IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 813 of 2014

With

R/CRIMINAL APPEAL NO. 1006 of 2014

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and
HONOURABLE MR.JUSTICE P. M. RAVAL

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Approved for Reporting	Yes	No

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SUJATA @ BABITA SURESH GANPATRAV ABHANG
Versus
STATE OF GUJARAT

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Appearance:
HCLS COMMITTEE(4998) for the Appellant(s) No. 1
MRS REKHA H KAPADIA(2246) for the Appellant(s) No. 1
MR LB DABHI, APP for the Opponent(s)/Respondent(s) No. 1

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

Date : 27/06/2025

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE P. M. RAVAL)

1. Both these appeals arise from the judgment and order of conviction dated 28.3.2014 passed in Sessions

Case No.58 of 2011 by the learned 10th Additional Sessions Judge, Vadodara convicting both the appellants under sections 302, 201 and 34 of Indian Penal Code by imposing life imprisonment and imposed a fine of Rs.1000/-, in default, to undergo further six months imprisonment and sentence under section 201 of Indian Penal Code for 7 years and also imposed a fine of Rs.1000/-, in default, to undergo further simple imprisonment of six months. Both the sentences were ordered to run concurrently.

2. Since the challenge in both the captioned appeals are self-same, both the appeals are heard together and shall be governed by a common order.

3. The facts of the case in nutshell are as follows :

3.1 It is the case of the prosecution that Sujata @ Babita by hatching conspiracy with Yogesh Murlidhar Gite with whom she has love affairs paid Rs.30,000/- to one Shekhar Gnaneshwar Gadekar who is absconding accused

for eliminating her husband i.e. deceased and at the night of 10.8.2010 both Sujata @ Babita and Yogesh Murlidhar Gite were in contact on their respective mobile and as a part of conspiracy, Sujata @ Babita kept open the door of kitchen of her house through which Sujata @ Babita and Yogesh Murlidhar Gite entered the house and at the early hours at 4.00 O'clock in the morning and absconding accused Shekhar Gnaneshwar Gadekar inflicted injuries on the right hand side of the deceased with the knife which was brought from Nasik by Yogesh Murlidhar Gite and that Yogesh Murlidhar Gite also strangulate the face of the deceased with pillow which culminated into the death of deceased Suresh Ganpatrao Abhang. Further, Sujata @ Babita and Yogesh Murlidhar Gite washed blood stained clothes and that Sujata @ Babita asked Yogesh Murlidhar Gite to destroy her phone and also paid Rs.5000/- towards contract killing and she also washed her night gown and thus committed offence under sections 302, 120-B, 452, 34, 201 of Indian Penal Code read with section 135 of the Bombay Police Act.

3.2 After completion of investigation, the chargesheet against Yogesh Murlidhar Gite and Sujata @ Babita wife of the deceased Suresh Abhang was filed before the court of learned Additional Chief Judicial Magistrate which came to be registered as Criminal Case No.3514 of 2010 wherein Shekhar Gadekar was shown as absconding. Since the case was exclusively triable by the court of Sessions, the same was committed before the learned Sessions Court and was registered as Sessions Case No.58 of 2011. The charge was framed against the accused vide Exh.14 which came to be read over and on being denied the charges and claimed to be tried.

3.3 In order to bring home the guilt, the prosecution has examined 20 witnesses and also produced 24 documentary evidences as under :

ORAL EVIDENCES :

Sr. No.	Name of witnesses		Witness No.	Exh.
1	Rajendra Rameshrao Shinde	Complainant	1	19
2	Shaileshbhai Babarbhai Soni	Panch witness	2	21
3	Laxminarayan Rajaram Reddy	Panch witness	3	32
4	Bharatbhai Manubhai	Panch witness	4	33
5	Jitendrabhai Ramjibhai	Panch witness	5	35
6	Yatinbhai Naginbhai Patel	Panch witness	6	43
7	Nayan D.Rawal	Panch witness	7	48
8	Ranjit Bhogilal Chauhan	Panch witness	8	50
9	Vrushali Sureshbhai	Witness	9	53
10	Sulochnaben Rameshrao Shinde	Witness	10	45
11	Nainita Sureshbhai Abhang	Witness	11	55
12	Rahul Sudambhai Pagare	Witness	12	58
13	Dr.Kishor Pramodrai Desai	Doctor	13	59
14	Punjabhai Arjunbhai	PSO	14	63
15	Vasantlal Vajeshankar Bhatt	I.O.	15	67
16	Akhil Mahammad Yusuf Siddiki	Witness	16	71
17	Harshvardhan Jaiprakash Banker	I.O.	17	73
18	Raghubarsing Mahavirsing Bhadoriya	I.O.	18	75
19	Nisarg Vasantbhai Patel	I.O.	19	86
20	Meghraj Nathalal Harsh	I.O.	20	87

DOCUMENTARY EVIDENCES :

Sr. No.	Details of Document	Exh.	Date
1	Complaint of complainant – Rajendra Rameshrao Shinde	20	10.08.2010
2	Panchnama of scene of offence	22	10.08.2010
3	Inquest Panchnama	34	10.08.2010
4	Panchnama under section 27	36	18.08.2010
5	Panchnama of physical verification of accused	44	16.08.2010
6	Panchnama of recovery of muddamal weapon	51	18.08.2010
7	Postmortem Note and Report	60	10.08.2010

8	Yadi written for postmortem of dead body and opinion.	61	10.08.2010
9	Report of PSO for registration of offence	65	10.08.2010
10	Yadi to written inquest of dead body	68	10.08.2010
11	Receipt of taking over of dead body after postmortem	69	10.08.2010
12	Receipt of handing over dead body for last rituals	70	10.08.2010
13	Panchnama of recovery of clothes of deceased	72	10.08.2010
14	Yadi written to the company for giving CDR of mobile number from 1.8.2010 to 10.8.2010	74	10.08.2010
15	Yadi and copy of form for getting information of mobile number 91 – 8980290548	76	13.08.2010
16	Call details of mobile number 8980290548 of accused Sujata being in contact continuously with accused Yogesh	77	1.8.2010 to 10.8.2010
17	Call details of mobile number 7698202485 of Vrushali	78	1.8.2010 to 12.8.2010
18	Call details of mobile number 9637182048	79	1.8.2010 to 20.8.2010
19	Yadi written to Crime Branch for getting call details of suspect	80	12.08.2010
20	Yadi to Judicial Magistrate for adding sections 452, 34, 201 and 120-B of IPC	81	17.08.2010
21	Yadi written for getting blood sample of accused	82	20.08.2010
22	Yadi written for getting details of mobile numbers and Form 1 to 3	83	20.08.2010
23	Dispatch note along with Yadi	84	31.08.2010
24	Receipt regarding receipt of muddamal by FSL	85	31.08.2010

3.4 At the end of the trial, after recording the statement of the accused under section 313 of the CrPC and hearing the arguments on behalf of the prosecution and the defence, learned trial Court delivered the judgment and order, as stated above.

4. Being aggrieved and dissatisfied with the same, the appellants have preferred the present appeal.

5. Learned advocate Mr.Pratik Barot appearing for accused No.1 and learned advocate Ms.R.H.Kapadia appearing for accused No.2 have jointly contended that the learned trial Court has committed serious error by misreading the oral as well as documentary evidence on record, more particularly, by relying on section 106 of the Indian Evidence Act 1872. It is further argued that entire case is based on circumstantial evidence and that the prosecution has failed to establish the chain of circumstances pointing guilt towards the present accused. It is also argued that even the panchnama of place of offence at Exh.36 which is alleged to be panchnama under the provisions of section 27 of the Indian Evidence Act and discovery is also not duly proved so as to link the present accused persons with the alleged crime. It is further argued that Exh.51 would also not fall within the scope of section 27 of the Indian Evidence Act. It is further argued that

Vrushali who is the daughter of the deceased has clearly stated in the deposition as well as in the cross examination that confession was made by the accused while the accused was on remand. Thus, it is argued that such statement would be clearly hit by section 26 of the Indian Evidence Act. It is further argued that Sulochna who is sister of the deceased came to know about involvement of the present accused as informed by Vrushali – the daughter of the deceased and therefore, she has no personal knowledge about the incident and her confession before the police is hit by section 26 of the Indian Evidence Act. The information received by Vrushali was informed to her by Sulochna also cannot be taken into consideration. It is also further argued that Nainita who is also the daughter of the deceased has stated in her deposition that her mother had accepted that she has committed crime while she was in police station. Learned counsel for the appellants also drawn attention of this Court towards material improvements which were also brought on record during the cross examination of this witness. It is further argued that

deposition of Rahul at Exh.12 does not carry forward the case of the prosecution any further. It is also argued that allegation qua both the accused regarding conspiring on telephone is also not proved since no certificate of CDR has been placed on record. It is lastly argued that even the evidence on record creates serious doubt about involvement of the present accused persons and it cannot replace the proof beyond reasonable doubt and therefore, the prosecution has failed to establish the chain of circumstances and in such circumstances, shifting the burden on the accused relying upon section 106 of the Indian Evidence Act is not warranted and thus, it is prayed to allow the present appeal.

6. On the other-hand, learned APP Mr.L.B.Dabhi has argued that the prosecution has proved its case beyond reasonable doubt by cogent oral and documentary evidence. It is argued that affair between Yogesh Murlidhar Gite and Sujata @ Babita is also proved and that conduct of the accused persons, more particularly, Sujata who was present

in the house along with her daughter Vrushali on the day of incident clearly points finger of her involvement and therefore, learned trial Court has correctly relied upon the provisions of section 106 of the Indian Evidence Act. It is further argued that there is no misreading of oral as well as documentary evidence by the learned trial Court and that no two views are possible and therefore, learned trial Court has correctly passed the judgment of conviction. It is argued that call details are also brought on record which clearly indicate involvement of the present accused and that blood group not being decided which reflects in the FSL report clearly goes to show that washing of clothes by Sujata and Yogesh Gite is clearly established. Thus, it is argued that no interference is required at the hands of this Court and the appeal is required to be rejected.

7. We have perused the Record and Proceedings of the case and have also given our thoughtful consideration to the submissions made by learned advocates for the respective parties.

8. On perusal of the deposition of PW 1 – Rajendra Rameshrao Side at Exh.19 who is the complainant and the deceased is his maternal uncle has stated in his deposition at paragraph 7 that he knows Yogeshbhai Gite who is present in the Court and has seen him at number of times at his maternal uncle's house. The witness has also stated that her maternal aunt i.e. accused No.2 considered him as her brother. The witness has further stated that quarrel used to happen between the deceased Suresh Abhang and accused No.2 i.e. her maternal aunt because of Yogesh Gite. The witness has further stated that whenever he used to come at the residence of his maternal uncle, he used to stay for 2 to 3 days which was not liked by deceased Suresh Abhang due to which there use to quarrel. The witness has also stated that deceased Suresh Abhang also informed Yogesh Gite not to come at his residence. However, on perusal of his cross examination, more particularly, paragraph 10, this witness has admitted that neither in his complaint nor in his further statement before the police, he

has stated these facts.

9. PW 2 – Shailesh Babarbhai Soni who has been examined at Exh.21 and who is panch of panchnama of scene of incident has turned hostile.

10. PW 3 – Laxminarayan Rajaram Reddy who is also second panch of Exh.22 i.e. scene of offence who is also turned hostile coupled with the fact that the Investigating Officer who has been examined as PW 18 at Exh.75 has not brought on record the contents of the panchnama of Exh.22. Thus, the said panchnama is not proved in accordance with law. Thus, recovery of mobile phones etc. from the scene of offence is also not proved.

11. PW 4 – Bharatbhai Manibhai who has been examined at Exh.33 has admitted in his cross examination that he does not know as to what has been written in the panchnama at Exh.34 which is inquest panchnama.

12. PW 5 – Jitendrabhai Ramjibhai who is the second panch of the said inquest panchnama has turned hostile and as stated above, the Investigating Officer has not proved the contents of the said panchnama in his deposition. Thus, Exh.34 inquest panchnama does not stand proved in accordance with law.

13. PW 6 – Yatinbhai Naginbhai Patel who has been examined at Exh.43 who is the panch witness of Exh.44 i.e. panchnama of physical verification of the accused and clothes etc. recovered from both the accused persons. This witness in his cross examination has admitted that the complainant – Rajendra Side is his friend and at his instance, he has signed as panch and that on asking as to why he was required to accompany him to the police station, it was informed that the police has recovered shirt etc and therefore his presence is required for signature. However, considering his entire deposition, the contents of the panchnama are also not proved and no reliance can be placed on such panchnama.

14. Vide Exh.48 PW 7 – Nayan Raval has been examined and he is the panch of Exh.36. However, in his cross examination in paragraph 9, the witness has admitted that it is true that whatever information was given by the police that how the things had happened. Considering the entire deposition of this witness, it does not seem to be reliable.

Evidence under section 27 of the Indian Evidence Act :

15. PW 8 – Ranjit Bhogilal Chauhan has been examined at Exh.50 who is panch witness of Exh.51 i.e. panchnama of discovery of weapons used in the alleged crime. However, nowhere in his entire deposition, he has stated that the accused wanted to show where he has hidden the knife with which he has committed crime and merely stated that the accused brought something like weapon from near small temple. However, the deposition of this witness does not satisfy the provisions of section 27 of the Indian Evidence Act. Similarly, the Investigating Officer

has also not stated the contents of the panchnama which fulfill the criteria of section 27 of the Indian Evidence Act and thus Exh.51 – panchnama of discovery of weapons is also not proved.

Analysis of evidence under section 27 of Indian Evidence Act:

16. At this stage, it would be fruitful to refer to the decision of the Honourable Apex Court in the case of ***Ramanand @ Nandlal Bharti versus State of Uttar Pradesh*** reported in ***(2022) SC 843*** wherein it is observed thus :

> "52. Section 27 of the Evidence Act, 1872 reads thus:
>
> "27. How much of information received from accused may be proved. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

53. If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence along with his blood stained clothes then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the

> investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter".

17. On perusal of the entire deposition of the Investigating Officer, it can be noticed that he has not stated exact words uttered by the accused before him at the police station. Secondly, the Investigating Officer has failed to prove the contents of the discovery panchnama and after the panchas having been declared hostile and not having uttered the exact words which the accused stated before the Investigating Officer at the police station lacks its authorship of concealment of the weapon used in the alleged crime. Therefore, this Court finds that the evidence of the discovery and recovery does not constitute the legal evidence as settled by the Honourable Supreme Court in the aforesaid judgment and cannot be used against accused.

18. Vrushali daughter of the deceased has been examined at Exh.53. In her examination in chief, she has

stated that both her mother as well as Yogesh Gite had admitted while they were on remand that they have committed crime. In her cross examination, she has accepted that it is true that the police informed that these two accused persons have confessed their crime. It is also admitted that statements which were not made before the police and were made for the first time before the Court was also brought on record which creates serious doubt in veracity of this witness with regard to the conduct of accused – Yogesh Gite.

19. Vide Exh.54, PW 10 Sulochnaben Rameshrao Shinde who is sister of the deceased has been examined. However, she is not the witness to the alleged incident, but she was informed by his son that his maternal uncle is serious and therefore, she went to Manjalpur – Subodhnagar. She then described as to what was told by the accused No.2. However, with regard to the alleged incident, she came to know from the daughter of accused No.2 that her mother had called two persons from Nasik

and has given Rs.30000/- for murdering his father and after having break fast after 1.30 hours in the night had also left after having a drink. However, specific question was put to her in the cross examination by the defence lawyer with regard to the aforesaid fact to which she has stated that after the statement with regard to the incident was taken by the police, she had informed this fact to police. However, she is hearsay witness and does not carry the case of the prosecution any further.

20. PW 11 Nainita has been examined at Exh.55. She is also the daughter of the deceased and accused No.2. In examination-in-chief, the witness has stated that while the police was investigating the case after sometime, they had taken her to the police station and had also might inquired with her. Thereafter, her mother i.e. accused No.2 admitted that yes, she had committed crime. She has further stated in her examination-in-chief that accused No.1 used to come to their residence and would stay for 14 to 15 days which was not liked by his deceased father. In the

cross examination, this witness has admitted that the police had informed that her maternal uncle and Yogesh Gite and her mother had committed crime of murdering of her father. Thus, this witness is also of no help and does not take the case of the prosecution any further.

21. PW 12 Rahul Sudambhai Pagare was examined at Exh.58 wherein he has stated that mother of Vrushali i.e. Babita or Sujata had called him and has stated that due to rain, the door is not opening and requested him to come and open the door and therefore, this witness went to Subodhnagar at the place of the accused and on reaching, he found the compound open and the main door opened. However, the door of the bed room was locked from outside. He first opened the room where the ladies were locked and from there one daughter and mother – accused No.2 came out and on opening the second door, he show dead body and therefore, called his son in law i.e. Keyur Shah. The witness has further stated that since he was having relationship with Vrushali, he had given simcard bearing

number 7698202485. However, the simcard was taken by accused No.2 and on asking to return back the said simcard, accused No.2 stated to have been lost. Nothing substantial has come on record except the fact that the main door was opened, whereas the doors of two rooms were closed from the outside.

22. PW 13 – Dr.Kishor Pramodrai Desai was examined at Exh.59 who has stated with regard to the injuries inflicted upon the deceased. This proves that the deceased was murdered.

23. Vide Exh.63, PW 14 – Punjabhai Arjunbhai has been examined who is police witness. This witness has entered the details in the station diary of the complaint received from Rajendra Shinde at 18.15 hours on 8.10.2010. Except recording the compliant in the station diary, this witness has not carried out any other activity with regard to the alleged offence.

24. PW 15 – Vasantlal Vajeshankar Bhatt has been examined at Exh.67. This witness has stated that while he was on duty on 10.8.2010 at Makarpura Police Station, he was informed by the PSO of Makarpura Police Station that one person had telephone informing that Suresh Abhang has committed suicide at Subodhnagar and on reaching at the place of incident and on inquiring with Sujata – wife of Suresh Abhang, she informed that his husband is working with the Railways at Pratapnagar and before four days, he was given chargesheet, due to which he was in tension and also consuming liquor and that on 9th in the night, after watching TV, his husband went to sleep at 12.30 hours and she went with her daughter in another room and slept there and on 10th morning at about 8.30 hours, on checking the room where her husband was sleeping and on opening the door, the blood was flowing from his mouth and also found vomit. This witness had prepared inquest panchnama as per the instructions from the higher officer with regard to the accidental death and on receiving the postmortem report, the Police Inspector of Makarpura Police Station was

handed over further investigation. Thus, from the deposition of this witness also, what has been stated by accused No.2 on reaching the place of incident, has come on record.

25. Vide Exh.71, PW 16 Akhil Mahammad Yusuf Siddiqui has been examined. This witness is a person from where alleged knife was purchased from Nasik. However, this witness has been declared hostile. As per his say, on 15th the police had come to his shop for investigation. He was shown knife and was asked as to someone has purchased the such knife or not, to which this witness answered that no one has purchased such type of knife from his shop. This witness has also stated that they had asked for the bill and therefore, the bill was prepared and was handed over to the police. Even after cross examination by the prosecution, nothing specific has come on record. This factum of knife being purchased from Nasik is not proved.

Evidence regarding Call Details Record :

26. PW 17 Harshvardhan Jaiprakash Banker has been examined at Exh.73. However, this witness is a formal witness with regard to the investigation and seeking details from the concerned cellular operator. At this juncture, it is required to be noted that call details which are placed on record during the examination of this witness are not support by any certificate issued under section 65-B of the Indian Evidence Act and thus, these call details are also not proved in accordance with law.

Analysis of evidence under Section 65-B of the Indian Evidence Act :

27. Vide Exh.18, Raghubarsingh Mahavirsingh Bhadoriya has been examined at Exh.75 who is the Investigating Officer of the alleged crime. On objection by the defence side for exhibiting call details, they were exhibited keeping in view the judgment delivered by the Honourable Supreme Court in the case of Bipin Shantilal Panchal Vs State of Gujarat and the said objections were

decided while passing the impugned judgment.

At this stage, it would be fruitful to refer to the decision of the Honourable Apex Court in the case of ***Arjun Panditrao Khotkar Vs Kailash Kushanrao Gorantyal***, reported in ***AIR 2020 SC 4908*** wherein while dealing with the interpretation of Section 65-B of the Indian Evidence Act 1872, it is held as under:

> "72. The reference is thus answered by stating that:
>
> (a) Anvar P.V. (supra), as clarified by us hereinabove, is the law declared by this Court on Section 65B of the Evidence Act. The judgment in Tomaso Bruno (supra), being per incuriam, does not lay down the law correctly. Also, the judgment in SLP (Crl.) No. 9431 of 2011 reported as Shafhi Mohammad (supra) and the judgment dated 03.04.2018 reported as (2018) 5 SCC 311, do not lay down the law correctly and are therefore overruled.
>
> (b) The clarification referred to above is that the required certificate under Section 65B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where the

"computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate under Section 65B(4). The last sentence in Anvar P.V. (supra) which reads as "...if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act..." is thus clarified; it is to be read without the words "under Section 62 of the Evidence Act...." With this clarification, the law stated in paragraph 24 of Anvar P.V. (supra) does not need to be revisited.

(c) The general directions issued in paragraph 62 (supra) shall hereafter be followed by courts that deal with electronic evidence, to ensure their preservation, and production of certificate at the appropriate stage. These directions shall apply in all proceedings, till rules and directions under Section 67C of the Information Technology Act and data retention conditions are formulated for compliance by telecom and internet service providers.

(d) Appropriate rules and directions should be framed in exercise of the Information Technology Act, by exercising powers such as in Section 67C, and also framing suitable rules for the retention of data involved in trial of offences, their segregation, rules of chain of custody, stamping and record maintenance, for the entire duration of trials and appeals, and also in regard to preservation of the meta data to avoid corruption. Likewise, appropriate rules for preservation, retrieval and production of electronic record,

> should be framed as indicated earlier, after considering the report of the Committee constituted by the Chief Justice's Conference in April, 2016."

Therefore, in view of the judgment, more particularly, clause (b) of paragraph 72, computer system / computer network was not possible to be physically brought before the Court, the only means of providing information containing such electronic evidence, in the present case, call details record can be only in accordance with section 65(B)(1) together with the requisite certificate under Section 65B(4) of the Indian Evidence Act. In absence of any such certificate, print out of call details record from the computer system / computer network cannot be legally looked into and as such, it cannot be said that the prosecution has proved the evidence with regard to call details in accordance with law.

Analysis of evidence under section 25 of the Indian Evidence Act:

28. On considering the aforesaid oral as well as documentary evidences and also considering the reasonings

given by the learned trial Judge, it transpires that the learned trial Judge in paragraph 24 of the impugned judgment has held to the effect that while the police was inquiring with the accused No.2 with regard to the alleged incident, accidental death report at Exh.65 was lodged by accused No.2 and accused No.2 had informed the details before she was arraigned as accused and therefore, has held that any such information disclosed before she was arraigned as accused is not hit by sections 25 and 26 of the Indian Evidence Act.

At this juncture, it would be profitable to refer to the decision in the case of ***Aghnoo Nagesia Vs State of Bihar***, reported in **1966 SCR (1) 134** wherein it was observed thus :

> "xxxx xxxx xxxx
>
> The terms of S.25 are imperative. A confession made to a police officer under any circumstances is not admissible in evidence against the accused. It covers a confession made when he was free and not in police custody, as also a confession made before any investigation has begun. The expression "accused of any offence" covers a

> person accused of an offence at the trial whether or not he was accused of the offence when he made the confession."

In view of the aforesaid settled principles of law, even if the accused No.2 had made confession before the police which is also stated by the Investigating Officer in his deposition that, tactfully he had inquired and therefore, accused No.2 made confession before him would not be admissible in terms of section 25 of the Indian Evidence Act even if she was accused in the offence or not when such confession was made.

Analysis regarding suspicion :

29. It is also required to be noted that at the most, it could be said that strong suspicion is pointing towards the accused persons. However, as held by the Honourble Supreme Court in the case of ***Sujit Biswas vs. State of Assam*** reported in **AIR 2013 SC 3817** suspicion, howsoever strong, cannot substitute the proof and conviction is not permissible only on the basis of the

suspicion. It is held thus in para 6:

> "6. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be" true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide Hanumant Govind Nargundkar v. State of M.P., (1952) 2 SCC 71, State v. Mahender Singh Dahiya (2011) 3 SCC 109 and Ramesh Harijan v. State of U.P. (2012) 5 SCC 777."

Analysis of evidence under section 106 of Indian Evidence Act:

30. The learned trial Court has also relied upon section 106 of the Indian Evidence Act and has passed the impugned judgment. It would be profitable to refer to the decision in the case of ***Shambhu Nath Mehra v. The State of Ajmer*** [**AIR 1956 SC 404: 1956 Cri LJ 794**] the Honourable Apex Court has stated the legal principle thus:

> "11. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge."

In view of the aforesaid settled principles of law, initial burden of proof by the prosecution has not been discharged and no conviction merely on the reliance of

section 106 of the Indian Evidence Act can be passed against the accused persons.

Analysis of circumstantial evidence :

31. The present case is based on circumstantial evidence. It is settled law that in a case based on circumstantial evidence, the prosecution is obliged to prove each circumstance, taken cumulatively to form a chain so complete that there is no escape from the conclusion that within all human probabilities, crime was committed by the accused and none else. Further, the facts so proved should unerringly point towards the guilt of the accused. The Honourable Supreme Court in a celebrated judgment in ***Sharad Birdhichand Sarda vs. State of Maharashtra*** reported in **(1984) 4 SCC 116** has set down the golden rules in the cases basing circumstantial evidence which is to be proved by the prosecution, as under :

(i) That chain of evidence is complete;

(ii) Circumstances relied upon by prosecution should be conclusive in nature;

(iii) Fact established should be consistent only with the hypothesis of the guilt of accused;

(iv) Circumstances relied upon should only be consistent with the guilt of the accused;

(v) Circumstances relied upon should exclude every possible hypothesis except the one to be proved.

In view of the above stated facts and circumstances of the present case, chain of evidence is not completed in all aspects and it is not conclusive in nature and that the fact of committing the crime is not established and is not consistent with the hypothesis of the guilt of the accused and does not exclude every possible hypothesis except one to be proved.

32. Thus, on overall reappreciation of the evidences both oral and documentary, this Court is of the considered view that impugned judgment and order passed by the learned 10th Additional Sessions Judge, Vadodara dated 28.3.2014 in Sessions Case No.58 of 2011 is required to be set aside and accordingly, it is set aside. The accused are

given the benefit of doubt for the offence under sections 302, 201 read with section 120-B and 34 of Indian Penal Code and the accused are acquitted of the charges leveled against them. The accused be set at liberty if in jail and if not required in any other case. Record and Proceedings be sent back forthwith.

(ILESH J. VORA,J)

(P. M. RAVAL, J)

H.M. PATHAN