion and conjecture do not take place of legal proof.

39. Although the house was transferred in favour of Deepak, way back in 2013, it does not imply, as a general rule, that after the passage of seven years, all humans shall forgive and forget and shall harbour no grudge, for the acts which had earlier aroused resentment. An analysis of the proved facts establishes that the accused Ashok had the motive to murder because, for a long time, he was nursing a deep-seated grudge against his brother due to the transfer of property of their mother in favour of the deceased Deepak, ignoring the accused Ashok.

40. The ***second circumstance*** is that the deceased Deepak had informed his sister, PW1 Sushma, about the threat given by the accused Ashok to eliminate him. PW1 Sushma testified in her cross-examination that her brother Deepak had informed her around 2-3 days before the incident that their brother Ashok had threatened Deepak to transfer the house in Ashok's name; however, she admitted not confronting accused Ashok about his threat to Deepak. Nonetheless, there is no reason to disbelieve the fact stated by the deceased to his sister.

41. Section 6 of the Indian Evidence Act, 1872, [Analogous to §4 of BSA, 2023], reads as follows:

> **[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.
>
> *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*) xx

42. In Gentela Vijayavardhan Rao v. State of A.P., [1996] SUPP 5 SCR, pg281: 1996 INSC 954, decided on Aug 28, 1996, the Hon'ble Supreme Court holds,

> [C-E]. The principle or law embodied in Section 6 of the Evidence Act is usually known as the rule of res gestae recognised in English Law. The essence of the doctrine is that fact which, though not in issue, is so connected with the fact in issue "as to form part of the same transaction" becomes relevant by itself. This rule is, roughly speaking, an exception to the general rule that hearsay evidence is not admissible. The rationale in making certain statement or fact admissible under Section 6 of the Evidence Act is on account of the spontaneity and immediacy of such statement or fact in relation to the fact in issue. But it is necessary that such fact or statement must be part of the same transaction. In other words, such statement must have been made contemporaneous with the acts which constitute the offence or at least immediately thereafter. But if there was an interval, however slight it may be, which was sufficient enough for fabrication then the statement is not part of res gestae.

43. In Sukhar v. State of U.P., SC 3J [1999] SUPP 3, pg319-320: 1999-INSC-451, decided on Oct 01, 1999, a three-Judge bench of the Hon'ble Supreme Court holds,

> [F-A] Section 6 of the Evidence Act is an exception to the general rule whereunder the hearsay evidence becomes admissible. But for bringing such hearsay evidence within the provisions of Section 6, what is required to be established is that it must be almost contemporaneous with the acts and there should not be an interval which would allow fabrication. The statements sought to be admitted, therefore, as forming part of resgestae must have been made contemporaneously with the acts or immediately thereafter The aforesaid rule as it is stated in Wigmore's Evidence Act reads thus :
>
> > "Under the present Exception [to hearsay] an utterance is by hypothesis, offered as an assertion to evidence the fact asserted (for example that a car-brake was set or not set), and the only condition is that it shall have been made spontaneously, i.e. as the natural effusion of a state of excitement. Now this state of excitement may well continue to exist after the exciting fact has ended. The declaration, therefore, may be admissible' even though subsequent to the occurrence, provided it is near enough in time to allow the assumption that the exciting influence continued."

44. In State of Maharashtra v. Kamal Ahmed Mohd. Vakil Ansari, [2013] 5 SCR 128, pg173: 2013-INSC-162, decided on Mar 14, 2013, the Hon'ble Supreme Court holds,

> [A-C] In our considered view, the test to determine admissibility under the rule of "res gestae" is embodied in words "are so connected with a fact in issue as to form a part of the same transaction". It is therefore, that for describing the concept of "res gestae", one would need to examine, whether the fact is such as can be described by use of words/phrases such as, contemporaneously arising out of the occurrence, actions having a live link to the fact, acts perceived as a part of the occurrence, exclamations (of hurt, seeking help, of disbelief, of cautioning, and the like) arising out of the fact, spontaneous reactions to a fact, and the like. It is difficult for us to describe illustration (a) under Section 6 of the Evidence Act, specially in conjunction with the words "are so connected with a fact in issue as to form a part of the same transaction", in a manner differently from the approach characterized above.

45. PW1 Sushma's initial statement had also mentions about the similar threat to Parul; but the non-examination of Parul will render this part inadmissible as evidence.

46. PW1 Sushma is the real sister of both Ashok and the deceased Deepak, and once she had lost one of her brothers being murdered, she would undoubtedly be aware of the possible negative repercussions of falsely deposing against her other brother, knowing that the minimum sentence for such a crime would be life or possibly death, which was in fact awarded in this case.

47. In Dalip Singh v. State of Punjab, [1954] 1 SCR 145, pg151-152, 1979-INSC-105, May 15, 1953, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [25]. We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in - 'Rameshwar v. State of Rajasthan', [1952] 1 SCR 377, pg386; 1951-INSC-63. We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel.
>
> [26]. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid

> for such a criticism and the mere fact of relationship far from being a foundation is often sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.

48. Given the above, it is established beyond a reasonable doubt that because of the bequeathment of property by their mother in favour of Deepak, the accused Ashok was harboring a deep-seated grudge against his brother Deepak, which would give him motive to commit the crime of murdering his brother.

49. The ***third circumstance*** is that accused Ashok was last seen with the deceased Deepak when Deepak was alive, and afterwards Deepak was found dead, and in between, no one else had met him.

50. The evidence of the last-seen against accused Ashok is that Deepak's friend Surjeet had told Deepak's sister Sushma [PW1] that on the preceding night, at around 8 PM, when Surjeet was present at Deepak's house then accused Ashok visited the house of Deepak, and when Ashok started consuming liquor over there, Surjeet returned.

51. The last person to know about the proximity and presence of the accused with the deceased was Surjeet. It was Surjeet who had called Sushma on her mobile and spoken about the circumstances of the preceding evening with Deepak. In his presence, Ashok Kumar had visited Deepak's house on his motorcycle, where Ashok had started consuming liquor, and when Surjeet left the place, Surjeet did not state that any assault or scuffle had taken place between Ashok and Deepak during his presence in Deepak's house.

52. Surjeet was the primary witness, and in the charge sheet, Surjeet was mentioned as witness No. 2. During the investigation, the prosecution recorded a statement of Surjeet under §175 CrPC, which forms part of the police file; however, it could not be tendered in evidence because before Surjeet's statement could be recorded, during the intervening period, on May 13, 2021, he expired. The prosecution had tendered in evidence Surjeet's death certificate as Ext PZ.

53. PW1 Sushma Devi was cross-examined about Surjeet, and she explained that she had known Surjeet since 2013 and he had become like her brother. Even before the incident, she was regularly in touch with Surjeet because whenever she visited Tohana to meet her brother, Surjeet would also meet her. PW1 Sushma Devi also clarified that she had Surjeet's mobile number, which was already in her contacts. A contradiction arises in her cross-

examination: she explained that she received a call from Surjeet at 8:45 AM, whereas in the complaint, she stated the time of receiving the call as 10 A.M. However, this is a minor discrepancy and cannot be grounds for disbelieving receipt of the phone call. Sushma testified that when she reached Tohana, Surjeet and many others were standing outside Deepak's home. She also stated that she and Surjeet had called the police and that she did not make the call from her number; instead, she had asked Surjeet to call from his phone.

54. PW1 Sushma Devi testified in the trial that Surjeet had disclosed to her that on the previous day, i.e., on 17th June 2020 at 8:00 PM, Ashok had come to the house of Deepak, and at that time, he was also present there, and in his presence, Ashok started taking liquor. Upon this, Surjeet left for his home. PW1 Sushma also testified that Surjeet had conveyed all those things to her the next morning on the phone, and she reported the conversation in the complaint she made to the police, based on which the FIR was registered. In cross-examination, PW-1 Sushma stated that her brother Ashok had met her several times in the house of her other brother Deepak.

55. PW15 Rajbir Singh, Sub Inspector, Police Station in City Tohana, testified that on June 18, 2020, he and other police officials visited the crime scene, where Sushma Devi, her niece Parul, and others met them, and the complainant made the statement. As per order sheet dated Sep 20, 2022, the prosecution gave up witness Parul as unnecessary.

56. The issue before this Court is the admissibility of evidence of oral information by a witness of a relevant fact to another person, who is not accused of the said crime and such information is otherwise subsequently linked with the commission of an offence or led to the commission of an offence.

57. Section 60 of the IEA [Corresponding to §55 of BSA, 2023] deals with hearsay evidence and mandates that the oral evidence must, in all cases whatever, be direct, as illustrated in the provision.

58. The last seen doctrine permits a presumption against the accused where the deceased was last seen alive with the accused, and the accused offers no satisfactory explanation, such evidence falls into one of the exceptions of exclusion of hearsay evidence, i.e., Res gestae defined under §6 of the Indian Evidence Act [§4 of BSA].

59. Section 32 of the IEA [§26 BSA] makes admissible the statements made by a deceased person concerning the cause of their death or the circumstances of the transaction resulting in their death. This exception is strictly confined to statements of the deceased

victim. It does not extend to statements by a third person about having seen the accused with the deceased, unless the statement itself is otherwise admissible in evidence.

60. In Ratan Gond v. State of Bihar, [1959] 1 SCR 1336, pg1343, decided on Sep 19, 1958, a three-judge bench of the Hon'ble Supreme Court holds,

> This brings us to a consideration of the submissions made on behalf of the appellant. We may say at the very outset that we agree with learned counsel for the appellant that the statements of Aghani, who unfortunately died within a few months of the occurrence before her statements could be recorded in a judicial proceeding, were not admissible in evidence either under Section 32 or Section 33 of the Evidence Act. Section 33 is clearly out of the way because Aghani made no statements in a judicial proceeding or before any person authorized by law to take her evidence. The only relevant clause of Section 32 which may be said to have any bearing is cl. (1) which relates to statements made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death. In the case before us, the statements made by Aghani do not relate to the cause of her death or to any of the circumstances relating to her death; on the contrary, the statements relate to the death of her sister. We are, therefore, of the opinion that the statements do not come within S. 32(1) of the Evidence Act and, indeed, Mr Dhobar appearing on behalf of the State, has conceded that S. 32(1) does not apply to the statements of Aghani.

61. The conversation regarding the last seen between Surjeet and Sushma has been mentioned in the initial complaint [Ext P1] and the FIR [Ext P66], and both these documents have also been proved in evidence. However, since Surjeet had expired before he could testify, Surjeet's conversation with Sushma Devi and Sushma Devi's testimony regarding the last-seen are legally inadmissible. The mere fact that Surjeet died before his statement could be recorded in the trial renders the statement inadmissible through another witness. The remedy available to the Investigators was to record the statements of all crucial witnesses under §183 of the BNSS, which was earlier §164 CrPC. Thus, in the absence of a statement under §164 CrPC, 1973, the prosecution has failed to establish the fact that the accused was last seen or present at the house of the deceased Deepak till 8:00 PM, from where, on the next morning, the dead body of Deepak was recovered.

62. The evidence given by Sushma regarding what Surjeet told her about Ashok being last seen with Deepak qualifies as hearsay and is inadmissible, unless it falls within the recognized exceptions of §32 of the Indian Evidence Act, 1872. Section 32 permits statements of a deceased person to be used as evidence in certain circumstances—primarily if they pertain to the cause of that person's death or circumstances resulting in their death. However, Surjeet's statement that he saw Ashok with Deepak conveyed to Sushma does not pertain to Surjeet's death, making §32 inapplicable for this scenario. Statements by

Sushma that "Surjeet saw Ashok with Deepak," whereas Surjeet could not be examined, and Surjeet's statement does not pertain to his own death, as such are inadmissible as they are pure hearsay and do not fit in the exceptions of §32 of the IEA.

63. The ***fourth circumstance*** is the recovery of a blood-stained vest from the bathroom of Deepak's house, where he was murdered. The prosecution examined ASI Karnail Singh as PW19, and he tendered his statement in affidavit as Exhibit P65. It was regarding the handing over of the case property including the vest from the deceased Deepak's house and its deposit with the Malkhana. The prosecution tendered in evidence the statement of EHC Suresh Kumar regarding the seizure of blood-stained clothes, and vest from the bathroom of the deceased.

A-1 Vest [Stated to be of Ashok]

Date & No. of Exhibit	Exhibit Name	Description and Findings	LCR Page
18.06.2020 4:30 PM Ext P2	BANIYAN Production cum seizure memo	One parcel containing blood stained baniyan of white colour lifted from the bathroom of house of deceased Deepak sealed with 3 seals of SS along with sample seal.	221

64. The vest was sent for testing in FSL Karnal, and as per the FSL report Ext P112, the Serologist detected human blood on the vest [Ext P3].

A-2 Underwear of Ashok.

Date & No. of Exhibit	Exhibit Name	Description and Findings	LCR Page
20.06.2020 P23	UNDERWEAR (ACCUSED) Recovery memo	One parcel in which underwear of kabutri (blue) colour which accused Ashok Kumar had worn at the time of murdering Deepak which was washed got recovered. Sealed with seal of SS along with sample seal.	261

D-1 Blood samples of Deepak.

Date & No. of Exhibit	Exhibit Name	Description and Findings	LCR Page
18.06.2020 4:30 PM Ext P2	COTTON SWAB - Production cum seizure memo	One parcel of dibbi plastic containing blood stained cotton lifted from the place of occurrence, sealed with 3 seals of SS along with sample seal.	221

E- Hair found at the crime-scene.

Date & No. of Exhibit	Exhibit Name	Description and Findings	LCR Page
18.06.2020 4:30 PM P2	HAIR-Production cum seizure memo	One parcel of dibbi plastic containing hairs lifted from the place of occurrence, sealed with 3 seals of SS along with sample seal.	221

65. However, hair recovered during the investigation was not sent for DNA comparison; as such, this evidence cannot be read against the accused.

66. The most significant evidence was the recovery of a blood-stained vest from the house of the deceased, where he was murdered. As per the initial investigation, Surjeet had said that Ashok was wearing a vest at the time when he had started taking liquor in the house of Deepak. In this backdrop, the vest stained with blood was a material object and could have established the accused's presence in the deceased Deepak's house through Bio-technological and chemical evidence, which could have proved the fact of the accused's presence beyond a shadow of doubt.

67. The best evidence to help establish Ashok's presence in the house of Deepak when Deepak was alive would have been the recovery of Ashok's blood-stained vest from the house of the deceased Deepak. However, the Investigators and their supervisory officers relied more on mortal humans than on indestructible science. They preferred to rely on Surjeet's oral testimony to establish that the accused, Ashok, was wearing the recovered vest and did not pursue DNA testing. Before the recording of testimony in the trial, Surjeet expired, and with that, the investigation into this crucial aspect of the offence, which carries the harshest sentence, also expired.

68. The prosecution did not opt to conduct a DNA examination of the blood-stained vest to connect the blood to that of deceased Deepak and to other genetic material of the accused, which could have been present in all likelihood on the vest due to sweating, etc., particularly because it was summer, when sweating increases. Had the Investigators and their supervisory officers sent the vest to the laboratory to extract and compare the DNA from the genetic material which most likely would have been present on the vest, by comparing DNA from the preserved genetic material of the victim Deepak and the DNA of the accused Ashok, the scientific evidence would have established the presence of Ashok in Deepak's house, and his link with the crime from the stains of blood of the deceased; and if established, it would have shifted the burden on the accused to demonstrate at what time he had left and at that time whether Deepak was alive or not. However, the prosecution did

not discharge its burden to connect the vest [Ext. P112] with Deepak and link it to Ashok, and the mere presence of human blood on the vest is insufficient unless the vest was connected with the accused Ashok, which was not done. Thus, the fact that the vest recovered from the crime scene was of Ashok (Accused) is not proved.

69. The ***fifth circumstance*** is the first disclosure statement [Ext P18] of Accused Ashok, and purchase of kappa from PW2 Jeewna Ram.

70. PW15 SI Rajbir Singh testified that on June 20, 2020, after the accused Ashok Kumar was arrested, he made a disclosure statement, [Ext P18] regarding the commission of a crime, and he got demarcated the shop of Blacksmith Jeewna, vide Ext P20, from where he had purchased Kappa. In cross-examination, PW15 admitted that no public person was associated at the time of interrogation of the accused because no one was available.

71. PW20 Inspector Jagdish Chander testified that on June 20, 2020, accused Ashok Kumar to have made a disclosure statement in his presence, about mobile phones, purchase of *kappa*, and the throwing of *kappa* in the canal.

72. PW2 Jeewna Ram in his examination-in-chief, admitted to selling iron equipment including *kappa* but feigned ignorance of whether he had sold one *kappa* to Ashok Kumar. On observing Ashok Kumar through video conferencing, PW2 Jeewna Ram stated that he did not know him. On having been declared as a hostile witness, when the leading questions were put to him, he denied making any statement to the police that on June 17, 2020, in the evening, Ashok Kumar had visited him and had asked for a *kappa* and purchased the same from him for Rs. 200/-. He denied making any such statement on Ext P-5.

73. An analysis of the evidence points out that the exact weapon used in the commission of the offence has not been established in evidence. The alleged Kappa was not recovered and since no fact was recovered, the disclosure statement without recovery of a fact, does not fall in the exception of §27 IEA, and rather is hit by §26 IEA.

74. The ***sixth circumstance*** is of the discovery of Gold Kara of the deceased Deepak pursuant to the disclosure statement of the accused Ashok.

D-1. Gold Kara:

Date & No. of Exhibit	Exhibit Name	Description and Findings	LCR Page
20.06.2020 Ext P18	Disclosure		167

	statement		
20.06.2020 Ext P23	GOLD KARRA Recovery memo	One parcel containing plastic container having a yellow gold karra which was taken out from the hand of deceased Deepak by accused Ashok Kumar after murdering him. Sealed with seal of SS along with sample seal.	261
20.07.2020 Ext P112	FSL report of Kara	As per the FSL report, blood was detected on the Gold Karra, but its serological analysis shows the result as 'Material Disintegrated'.	211

75. The recovery pursuant to the disclosure statement [Ext P18] of the accused establishes that after committing the crime, the accused had taken away the gold kara, Ext P23, and the presence of blood on the gold kara further links the kara with the deceased and the crime. Had it been the kara of the accused, there was no need for the accused to conceal it. He would have either put it on or kept it in a safe place. Further, if the kara is taken as belonging to the accused, the presence of blood on it leads to an inference of the accused Ashok's presence at the crime scene, giving rise to *Locard*[1]'s principle that every crime leaves a trail, and in this case the perpetrator of the crime took with him the blood from the scene of the crime, and whether it was his own blood or that of the deceased, and puts a reverse burden on him to explain the same, because there is medical corroboration to the injuries on the hand of accused Ashok.

76. However, since the accused Ashok was not charged with the commission of an offence punishable under §404 IPC of misappropriating the property of a deceased, he cannot now be convicted and sentenced for the said offence.

77. The ***seventh circumstance*** is of the first disclosure statement made by the accused Ashok, which led to the recovery of one Vivo and one Poco mobile phone.

D-2. Mobile Phones VIVO Ext P-53 and POCO Ext P-54:

Date & No. of Exhibit	Exhibit Name	Description and Findings	LCR Page
20.06.2020 Ext P18	Disclosure statement		167
20.06.2020	Recovery	One parcel cloth containing two mobile phones,	261

[1] **Locard's exchange principle originated in Lyon, France**, developed by forensic pioneer Dr. Edmond Locard at his laboratory there in the early 20th century. The foundational idea "Every contact leaves a trace" stems from Locard's observations, such as his French quote: "*Il est impossible au malfaiteur d'agir avec l'intensité que suppose l'action criminelle sans laisser des traces de son passage,*" but Locard never explicitly termed it an "exchange principle" in his own publications. [**https://www.mccrone.com/mm/fractured-patterns-microscopical-investigation-of-real-physical-evidence/**]

Ext P23	memo of Mobile phones VIVO & POCO	VIVO of black and red colour and POCO of blue colour which the accused had taken with him after murdering his brother Deepak. Sealed with seal of SS along with sample seal.	

78. The prosecution examined the Investigator PW17 Surender Singh, and he testified to visiting the spot and conducting the investigation. He also testified that on June 20, 2020, the accused made a disclosure statement, Ext P18 pursuant to which the spot from where he had thrown the DVR in the canal was identified vide Ext P21 and P22, and later on, a polythene bag containing two mobile phones, one gold *kara*, one underwear, and cash were also recovered, from the bushes near the land of the Aviation Department which were taken into possession with a vide memo Ext P23.

79. PW-17 Surender Singh, DSP, testified that from the mobile phones recovered pursuant to Ashok's disclosure statement Ex P18, the mobile phone Ex P53 was of the VIVO brand and Ext P54 of the POCO brand. In cross-examination, he stated that at the time of the recovery of mobile phones, they tried to join people from the public, but no one was ready to join, and no one cooperated.

80. PW20 Inspector Jagdish Chander stated that pursuant to the disclosure statement, the accused got recovered two mobile phones, made by VIVO and POCO, in addition to one gold kara, underwear, and cash from the bushes situated in the land of the Aviation Department at Hisar.

81. This Court is not relying upon the self-inculpatory confessional part of the disclosure statement, which had nothing to do with the discovery of fact, because that is inadmissible evidence; however, the portion that mentions the disclosure about the facts connected with the recoveries and with the crime is admissible and is being referred to.

82. In Ramkishan Sharma v. State of Bombay, [1955] 1 SCR 903, pg924 :1954-INSC-99, Decided on Oct 22,1954, a three-Judge Bench of the Hon'ble Supreme Court holds,

> The expression "whether it amounts to a confession or not" has been used in order to emphasise the position that even though it may amount to a confession that much information as relates distinctly to the fact thereby discovered can be proved against the accused. The section seems to be based on the view that if a fact is actually discovered in consequence of information given some guarantee is afforded thereby that the information was true and accordingly can be safely allowed to be given in evidence. But clearly the extent of the information admissible must depend on the exact

> nature of the fact discovered to which such information is required to relate. [*Kottaya* v. *Emperor]*.

83. In Udai Bhan v. State of UP, [1962] SUPP 2 SCR 830, pg835-837: 1962 INSC 30, the Hon'ble Supreme Court holds,

> Thus, s. 27 partially removes the ban placed on the reception of confessional statements under s. 26. But the removal of the ban is not of such an extent as to absolutely undo the object of s. 26. All it says is that so much of the statement made by a person accused of an offence and in custody of a police officer, whether it is confessional or not, as relates distinctly to the fact discovered is proveable. Thus, in this case taking the recovery memos the statements in regard to the key was this that the appellant handed over the key and said that he had opened the lock of the shop of the complainant with that key. The handing over of the key is not a confessional statement but the confession lies in the fact that with that key the shop of the complainant was opened and, therefore, that portion will be inadmissible in evidence and only that portion will be admissible which distinctly relates to the fact discovered i.e., the finding of the key. Similarly, the recovery of the box is proveable because there is no statement of a confessional nature in that memorandum.
> xxxxxxxxx
> Thus it appears that s. 27 does not nullify the ban imposed by s. 26 in regard to confessions made by persons in police custody but because there is the added guarantee of truthfulness from the fact discovered the statement whether confessional or not is allowed to be given in evidence but only that portion which distinctly relates to the discovery of the fact. A discovery of a fact includes the object found, the place from which it is produced and the knowledge of the accused as to its existence.

84. An analysis of the evidence mentioned above proves the recovery of the mobile phone VIVO as Ext P53 and POCO as Ext P54 on the statement of the accused recorded under §27 of the Indian Evidence Act, 1872.

85. The ***eighth circumstance*** is the recovery of the Redmi mobile phone with SIM no. 989XX-98260, and the call recordings retrieved from the mobile phone and the transcripts made thereof, pursuant to the second disclosure statement.

86. PW17 DSP Surender Singh, who was the Investigator and at that time the SHO of the police station, testified that after the accused was arrested, he was searched and a mobile phone was recovered from him which was seized as described in the arrest memo Ext P16, and deposited in the Police Malkhana.

87. PW17 DSP Surender Singh testified that on June 27, 2020, he took out the accused Ashok from the police lock-up and again interrogated him, and the accused Ashok made a disclosure statement, Ext P44, disclosing about the call recordings in the Redmi phone.

PW20 Inspector Jagdish Chander and PW21 SI Mahender Singh also corroborated that on June 27, 2020, when the accused was interrogated, he had made a disclosure statement, Ext P44, in which he mentioned about the call recordings of the calls made by him to his relatives and friends after committing the murder of his brother.

88. Based on such a confession made in the disclosure statement, the Investigator PW17 Surender Singh took the mobile phone Redmi having SIM no. 989XX-98260 of the accused Ashok Kumar from PW4 MHC Rajbir, with whom it had been deposited earlier. On the mobile phone, PW17 Surender Singh heard recordings of the accused Ashok Kumar with various people, including Hemant Bharti, Dr. Ashok, etc. He got prepared the transcripts and CD of the audio files of the call recordings through Constable Rajan, and subsequently, he obtained a certificate [Ext P48] under §65-B of the Evidence Act from PW34 Constable Rajan. The prosecution also tendered in evidence the production-cum-seizure memo, Ext. P49, regarding the Mobile make Redmi [Ex P55 (MO)].

89. The link evidence of the REDMI mobile phone is as follows:

A-1. REDMI

Date & No. of Exhibit	Exhibit Name	Description and Findings	LCR Page
19.06.2020 at 2 P.M. Ext P16	Arrest Memo	Accused Ashok arrested And his Phone make Redmi seized SIM mobile no. 989XX 98260 IO- Surender Singh WITNESSES- Rajbir Singh, SI (265/H) and Krishan Kumar, HC	163

A-2. REDMI PHONE- TAKEN OUT FROM MALKHANA

Date & No. of Exhibit	Exhibit Name	Description and Findings	LCR Page
27.06.2020 11.30 A.M. Ext P49	Production cum Seizure Memo	Redmi phone of Ashok with SIM mobile no. 989XX 98260 taken out from malkhana Moharar Police Station. Parcel of phone and SIM was prepared and sealed SS Produced by- Rajbir Singh, HC (172) to Surender Singh, SHO	241
27.06.2020 Ext P45	Transcripts of call from REDMI Phone	8 transcripts prepared by Rajan, Ct. Ashok and Hemant Ashok and Dr. Ashok Ashok and Hemant Ashok and Gurcharan	223-233

		Ashok and Rakesh Ashok and Balwinder Ashok and Happy Ashok and Chander Bhan WITNESS- Rajbir, HC (172) and Rajan, Ct.	

90. The Investigator, PW17 Surender Singh, in cross-examination, admitted that when he took the mobile phone from HC Rajbir [PW4], at that time, no seal was affixed on it, and he voluntarily said that he did not seal the said mobile phone at the time of arrest of the accused. PW17 admitted that the mobile phone had remained unsealed from June 19, 2020, to June 27, 2020, during its time in MHC's custody. PW17 stated that Constable Rajan PW34, prepared the transcripts of the call recordings. He also stated that he did not take into possession the mobile phones of Dr. Ashok [PW14], Hemant Bharti [PW8], and other people.

91. PW34 Constable Rajan testified that he prepared transcript Ext P45 by hearing the voice of accused Ashok and others and it was signed by HC Rajbir and attested by SHO Inspector Surender. The prosecution tendered in evidence Ext P45, which contains transcripts of the call details between Ashok and the people whom he had called, informing them about the incident.

92. The *first transcript* [no. 1], is of conversations recorded of the call made by accused Ashok on June 17, 2020, at 09:25 PM, to Hemant Bharti [PW8], in which he told Hemant that he had won the battle (*fateh morcha*).

93. The *third transcript* [Transcript no. 3], is of conversations recorded of the call made by accused Ashok on June 18, 2020, at 10:57 AM, to [PW8] Hemant Bharti, in which Ashok again called Hemant and inquired about Deepak. Accused Ashok told Hemant that he had done something in the night. Accused Ashok told PW8 Hemant that he had killed Deepak and gone to a far-off place. When Hemant asked Accused Ashok whether he killed him [Deepak] at home, then Accused Ashok said ‘yes’, and when questioned who killed him, then Ashok said, “I killed him, and who else did?” He again reiterated, “I killed him, and who else did? He again reiterated that “I killed him”.

94. PW8 Hemant also admitted having made a statement under §164 CrPC before JMIC, Tohana. The prosecution also tendered in evidence the statement of [PW8] Hemant Bharti recorded under §164 CrPC as Ext P10.

95. PW8 Hemant Bharti testified that on June 18, 2020, at 9:00 PM, he had received a telephone call from Ashok Kumar in which he claimed to have won a battle (*Morcha fateh kar diya hai*). After that, PW8 warned him not to call under the influence of alcohol and disconnected the call. The next day, i.e., June 19, 2020, PW8 Hemant again received a call from accused Ashok Kumar, who inquired whether Hemant had learned about Deepak. Accused Ashok said he had taken action against him [Deepak], but Hemant [PW8] could not understand what he meant. On this, PW8 again inquired from him, to which the accused responded by saying that he had killed Deepak, and then accused Ashok disconnected the call. In cross-examination, PW8 admitted that he was not on visiting terms at the house of the accused Ashok and his deceased brother Deepak.

96. There is a contradiction in the date mentioned in the statement of Hemant Bharti recorded on June 28, 2020, stated under oath before JMIC, Tohana, under §164 CrPC [Ext P10] and the date mentioned in his examination-in-chief. However, this contradiction is immaterial, as the call detail records corroborate the name of the accused and date and time of the calls mentioned in statement [Ext P10]. This contradiction is not prejudicing the accused.

97. Whenever there is a delay in the examination of the witnesses, the chances of discrepancies and contradictions would arise, and such can apparently be attributed to the inherently fallible nature of human memory.

98. The *second transcript* [Transcript no. 2] is of conversations recorded of the call made by accused Ashok on June 18, 2020, at 10:54 AM, to Dr. Ashok [PW14]. Accused Ashok stated to PW14 Dr. Ashok that he had forewarned him [Dr. Ashok] a couple of days prior about his intention to kill Deepak within 1-2 days. Accused Ashok again stated that he performed the action at 8:30 PM and left at 5:00 AM the next morning. Accused Ashok also told that he took the neck (severed head) and threw it somewhere.

99. PW14 Dr. Ashok Kumar testified that he was running a private clinic at Balmiki Chowk, Tohana. He said he had a mobile SIM number, 989XX 33228, and that Ashok would come to his clinic to pick up medicines. On June 18, 2020, at 10:54 AM, the accused Ashok, whom he identified through video conferencing, made a phone call from his mobile phone number. 989XX 98260 to PW14 Dr. Ashok stating that he had murdered his brother Deepak and had taken his neck after cutting it into pieces on the previous day, i.e., June 17, 2020, at 8:30 PM, and he had taken the neck (severed head) of his brother with him on June 18, 2020, at 5:00 PM. In cross-examination, he stated that on the date of occurrence, the

accused had not visited his clinic, and that previously accused had made phone calls to him 2-3 times; however, the accused's mobile number was already in his contact list.

100. The *fourth transcript* [Transcript no. 4], is of conversations recorded of the call made by accused Ashok on June 18, 2020, at 11AM, to Gurcharan [PW10], in which he again reiterated the incident.

101. PW10 Gurcharan Singh testified that on June 18, 2020, he received a call from an unknown mobile number; however, he recognized the caller as accused Ashok Kumar. Initially, Ashok inquired about his [Gurcharan's] health, and thereafter, Ashok told that he had quarreled with a known person. When Gurcharan asked about his whereabouts, accused Ashok said he was out of the station, but his mobile was then disconnected. Having been declared a hostile witness by the prosecution, PW10 Gurcharan did not support the prosecution's case or his initial version. Thus, the Accused's conversation with PW10 Gurcharan Singh is not proved.

102. The *fifth transcript* [Transcript no. 5], is of conversations recorded of the call made by accused Ashok on June 18, 2020, at 11:13 AM, to Rakesh Kumar, in which he told his relative Rakesh Kumar that he [Accused Ashok] had taken action against Deepak in the night. However, prosecution did not examine Rakesh. Thus, the Accused's conversation with Rakesh is not proved.

103. The *sixth transcript* [Transcript no. 6], is of conversations recorded of the call made by accused Ashok on June 18, 2020, at 04:32 PM, to Balvinder Singh [PW11], in which accused Ashok told his relative Balvinder Singh that he had killed him [Deepak], and he was like a small cat, and he killed him last night with a kappa. He killed him in small pieces at night. He also said that he had come prepared and had also brought kappa on the previous night to kill him.

104. PW11 Balwinder Singh testified that he had a SIM card for mobile number 839XX 96929 in his name, which he had handed over to his uncle, Amar Singh. Thus, PW11 Balwinder did not support the prosecution's case, and consequently the Accused's conversation with PW11 Balwinder is not proved.

105. The *seventh transcript* [Transcript no. 7], is of conversations recorded of the call made by accused Ashok on June 18, 2020, at 08:34 PM, to his relative Happy [PW12], in which he told Happy that he [Ashok] was in the neighborhood, 5 minutes away, and when Happy called him to his home, accused Ashok said he did not want to come to his home because it would put PW12 Happy in trouble and the police would call him. When Happy

inquired whether what he had heard was true or false, Ashok told him that whatever he had heard was correct.

106. PW12 Happy Kumar testified that he had a mobile phone with SIM number 852XX 60080. He further testified that SIM number 999XX 63313 was also in his name, and that he had received a phone call on June 18, 2020, at 8:30 PM, but he could not hear the conversation. Then, he was also declared hostile. Thus, the Accused's conversation with PW12 Happy is not proved.

107. The *eighth transcript* [Transcript no. 8], is of conversations recorded of the call made by accused Ashok on June 18, 2020, at 08:41 PM, to his relative PW7 Chanderbhan Gandhi in which Ashok inquired of Chander Bhan whether he knew what had happened in Tohana, but Chander Bhan Gandhi had no knowledge. On this, Ashok told him he had taken action in the night and then clarified that he had acted against Deepak.

108. PW7 Chander Bhan, who admitted receiving a call, later retracted his previous statement. Even in cross-examination, he did not support the prosecution's case. Thus, the Accused's conversation with PW7 Chanderbhan Gandhi is not proved.

109. On analysis of the testimonies of PW8 Hemant and PW14 Dr Ashok, which are duly corroborated by the transcripts of the accused's conversation with them, the circumstance of the accused making Extra Judicial Confession to PW8 Hemant and to PW14 Dr Ashok, about killing his brother Deepak, and throwing Deepak's severed head, is established beyond reasonable doubts because the defence did not lead any evidence of any prejudice, animosity, or ill will of these witnesses against the accused Ashok.

110. It is relevant to present the calls in a tabular format.

Sr. No.	Ph. No./Name	Ph. No./Name	Date	Time	Duration	Exhibit	LCR Page
1.	989XX-98260 Ashok	972XX-13411 Hemant Bharti	17.06.2020	9.25 PM	39 seconds	P-87	389
2.	989XX-98260 Ashok	989XX-33228 Dr. Ashok	18.06.2020	10.54 AM	100 seconds	P-25	269
3.	989XX-98260 Ashok	999XX-19601 Hemant Bharti	18.06.2020	10.57 AM	82 seconds	P-85	379
4.	989XX-98260 Ashok	946XX-74586 Gurcharan	18.06.2020	11.00 AM	119 seconds	P-81	367
5.	989XX-	946XX-73037	18.06.2020	11.13	48 seconds	P-89	411

	98260 Ashok	Rakesh Kumar		AM			
6.	989XX-98260 Ashok	839XX-86929 Balvinder Singh	18.06.2020	4.32 PM	181 seconds	P-103	453
7.	989XX-98260 Ashok	999XX-63313 Happy	18.06.2020	8.34 PM	224 seconds	P-26	279
8.	989XX-98260 Ashok	981XX-32001 Chander Bhan Gandhi	18.06.2020	8.41 PM	229 seconds	P-101	445

111. The ***ninth circumstance*** is evidence of mobile numbers, application forms, and call details of the accused Ashok with PW8 Hemant, PW14 Dr. Ashok, PW10 Gurcharan Singh, Rakesh Kumar, PW11 Balwinder Singh, PW12 Happy Kumar, and PW7 Chanderbhan Gandhi.

112. The prosecution examined PW16, the Nodal Officer of Bharti Airtel Limited, to prove the call details for the mobile numbers 989XX 33228 [Ext P25] and 999XX 63313 [Ext P26] of Dr. Ashok Kumar [PW14] and Happy [PW12] respectively. He also tendered in evidence the customer application forms, Ext P27 and Ext P28, along with the certificate Ext P29, under §65-B of the IEA, vide letter Ext P-30.

113. The prosecution proved the call details through PW26, Mr. Surender Singh Sindhu, Assistant General Manager of BSNL, who testified to the customer application form Ext P80 and the call details of mobile numbers 946XX 74586 (Ext P81), along with Ext P82 certificate under §65-B of the IEA.

114. The prosecution examined Mr. Gaurav, Nodal Officer of Reliance Jio, as PW27, and he testified by producing Ext P84, the customer application form and call detail record, Ext P85 relating to mobile number 999XX 19601; and Ext P86, the customer application form, and Ext P87, the call details record for the mobile number 972XX 13411; and Ext P88, customer application forms and Ext P89, call details record regarding mobile number 946XX 73037; along with the certificate Ext P-90 under §65-B of the IEA.

115. The prosecution examined Mr. Rajesh Kumar, AGM, Corporate Regulatory, Vodafone Idea Limited, as PW32. He testified and proved Ext P98 Customer Application Form, and P99 call details records relating to the mobile number 989XX 98260 of the accused Ashok Kumar. He also proved the customer application form for Chander Bhan Gandhi Ext P100 and the call details Ext P101 relating to the mobile number 981XX 32001. He also proved the customer application form of Balvinder Singh Ext P102, along with call detail records, Ext P103 relating to mobile number 839XX 86929 and location

chart Ext P104 of the above-said mobile numbers from June 15, 2020, to June 20, 2020, along with his certificate under §65-B of the IEA, as Ext P105.

116. Certificates of call details records of calls of Ashok with PW8 Hemant, PW14 Dr. Ashok, who supported the prosecution's case are presented in a tabular format:

Date & No. of Exhibit	Exhibit Name	Mobile No. and Name to whom Mobile SIM was issued	Description and Findings	LCR Page
Ext P105 08.09.2020	Certificate under §65-B of IEA	989XX-98260 Accused Ashok	Issued by the Nodal Officer, Haryana, Vodafone Idea	461
Ext P29 02.09.2020	Certificate under §65-B of IEA	989XX-33228 Dr. Ashok [PW14]	Issued by the Nodal Officer of Airtel	295
Ext P29 02.09.2020	Certificate under §65-B of IEA	999XX-63313 Happy [PW12]	Issued by the Nodal Officer of Airtel	295
Ext P90 03.09.2020	Certificate under §65-B of IEA	972XX-13411 Hemant Bharti	Issued by the Nodal Officer, Haryana, Reliance Jio	427
Ext P90 03.09.2020	Certificate under §65-B of IEA	999XX-19601 Hemant Bharti	Issued by the Nodal Officer, Haryana, Reliance Jio	427
Ext P82 02.09.2020	Certificate under §65-B of IEA	946XX-74586 Gurcharan	BSNL Hisar	371
Ext P90 03.09.2020	Certificate under §65-B of IEA	946XX-73037 Rakesh Kumar	Issued by the Nodal Officer, Haryana, Reliance Jio	427
Ext P105 08.09.2020	Certificate under §65-B of IEA	839XX-86929 Balvinder Singh	Issued by the Nodal Officer, Haryana, Vodafone Idea	461
Ext P105 08.09.2020	Certificate under §65-B of IEA	981XX-32001 Chander Bhan Gandhi	Issued by the Nodal Officer, Haryana, Vodafone Idea	461

117. The prosecution has established the call details record of calls made from the phone of accused Ashok to witnesses. Although only two witnesses, namely PW8 Hemant and PW14 Dr Ashok, supported the prosecution's version, but the calls made even to the other

witnesses stand proved, whereas witnesses PW10 Gurcharan Singh, Rakesh Kumar, PW11 Balwinder Singh, PW12 Happy Kumar, and PW7 Chanderbhan Gandhi did not prove the conversations. The call records could have been the best possible evidence for the prosecution to prove the threats allegedly administered by the accused and the demand of ransom.[2] And in the present case, the prosecution has proved the calls made by accused Ashok to PW8 Hemant, PW14 Dr Ashok, PW10 Gurcharan Singh, Rakesh Kumar, PW11 Balwinder Singh, PW12 Happy Kumar, and PW7 Chanderbhan Gandhi beyond a reasonable doubt; however, the conversations with the witnesses other than PW8 Hemant and PW14 Dr Ashok, are not established.

118. The ***tenth circumstance*** is the retrieval of audio recordings from the mobile device.

119. PW34 Constable Rajan testified that he copied audio files from the Mobile phone of the accused Ashok and prepared two CDs and handed over those to PW17 SHO Inspector Surender Singh, who sealed them in parcels and affixed seals SS and took them in possession, vide memo Ext P46. PW34 Constable Rajan tendered in evidence the CDs as Ext P109(MO) and Ext P111(MO). The FSL report about call recordings and voice sample of Ashok is tendered in evidence as Ext P108.

A-3. REDMI PHONE- TAKEN OUT FROM MALKHANA

Date & No. of Exhibit	Exhibit Name	Description and Findings	LCR Page
27.06.2020 11.30 A.M. Ext P49	Production cum Seizure Memo	Redmi phone of Ashok with SIM mobile no. 989XX98260 taken out from malkhana Moharar Police Station. Parcel of phone and SIM was prepared and sealed SS Produced by- Rajbir Singh, HC (172) On Surender Singh, SHO	241
27.06.2020 Ext P46	Recovery memo of CD of call recording	WITNESS- Ct. Rajan	235
27.06.2020 Ext P47	Recovery memo of document(transcript)	WITNESS- Rajbir Singh, HC (172) and Rajan, Ct.	237
27.06.2020 Ext P48	Certificate 65-B of call recording AND CD	WITNESS Rajan, Ct	239

120. PW34 Constable Rajan testified that he prepared certificate [Ext P48] under Section 65-B of the IEA.

[2] Supreme Court of India in William Stephen v. The State of Tamil Nadu, 2024-INSC-146, decided on 21-02-2024, Para 15.

121. PW31 SI (Retired) Kheta Ram testified that on Nov 20, 2020, he took custody of the accused Ashok Kumar and took him to the FSL Madhuban, where Ashok's voice specimen was taken. Thereafter he produced accused Ashok before the Jail Authorities and then reached Police Station City, Tohana, and deposited the envelope containing a CD sealed with the seal of FSL with PW29 EASI Ajmer Singh. EASI Ajmer Singh tendered in evidence his affidavit, Ext P 93, and stated that on 20.11.2020, ASI Kheta Ram [PW31] deposited in Malkhana, two parcels of audio CDs of the accused Ashok Kumar sealed with the seal of FSL. Two parcels of audio CD of the accused Ashok Kumar, sealed with seal of FSL after being taken out from Malkhana in intact condition was handed over to PW3 Constable Lilu Ram No.537 for depositing the same with DFSL, Madhuban vide RC No.17 dated 07.01.2021 and Constable Lilu Ram after depositing the same handed over the receipt to him [PW29] which he had tagged with the record.

122. An analysis of the evidence establishes that the relevant fact of retrieval of audio files from the Redmi phone of the accused Ashok is established.

123. The ***eleventh circumstance*** is the taking of the accused's voice sample and its proof by the laboratory.

124. Prosecution tendered in evidence Ext P78, which is an application for taking consent for the voice sample of Ashok Kumar. Vide order dated June 28, 2020, passed by JMIC, Tohana, the said application was allowed, and the voice sample of the accused was considered essential for comparison, investigation of the alleged crime, and in the interest of justice.

A-4. VOICE SAMPLE ASHOK

Date & No. of Exhibit	Exhibit Name	Description and Findings	LCR Page
28.06.2020 Ext P78	Application to take voice sample of accused	Application seeking direction to the accused to give his voice sample for the purpose of comparison and investigation	267
28.06.2020 Ext P79	Order of JMIC, Tohana allowing the aforesaid application	Order of JMIC, Tohana allowing the aforesaid application	353-355
18.08.2020	Letter no. 1328/5A		
18.08.2020 Ext P107	Appointment letter No. 8368/FSL	Appointment letter with date and time for recording of specimen voice sample of Ashok Kumar Allotted Date: 18.11.2020	465

		Time: 10.00 AM	
30.08.2024 Ext P108	Report (Opinion) No. FSL (H) 20/ FSL/ MBN/ 2007104173, Phy-10/21	Voice sample of Ashok and the CD record matched	209

125. Prosecution examined PW33 Gaytri Sen, Assistant Director (Physics), Forensic Science Laboratory, Madhuban, Karnal. She testified that on Aug 18, 2020, she requested DSP Tohana to direct the Investigating officer to bring accused Ashok on 18.11.2020 along with their consent for recording of specimen voice sample of the accused Ashok Kumar.

126. PW33 Gaytri Sen, Assistant Director (Physics), FSL, Madhuban, Karnal, stated in her cross-examination that on 20.11.2020, accused Ashok Kumar was brought to FSL, Madhuban by SI Kheta Ram. She started taking the voice sample of the accused at about 3:48 PM, and it lasted for about 5-7 minutes. After taking a voice sample, she returned the transcription and the specimen to SI Kheta Ram.

127. PW33 Gaytri Sen identified the CDR containing the sample voice recording of Ashok in CDR as Ext P110 (MO). In her cross-examination, she stated that she had used multi-speech software for comparison of specimen voice sample and the questioned conversations [It needs to be explained here that the word “questioned” is used to compare the original/primary with the sample]. She denied preparing a false report.

128. The prosecution tendered in evidence the report of the Forensic Science Laboratory, Madhuban Karnal, as Ext P108 regarding the comparison of voice samples. The result of the examination/opinion reads as follows:

> “On the basis of auditory and spectrographic examination of questioned voice sample marked Q1 (A) with the specimen voice samples of “Ashok Kumar” marked S1 (A) using multi speech software, it has been observed that voice marked Q1 (A) is the probable voice of same person i.e. “Ashok Kumar” whose specimen voice marked S1 (A) (“Ashok Kumar”) in respect of available ‘acoustic’ and other ‘linguistic & phonetic’ features.”

129. Given the above, the prosecution has established that the voice retrieved from the Redmi mobile phone of accused Ashok was his own voice, and that the accused Ashok had confessed about killing his brother to his multiple relatives and to his Doctor, and two of these confessions amounting to admissions of the accused have been proved beyond reasonable doubt and are admissions and are legally admissible.

130. In Baldev Raj v. State of Haryana, [1990] SUPP 1 SCR, pg497: 1990-INSC-284, decided on Sep 17, 1990, the Hon’ble Supreme Court holds,

> [D-F]. An extra-judicial confession, if voluntary, can be relied upon by the court along with other evidence in convicting the accused. The value of the evidence as to the confession depends upon the veracity of the witnesses to whom it is made. It is true that the court requires the witness to give the actual words used by the accused as nearly as possible but it is not an invariable rule that the court should not accept the evidence, if not the actual words but the substance were given. It is for the court having regard to the credibility of the witness to accept the evidence or not. When the court believes the witness before whom the confession is made and it is satisfied that the confession was voluntary, conviction can be founded on such evidence. …

131. In State of Rajasthan v. Raja Ram, [2003] SUPP 2 SCR, pg458: 2003-INSC-388, Aug 13, 2003, the Hon'ble Supreme Court holds,

> [C-F]. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any Court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

132. The ***twelfth circumstance*** is the presence of injuries on the fingers of the accused Ashok.

133. After arrest on June 19, 2020, the accused was taken to the Civil Hospital, Tohana, for a medical examination, where PW30, Dr. Abhishek Saini, examined the accused Ashok and recorded MLR Ext. P95. PW30 testified to noticing injuries on the fingers of the accused Ashok.

134. Vide an application dated June 19, 2020, the physical examination of the accused was conducted by the Medical Officer, Tohana. According to the medical-legal certificate, [Ext P95], the doctors noted the following injuries on his person:

> "*1. Stitched wound of 3.5 cm having 4 stitches on left index finger of upper limb above metacarpophalangeal joint.*
>
> *2. Stitched wound of 2.5 cm having 3 stitches on right index finger of upper limb just above metacarpophalangeal joint.*
>
> *3. Incised wound on middle finger of right hand – superficial and linear – 1.5 cm with incomplete scab formation over tip of finger.*
>
> *4. Abrasion over right thumb- 1 cm x 0.5 cm with reddish brown scab over tip of thumb."*

135. In cross-examination, PW30 explained that the probable duration of injuries number 3 and 4 was 2-3 days. Because the alleged kappa as per Ashok's disclosure statement was thrown by him in the canal, it could not be recovered during the investigation and for this reason no opinion was required from the examining Doctor Dr. Abhishek Saini on MLR P95, that whether the accused would have received these injuries while causing kappa blows to the deceased or not, because it would depend upon the shape and handle of the weapon. As per the Postmortem Report [Ext P91], apart from severing of the head, there were 28 incised injuries on the deceased. The prosecution has proved the existence of injuries on the fingers of both hands of the accused Ashok, and two injuries, which were unstitched, related to the time of murder, as such, the presence of unexplained injuries on the fingers points out that the accused Ashok had received these injuries while inflicting multiple blows with some sharp edged weapon, and this circumstance stands proved.

136. An analysis of the above fully establishes that the chain of circumstances is complete, unbroken, and leads to the sole inference of Ashok's guilt beyond a reasonable doubt.

137. In Hanumant v. The State of Madhya Pradesh, [1952] 3 SCR 1091, pg1097: 1952-INSC-41, Sep 23, 1952, the Hon'ble Supreme Court holds,

> 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 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 act must have been done by the accused...

138. In Sharad Birdhi Chand Sarda v. State of Maharashtra, [1985] 1 SCR 88, pg162-164: 1984-INSC-121, Jul 17, 1984, where a bride was found dead in her bed-after 4 months of her marriage, a three-Judge Bench of the Hon'ble Supreme Court holds,

[E-G]. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. The State of Madhya Pradesh [(1952) SCR 1091] This case has been uniformly followed and applied by this Court in a large number of later decisions uptodate, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969 3 SCC 1981] and Ramgopal v.State of Maharashtra [AIR 1972 SC 656]. It may be useful to extract what Mahajan, J. has laid down in Hanumant's case (supra): "It is …..accused."

[C-B]. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra [(1973) 2 SCC 793] where the following observations were made:

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

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

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

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

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of

> the accused and must show that in all human probability the act must have been done by the accused.
>
> These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

139. All the parameters mentioned in the above judicial precedents are fully met against the accused Ashok.

140. Another relevant fact is that the accused Ashok had absconded. If someone's sibling dies or has an untimely tragic death as shocking as that in the present case, then normal human behavior dictates that in usual course of events, unless the siblings have completely severed their ties, the siblings who live nearby would be grief-stricken and would immediately reach the abode of the deceased or attempt to be present with the deceased at the earliest, and any contrary behavior would indicate something suspicious.

141. In Shyamal Ghosh v. State of West Bengal, [2012] 10 SCR 95, pg138-139 :2012-INSC-281, Jul 11, 2012, the Hon'ble Supreme Court holds,

> [41-BG]. Even if we assume that absconding by itself may not be a positive circumstance consistent only with the hypothesis of guilt of the accused because it is not unknown that even innocent persons may run away for fear of being falsely involved in criminal cases, but in the present case, in view of the circumstances which we have discussed in this judgment and which have been established by the prosecution, it is clear that absconding of the accused not only goes with the hypothesis of guilt of the accused but also points a definite finger towards them.

142. Given the above, on analysis of all evidence which stands proved, it is established beyond a reasonable doubt that Appellant Ashok had murdered his brother and, after that, had carried away the severed head, leaving behind the decapitated body.

143. As a result, the judgment of conviction under §§302 and 201 IPC calls for no interference, except for the sentence part. However, there is no evidence for the conviction of an offence punishable under § 457 IPC, as there is no evidence that he had trespassed in his brother's house. The motive was murder and not theft, and the accused was not charged under §404 IPC for misappropriation of the property of the deceased. Further, there is no evidence of an offence punishable under §506 IPC, as Deepak had never filed a complaint regarding the previous threats, nor did any witness state having seen the fact of such threats. Accordingly, the appellant is acquitted of the charges under §§457 and 506 of the IPC. Furthermore, the sentence under §201 IPC is reduced, but the fine amount is enhanced.

144. The default sentence for the non-payment of fine, wherever imposed, shall be converted from ‘Rigorous Imprisonment’ to ‘Simple Imprisonment’.

145. **Consequently, the conviction is upheld.**

146. Now, we take up the Death Reference MRC-1-2025 and the review of the sentence in the Criminal Appeal filed by Ashok.

147. In Ediga Anamma v. State of Andhra Pradesh, [1974] 3 S.C.R. 329; 1974 INSC 27, Feb 11, 1974, the Hon’ble Supreme Court holds,

> [338C] While deterrence through threat of death may still be a promising strategy in some frightful areas of murderous crime, to espouse a monolithic theory of its deterrent efficacy is unscientific and so we think it right to shift the emphasis, to accept composite factors of penal strategy and not to put all the punitive eggs in the 'hanging' basket but hopefully to try the humane mix.[3]
>
> [336G–A] “354(3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence."
>
> The unmistakable shift in legislative emphasis is that life imprisonment for murder is the rule. and capital sentence the exception to be resorted to for reasons to be stated.
>
> [338D–E] We assume that a better world is one without legal knifing of life, given propitious social changes. Even so, to sublimate savagery in individual or society is a long experiment in spiritual chemistry where moral values, socio-economic conditions and legislative judgment have a role. Judicial activism can only be a signpost, a weather vane, no more. We think the penal direction in this jurisprudential journey points to life prison normally, as against guillotine, gas chamber, electric chair, firing squad or hangmen's rope. 'Thou shalt not kill' is a slow commandment in law as in life, addressed to citizens as well as to States, in peace as in war. We make this survey to justify our general preference where S.302 keeps two options open and the question is of great moment.
>
> [338E–A] Let us crystallise the positive indicators against death sentence under Indian Law currently. Where the murderer is too young or too old, the clemency of penal justice helps him. Where the offender suffers from socio-economic, psychic or penal compulsions insufficient to attract a legal exception or to downgrade the crime into a lesser one, judicial commutation is permissible. Other general social pressures, warranting

[3] Justice V. R. Krishna Iyer, in Ediga Anamma v. State of Andhra Pradesh, Supreme Court of India.

> judicial notice, with an extenuating impact may, in special cases, induce the lesser penalty. Extraordinary features in the judicial process, such as that the death sentence has hung over the head of the culprit excruciatingly long, may persuade the court to be compassionate. Likewise, if others involved in the crime and similarly situated have received the benefit of life imprisonment or if the offence is only constructive, being under s. 302 read with s. 149, or again the accused has acted suddenly under another's instigation, without premeditation, perhaps the court may humanely opt for life, even like where a just cause or real suspicion of wifely infidelity pushed the criminal into the crime. On the other hand, the weapons used and the manner of their use, the borrandous features of the crime and hapless, helpless state of the victim, and the like, steal the heart of the law for a sterner sentence. We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society. A legal policy on life or death cannot be left for ad hoc mood or individual predilection and so we have sought to objectify to the extent possible, abandoning Retributive ruthlessness, amending the deterrent creed and accenting the trend against the extreme and irrevocable penalty of putting out life.

148. In Vasanta Sampat Dupare v UOI, 2025-INSC-1043, Aug 25, 2025, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [1]. The majesty of our Constitution lies not in the might of the State but in its restraint. When the Court contemplates the ultimate punishment, i.e. the Capital Punishment, it enters a domain where justice must be tempered by conscience and guided by the unwavering promises of equality, dignity and fair procedure. A Constitution that proclaims liberty and dignity as its first commitments cannot permit the State to end a human life unless every safeguard of fairness has been honoured and every civilizing impulse of the law has been heard. The question is never only what penalty a crime might merit, it is first whether the machinery of the Republic has honoured every safeguard that makes punishment lawful in a constitutional democracy. In the narrow space between guilt and the gallows, a robust Constitution demands that we pause, look again, and ask whether the process itself has measured up to the high bar that humanity and the rule of law together set.

149. In Bachan Singh v. State of Punjab, [l983] 1SCR 145, pg229, 237:1980-INSC-120, Aug 16, 1982, Constitutional Bench of the Hon'ble Supreme Court while upholding the Constitutional validity of the Capital Sentence, in a reference to the Constitution Bench regarding the constitutional validity of death penalty for murder provided in Section 302, Penal Code, and the sentencing procedure embodied in sub-section (3) of Section 354 of the Code of Criminal Procedure, 1973, holds,

> [A-C] [151]. Section 354(3) of the Code of Criminal Procedure, 1973, marks a significant shift in the legislative policy underlying the Code of 1898, as

> in force immediately before Apr 1, 1974, according to which both the alternative sentences of death or imprisonment for life provided for murder and for certain other capital offences under the Penal Code, were normal sentences. Now, according to this changed legislative policy which is patent on the face of Section 354(3), the normal punishment for murder and six other capital offences under the Penal Code, is imprisonment for life (or imprisonment for a term of years) and death penalty is an exception.
>
> [F]. In the context, we may also notice Section 235(2) of the Code of 1973, because it makes not only explicit, what according to the decision in Jagmohan's case was implicit in the scheme of the Code, but also bifurcates the trial by providing for two hearings, one at the pre-conviction stage and another at the pre-sentence stage.
>
> [C-E]. Now, Section 235(2) provides for a bifurcated trial and specifically gives the accused person a right of pre-sentence hearing, at which stage, he can bring on record material or evidence, which may not be strictly relevant to or connected with the particular crime under inquiry, but nevertheless, have, consistently with the policy underlined in Section354(3) a bearing on the choice of sentence. The present legislative policy discernible from Section 235(2) read with Section 354(3) is that in fixing the degree of punishment or making the choice of sentence for various offences, including one under Section 302, Penal Code, the Court should not confine its consideration "principally" or merely to the circumstances connected with the particular crime, but also give due consideration to the circumstances of the criminal.

150. In Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, CrA No. 1478-2005, pg35-36, May 13, 2009, the Hon’ble Supreme Court holds,

> Rarest of rare dictum, as discussed above, hints at this difference between death punishment and the alternative punishment of life imprisonment. The relevant question here would be to determine whether life imprisonment as a punishment will be pointless and completely devoid of reason in the facts and circumstances of the case? As discussed above, life imprisonment can be said to be completely futile, only when the sentencing aim of reformation can be said to be unachievable. Therefore, for satisfying the second exception to the rarest of rare doctrine, the court will have to provide clear evidence as to why the convict is not fit for any kind of reformatory and rehabilitation scheme. This analysis can only be done with rigor when the court focuses on the circumstances relating to the criminal, along with other circumstances. This is not an easy conclusion to be deciphered, but Bachan Singh (supra) sets the bar very high by introduction of Rarest of rare doctrine.

151. In Machhi Singh v. State of Punjab, [1983] 3 SCR 413, pg430-431: 1983-INSC-78, Jul 20, 1983, a three Judge Bench of the Hon’ble Supreme Court holds,

> [H-D]. The reasons why the community as a whole does not endorse the humanistic approach reflected in "death sentence in no case" doctrine are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of "reverence for life" principle. When a member of the community violates this very principle by killing another member, the society may not feel itself, bound by the shackles of this doctrine. Secondly, it has to be realized that every member of the community is able to live with safety without his or her own life being endangered because of the protective arm of the community and on account of the rule of law enforced by it. The very existence of the rule of law and the fear of being brought to book operates as a deterrent to those who have no scruples in killing others if it suits their ends. Every member of the community owes a debt to the community for this protection. When ingratitude is shown instead of gratitude by 'Killing' a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self-preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so (in rarest of rare cases) when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict the death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining the death penalty…

152. In Mohinder Singh v. State of Punjab, [2013] 3 SCR 90, 2013-INSC 61, Jan 28, 2013, a three-Judge bench of the Hon'ble Supreme Court holds,

> [20E-F] It is well settled law that awarding of life sentence is a rule and death is an exception. The application of the "rarest of rare" case principle is dependent upon and differs from case to case. However, the principles laid down and reiterated in various decisions of this Court show that in a deliberately planned crime, executed meticulously in a diabolic manner, exhibiting inhuman conduct in a ghastly manner, touching the conscience of everyone and thereby disturbing the moral fiber of the society, would call for imposition of capital punishment in order to ensure that it acts as a deterrent.

153. In Shankar Kisanrao Khade v. State of Maharashtra, [2013] 6 SCR 949; 2013-INSC-281CrA-362-363 of 2010, Apr 25, 2013, the Hon'ble Supreme Court, while commuting death sentence of a middle-aged man to life (End of Natural Life under S. 376AB], who continuously raped and murdered girl child aged 11, with moderate intellectual disability holds,

> [28]. Aggravating Circumstances as pointed out above, of course, are not exhaustive so also the Mitigating Circumstances. In my considered view that the tests that we have to apply, while awarding death sentence, are "crime test", "criminal test" and the R-R Test and not "balancing test". To award death sentence, the "crime test" has to be fully satisfied, that is 100% and "criminal test" 0%, that is no Mitigating Circumstance favouring the accused. If there is any circumstance favouring the accused, like lack of intention to commit the crime, possibility of

> reformation, young age of the accused, not a menace to the society no previous track record etc., the "criminal test" may favour the accused to avoid the capital punishment. Even, if both the tests are satisfied that is the aggravating circumstances to the fullest extent and no mitigating circumstances favouring the accused, still we have to apply finally the Rarest of Rare Case test (R-R Test). R-R Test depends upon the perception of the society that is "society centric" and not "Judge centric" that is, whether the society will approve the awarding of death sentence to certain types of crimes or not. While applying that test, the Court has to look into variety of factors like society's abhorrence, extreme indignation and antipathy to certain types of crimes like sexual assault and murder of minor girls intellectually challenged, suffering from physical disability, old and infirm women with those disabilities etc. Examples are only illustrative and not exhaustive. Courts award death sentence since situation demands so, due to constitutional compulsion, reflected by the will of the people and not the will of the judges.

154. In Mofil Khan v. State of Jharkhand, RA CR.641 of 2015 In CRL.A 1795 of 2009, 2021-INSC-791, [para 10], Nov 26, 2021, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [10]. It is well-settled law that the possibility of reformation and rehabilitation of the convict is an important factor which has to be taken into account as a mitigating circumstance before sentencing him to death…

155. In Sundar @Sundarrajan v. State by Inspector of Police, [2023] 5 S.C.R. 1016, 2023-INSC-264, Mar 21, 2023, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [89] …..'Rarest of rare' doctrine requires that the death sentence not be imposed only by taking into account the grave nature of crime but only if there is no possibility of reformation in a criminal.

156. Learned Amicus Curiae submits that she had interviewed the convict in jail and, in her opinion, the convict is suffering from physical as well as psychological health issues. He is suffering from a cardiovascular disease, and after the pronouncement of the death sentence, he has severe sleep disruptions and is undertaking psychological treatment.

157. There is also no evidence on record to suggest that the appellants would be a menace and threat to the harmonious and peaceful co-existence of the society.[4] In our opinion, the mitigating factors that would not justify the imposition of a capital sentence are that the motive for killing his brother was a property dispute, and it was the convict's personal revenge, not social revenge. Further, there is no allegation of convict's violent behavior in

[4] Supreme Court of India, Bachhitar Singh v. State of Punjab, [E-SCR] SCR [2002] SUPP 2 S.C.R.621; 2002 INSC 410, decided on 26-09-2002.

the prison(s). These factors, coupled with the applicant's age being over 60 years, would not justify the imposition of capital punishment.

158. Given the above, the death sentence awarded by the trial Court to the appellant under §302 IPC is commuted and altered to life imprisonment with the stipulation that the convict Ashok Kumar shall not be released on remission or otherwise, unless he has undergone 20 years of actual sentence in prison or in custody, and the fine amount is enhanced to Rs. 5,00,000/-.

159. In Prakash Dhawal Khairnar (Patil) v. State of Maharashtra, [2001] Supp 5 SCR 612, pg630: 2001-INSC-606, Dec 12, 2001, the convict had murdered his brother, brother's wife, mother, and children because of frustration, as he was not partitioning the alleged joint property, on these facts, the Hon'ble Supreme Court holds,

> [B]. In this case also, considering the facts and circumstances, we set aside the death sentence and direct that for murders committed by him, he shall suffer imprisonment for life but he shall not be released unless he had served out at least 20 years of imprisonment including the period already undergone by him.

160. In Birju v. State of Madhya Pradesh, [2014] 1 SCR 1047; 2014-INSC-98, Feb 14, 2014, when Grand-father expressed his inability to give the money, on which, the accused abused him in the name of his mother and took out a country made pistol from his pocket and shot, which hit on the right temporal area of an infant, aged one, who was on his lap, the Hon'ble Supreme Court holds,

> [19G-A]. We have no doubt in our mind that the accused had the full knowledge, if he fires the shot on the temporal area, that is between the forehead and the ear, it would result in death of the child of one year who was in the arms of PW1. Appellant, of course, demanded Rs.100/- from PW1, which he refused and then he took out the pistol and fired at the right temporal area of the child, as retaliation of not meeting his demand and there is nothing to show that, at the time of the incident, he was under the influence of liquor. Consequently, while affirming the conviction, we are not prepared to say that it is a rarest of rare case, warranting capital punishment. We, therefore, set aside the death sentence awarded by the trial Court and affirmed by the High Court, and convert the same to imprisonment for life.
>
> [21F]. We are of the view that this is a fit case where 20 years of rigorous imprisonment, without remission, to the appellant, over the period which he has already undergone, would be an adequate sentence and will render substantial justice.

161. As an outcome, the conviction and sentence awarded by the Trial Court to the Convict Ashok Kumar is modified and shall stand substituted as follows:

Section	Sentence of imprisonment	Fine in INR	Sentence in default of payment of fine
302 IPC	Life imprisonment, with the clarification that Ashok shall not be released from prison until he has completed 20 years (Twenty years) of actual sentence.	5,00,000/- (Rs. Five lacs)	SI for 50 days
201 IPC	RI for two years	2,00,000/- (Rs. Two lacs)	SI for 20 days

162. The sentence shall include total custody till date including remission if earned till date as actual custody.

163. In case the prisoner Ashok suffers from any mental or health issues, then during that time, he may be kept out of prison in some other facility, subject to and in terms of the opinion of the Doctors and the Subject Specialists, and the period spent for this term shall be considered as if he had served his actual sentence.

164. Fine, if recovered, to be paid as compensation to the victim's children and their family members in equal shares; and in their absence, to the siblings, other than the convict, in equal shares. All the substantive sentences awarded to the appellant shall run concurrently.

165. In Sharad Hiru Kolambe v. State of Maharashtra, [E-SCR]; 2018-INSC-852, decided on 20.09.2018, Para 15, the Hon'ble Supreme Court of India holds,

> [15]. In the circumstances, we reject the submission regarding concurrent running of default sentences, as in our considered view default sentences, inter se, cannot be directed to run concurrently.

166. In the light of the judicial precedents mentioned above, the sentences in default of fine shall run consecutively.

167. The Trial Court to return the cash and jewellery to the legitimate claimant and order the destruction of all other case property in accordance with rules, notifications, and office orders, if any, after six months of the pronouncement of this Judgement, and if any SLP/Appeal/Review/Curative Petition is filed before the Hon'ble Supreme Court of India, then as per their directions, if made qua the case property, and if no such directions are made, then after six months of the final order of the Hon'ble Supreme Court.

168. **CRA-D-293-2025, filed by Ashok Kumar, is partly allowed in the terms mentioned above.**

169. **Murder Reference No. 1 of 2025 is dismissed because of the commutation of the death sentence to Life imprisonment, with the clarification that Ashok shall not be released from prison until he has completed 20 years (Twenty years) of the actual custody, in prison or otherwise**.

170. To comply with Section 412 BNSS [371 CrPC, 1973], the proper officer of the High Court shall, without delay, send either physically or through electronic means, a copy of the order, under the seal of the High Court and attested with his official signature, to the Court of Session.

171. As a result, all the matters stand closed in the terms mentioned in this verdict. All pending miscellaneous applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

(H.S. GREWAL)
JUDGE

Dec 22, 2025
Jyoti Sharma

Whether speaking/reasoned	YES
Whether reportable	**YES**