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XVIII K.K. LUTHRA MEMORIAL MOOT COURT, 2022

Before

THE HIGH COURT OF KILLDARE

Criminal Appeal No. 1111 of 2021

CRISTO.....APPELLANT

v.

STATE.....RESPONDENT

MEMORIAL ON BEHALF OF THE APPELLANT

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STATEMENT OF FACTS

[1] Cristo and his family recently moved to Killdare in Frisk, a developing country where crimes have been on the rise lately. However, due to a lack of manpower and resources, the local Police are having difficulty tackling this law and order situation. Cristo enrolled at the University of Killdare where he befriended a local resident named Lionel and they often went for recreational outings. Lionel and Cristo were a part of the University's football team. Over the years, Lionel has been the team's leading goal-scorer and was their Coach, Jose.M's favourite. Several of their teammates felt that Cristo deserved to play ahead of Lionel as Cristo is usually in the reserves for the games.

[2] One night, Cristo invited Lionel for one of their recreational dinners. While Lionel initially declined because he believed that very few places would be open at that time, he eventually agreed to go and asked Cristo to pick him up from his house. Cristo then picked Lionel up on his motorcycle and they both went to their favourite restaurant 'Bob's Butchery'. After dinner that night, upon Lionel's insistence, Cristo dropped him a few blocks before his house so he could walk after their heavy meal. When Lionel never returned home that night, his parents called Cristo, who then informed them of the same.

[3] The following day Lionel's parents reported their son missing at noon and later that day the Police discovered his body lying in a narrow ditch in an isolated area a few blocks before their home. The Police informed Lionel's parents that he was killed from what seemingly was a blow to his head. The parents informed the Police that there was no one known to them that they think would have caused Lionel's death. Lionel's body was sent for post-mortem.

[4] Later that evening, the police questioned Cristo at his home. Cristo reiterated that Lionel insisted on being dropped off a few blocks from his home and that Cristo was also in a hurry to return home before the colony guard would close the main gate for the night. The Police claimed that inquiries from the guard revealed the existence of a smaller gate that was permanently open and did not bar the entry/exit of motorcycles. Cristo was taken to the local police station where, pursuant to fierce police questioning, he allegedly admitted to causing Lionel's death with a heavy stone, that he threw in a nearby stream, due to anger and jealousy on account of Coach Jose M's biased behaviour and Lionel's demand for repayment of money allegedly loaned to Cristo. It is further alleged that he identified the spot where Lionel's body was dumped. A rare pack of cigarettes that Lionel was known to carry was allegedly recovered from Cristo's room when he had taken the Police to his residence.

[5] Based on the findings of the investigation report, an indictment was given against Cristo by the Trial Court in Killdare for the *prima facie* commission of offences under Sections 302 and 201 of the Frisk Penal Code 1860, to which he pleaded not guilty and trial commenced.

[6] Ms. Antonella, a waitress at Bob's Butchery and Mr. Pique, a toll-booth operator on the way to Lionel's home confirmed seeing Cristo and Lionel together on the motorcycle that night. According to the post-mortem report prepared by Doctor Arsene, Lionel died after being hit on his head with a blunt object between 12 am to 2am on the night of his death. Common friends of the duo Mr. Kun and Mr. Sergio deposed to show the existence of a loan. However, nothing material was elicited by the common friends and the Doctor during their cross-examinations. While Coach Jose.M deposed that he favoured Lionel over Cristo because of his playing skills, he admitted during cross-examination that he never saw Lionel and Cristo quarrel. Lionel's father, Ms. Pep also admitted during cross examination that Lionel and Cristo were good friends who he had never seen argue or fight with each other.

[7] One, Mr. Chancerton deposed that on the night of the crime, when he was in a rush to a medical store to procure medicines for his son, he crossed the spot where Lionel's body was recovered and recalled having seen two boys of roughly the same age as Lionel and Cristo, having a loud heated conversation with each other. During his cross-examination, he admitted that he did not know Lionel from before and was never called by the Police during the investigation to identify Cristo. The investigating officer admitted during cross-examination that when memos were prepared for recovery of Lionel's body, Cristo's alleged identification of the spot where Lionel's body was found, and recovery of the pack of cigarettes, no independent public witnesses were present as they were prepared at night. He also admitted that there were several complaints of petty crimes in and around Killdare lately. The State dropped the Guard of Cristo's residential complex as a witness. It was reiterated in Cristo's Court statement that it was upon Cristo's insistence to walk back home after a heavy meal that he was dropped off a few blocks before his home and additionally that Cristo was also in a rush as he feared that he may not be able to enter his residential complex due to Guard closing the main gate considering how late it had gotten.

[8] All identifications and recoveries were accepted by the Trial Court and held to support the overall case of the State. Testimonies of Mr. Kun, Mr. Sergio and Coach Jose.M were held to have established motive. No adverse inference was drawn on failure to recover any murder weapon or failure to call the Guard as a State witness. Further, the Court accepted the State's case on last seen and its arguments on false pleas taken by Cristo and his failure to reveal/prove any other hypothesis justifying the sudden disappearance and killing of Lionel as being an additional incriminating circumstance. Cristo was convicted by the Trial Court and sentenced to undergo rigorous imprisonment for life along with a fine of Rs.10,000/- and rigorous imprisonment for a period of seven years and fine of Rs.5,000/- for

commission of offences under Sections 302 and 201 of the Frisk Penal Code 1860 respectively. Aggrieved by the above decision and sentence, Cristo filed an Appeal before the High Court of Killdare.

ISSUES RAISED

1. **Whether The Essential Ingredients Of Sections 299/300 And 201 Of The Frisk Penal Code Have Been Met In The Facts And Circumstances Of The Instant Case?**
2. **Whether The Trial Court Has Correctly Applied The Applicable Test Of Proving Facts 'Beyond All Reasonable Doubt'?**

SUMMARY OF ARGUMENTS

1. THE APPELLANT CANNOT BE CONVICTED ON THE BASIS OF THE CIRCUMSTANTIAL EVIDENCE ON RECORD

The alleged confession of the appellant made to the Police and in Police-custody is wholly inadmissible as evidence under Sections 25, 26, and 27 of the Frisk Evidence Act, 1860 ('FEA') and shall not be proved against the appellant. The entirely vague identification evidence of the witness who allegedly last saw the deceased in the appellant's company is weak and manifestly unreliable and doubtful since he neither had the opportunity to gain an enduring impression of the appellant nor was required to participate in a test identification parade. The State's highly suspicious and obliquely motivated dropping of the Guard as a witness may lead to an adverse inference against the respondents under Section 114(g) of FEA. The credibility of the recovery memos under Sections 100 and 174 of the Code of Criminal Procedure, 1972 is highly doubtful due to procedural defects in their preparation. The evidence relied upon by the respondent to establish motive is purely based on conjecture and is uncorroborated. The witness testimonies cogently prove that the appellant and deceased were good friends who shared no animosity or resentment toward each other. Given the limited scope of the medical evidence, non-recovery of murder weapon, and lack of premeditation and deliberation, there is no evidence on record proving that the appellant had the *mens rea* to cause the death of the appellant and all claims to that effect are based on conjecture and speculation. Therefore, each of the circumstances relied upon by the respondents is highly suspicious, inadmissible, unreliable, and not of conclusive nature, and allows for the reasonably high possibility of multiple hypotheses regarding the chain of events to co-exist. The threshold of proof required for a conviction based on circumstantial evidence has not been met.

2. THE ESSENTIAL INGREDIENTS OF SECTION 299 AND 300 OF THE FRISK PENAL CODE HAVE NOT BEEN MET

Given that every voluntary culpable homicide is murder unless it falls under the exceptions outlined in the FPC, the essential ingredients of voluntary culpable homicide under Section 299 FPC and murder under Section 300 FPC are the same. There is no evidence on record proving that there was any premeditation or intention on part of the appellant to cause the death of the deceased. Further, it has not been proved that the appellant had knowledge that the death of the deceased was likely to be caused by any of his acts or omission. A chain of circumstances proving that the appellant had caused the death of the deceased or was even present in the vicinity of the deceased at the time of occurrence has not been proved beyond reasonable doubt by the respondents. On the other hand, the appellant has provided a plausible explanation under Section 106 for having departed from the company of the deceased before the occurrence of the incident and the same has not been disproved by the respondent. The essential ingredients under Sections 299 and 300 have not been met.

3. THE ESSENTIAL INGREDIENTS OF SECTION 201 OF THE FRISK PENAL CODE HAVE NOT BEEN MET

There is no recovery of murder weapon and the alleged confession that the appellant disposed of the murder weapon in a nearby stream is inadmissible. The alleged identification of the spot where the deceased's body was allegedly disposed of by the appellant is also inadmissible under Section 27 of the FEA. Therefore, who actually had disposed of the deceased's body in the narrow ditch in the isolated area is completely unknown to the respondent. There is thus, no evidence on record proving beyond a reasonable doubt that the appellant either disappeared or dismantled any evidence intending to screen himself from legal punishment.

The information provided by the appellant regarding his departure from the company of the deceased on the night of the incident has been consistent and there is no evidence of record, especially since the guard was dropped as witness, to prove that this information is inconsistent or false. The essential ingredients of Section 201 of the Frisk Penal Code, 1872 are not satisfied.

4. TRIAL COURT FAILED TO APPRECIATE EVIDENCE CORRECTLY

The Trial Court has a duty to ensure that suspicion must not take the place of substantial legal proof. Given that there are at least two possible views capable of being derived from the evidence on record and the essential ingredients of the alleged offences have not been met, neither can a conviction based on circumstantial evidence take place nor is the guilt of the appellant proved beyond reasonable doubt. Therefore, the Trial Court by convicting the accused based on such highly inadmissible and unreliable evidence failed to appreciate the evidence on record correctly and erred by wrongfully convicting the appellate under Section 201 and 302 of the FPC.

WRITTEN PLEADINGS

Under Section 374(2) of the Code of Criminal Procedure, 1973 ("CrPC"), any person convicted by a Trial Court in which a sentence of imprisonment for more than 7 years has been passed against him may appeal to the High Court.[1] Presently, the appellant has been convicted and sentenced by the Trial Court to undergo rigorous imprisonment for life and rigorous imprisonment for seven years for the commission of offences under Sections 302 and 201 of the Frisk Penal Code, 1860 ("FPC"), respectively.[2] Consequently, he has the right to appeal against the order of conviction before the High Court of Killdare following Section 374(2) of CrPC.

In an appeal against conviction, the High Court has to review and re-appreciate the entire evidence on record in detail before arriving at its own conclusion regarding the guilt of the accused.[3] Upon appraisal of evidence, if two views are possible then the benefit of doubt must be in favour of the accused-appellant.[4] It is also submitted that as per *T. Subramanian v. State of Tamil Nadu*,[5] where two views are reasonably possible from the same evidence, the respondent cannot be said to have proved its case beyond reasonable doubt.

A. THE APPELLANT CANNOT BE CONVICTED ON THE BASIS OF THE CIRCUMSTANTIAL EVIDENCE ON RECORD

It is submitted that the present case is based on circumstantial evidence since the facts indicate that there were no eyewitnesses to the incident of death of Lionel, the deceased. In *Sharad Birdhichand Sarda v State of Maharashtra*, it was held that, before a conviction can be made on the basis of circumstantial evidence, the respondent must establish the satisfaction of all the following conditions.[6] *Firstly*, the circumstances from which the guilt of the appellant-accused is drawn must be fully established. *Secondly*, the circumstances should be conclusive in nature and tendency. *Thirdly*, the established facts should be consistent only with the hypothesis of the guilt of the accused. Therefore, if there exists any other explanation, possibility, or hypothesis other than that establishing the guilt of the accused-appellant, then the threshold for conviction on the basis of circumstantial evidence will not be met. *Fourthly*, the chain of evidence must be complete and not leave any reasonable ground to arrive at any conclusion consistent with the accused-appellant's innocence but

[1] *Shivaji Narayan Bachhav v State of Maharashtra* (1983) 4 SCC 129; K N Chandrasekharan Pillai, *R.V. Kelkar's Criminal Procedure* (6th edn, EBC 2014) 654-655.
[2] The K.K. Luthra Memorial Moot Court 2022, Statement of Facts 6 para 14.
[3] *State of Gujarat v Bhalchandra Laxmishankar Devim* (2021) 2 SCC 735; *Koteswara Rao v State of Andhra Pradesh* (2009) 10 SCC 636; *R v Pollock* [2004] NICA 34.
[4] *Lal Mandi v State of West Bengal* (1995) 3 SCC 603.
[5] (2006) 1 SCC 401.
[6] (1984) 4 SCC 116; Ratanlal & Dhirajlal, *The Law of Evidence* (27th edn, LexisNexis 2019) 36-37.

must show that the accused-appellant must have committed the offence in all probability.

To this extent, it is submitted that the totality of the evidence submitted by the respondent in the present case signifies the surmises and conjectures in the judgement of the Trial Court convicting the appellant. The circumstances relied upon by the respondent are not of conclusive nature and the guilt of the accused-appellant is not the only hypothesis that can be derived from the evidence on record. Thus, it is contended that the chain of evidence remains incomplete and there exists reasonable doubt in the chain of events and evidence alleged before the Trial Court. The individual weight of each of these circumstances against the accused-appellant will be discussed below.

1. *THE 'CONFESSION' OF THE APPELLANT IS WHOLLY UNRELIABLE AND INADMISSIBLE*

1.1. *Inadmissibility of Confession Under Sections 25 and 26 of the Frisk Evidence Act, 1872*

It is a well-settled principle of law that any 'confession' made by an accused to a police officer or in police custody without a magistrate present, respectively, cannot be proved against the accused and is inadmissible in evidence.[7] It is contended that the alleged statement of the accused-appellant in this case, stating that he had killed the deceased due to anger and jealousy on account of Coach Jose M's biased behaviour and the deceased's repeated demands for money,[8] may be interpreted as revealing not only the actual commission of the crime but the latter half as also including incriminating facts that may highlight motive. Further, the alleged confession that he hit the deceased with a heavy stone which he then threw in a nearby stream relates to the weapon used and its concealment.[9]

It is hereby submitted that, this statement was made by the appellant to a police officer in police custody pursuant to some fierce questioning.[10] The facts are not indicative of the presence of a magistrate in the police-custody at the time of such confession. Following Sections 25 and 26 of FEA, this confessional statement is entirely inadmissible in evidence and shall not be proved against the appellant.

1.2.*The Exception Under Section 27 of FEA is Inapplicable*

The exception under Section 27 provides a partial exception to Sections 25 and 26 of FEA to the extent that any information, confession or not, disclosed by an accused person in police-custody relating distinctly to a fact discovered in consequence of that information is admissible in evidence.[11] The essentials of Section 27 of FEA, as also observed by the Privy Council in *Pulukuri Kotayya v. Emperor*, include, among others, the following: (1) the fact must have been 'discovered'; and (2) that

[7] *Indra Dalal v State of Haryana* (2015) 11 SCC 31; The Frisk Evidence Act 1872, s 25.
[8] Statement of Facts (n 2) 3 para 10-11(i).
[9] ibid.
[10] Statement of Facts (n 2) 3 para 10-11(ii).
[11] *Geejaganda Somaiah v State of Karnataka* (2007) 9 SCC 315; *Aghnoo Nagesia v State of Bihar* AIR 1966 SC 119; *State of Bombay v Kathi Kalu Oghad* AIR 1961 SC 1808; Ratanlal & Dhirajlal, *The Law of Evidence* (27th edn, LexisNexis 2019) 150.

this discovery must have taken place 'in consequence' of some information received from the accused.[12] Presently, it is submitted that the confession of the appellant cannot become admissible under Section 27 of FEA even partly because the facts and circumstances do not fulfil its essential elements.

1.2.1. **Confession Regarding the Murder Weapon and its Disposal is Inadmissible**

It was contended that the appellant allegedly confessed to a police officer in police custody that he killed the deceased with a heavy stone which he threw in the nearby river.[13] However, the alleged murder weapon has not been discovered or recovered by the police officers in furtherance of this information shared by the appellant.[14] Consequently, the statement made by the appellant regarding the murder weapon and its disposal would not be covered under the exception provided for under Section 27 of FEA and would still be inadmissible in Court.[15]

1.2.2. **The Identification of Spot of Concealment of Deceased is Inadmissible Under Section 27 of FEA**

The investigation report alleges that the appellant identified the spot where the deceased's body was concealed.[16] However, the facts of the case clearly indicate that the Police had already discovered the deceased's body dumped in a narrow ditch in an isolated roadside area, a few blocks before the deceased's home, pursuant to having received a complaint from the deceased's parents.[17] Any disclosure statement made to the investigating officer by the appellant identifying the place of crime, that the Police was already aware of, would lose its relevance in law and cannot be relied upon by the respondent since it is not a discovery of fact made pursuant to the alleged disclosure statement.[18] Presently, therefore, since the Police was already aware of the spot so identified by the appellant and the same was not discovered by the Police pursuant to or in consequence of the information stated by the appellant, the confessional fact would lose its relevance in law, would not satisfy the essential ingredients of Section 27 of the FEA, and cannot be relied upon by the respondent.

1.2.3. **The Voluntariness of the Disclosure Statements Made is Highly Suspicious**

Criminal jurisprudence accepts that "no person accused of an offence shall be compelled to

[12] *Kusal Toppo v State of Jharkhand* (2019) 3 SCC 676; *Geejaganda Somaiah v State of Karnataka* (2007) 9 SCC 315; *Anter Singh v. State of Rajasthan*, (2004) 10 SCC 657; *Pulukuri Kotayya v. Emperor* AIR 1947 PC 67.
[13] Statement of Facts (n 2) 3 para 10-11(ii).
[14] Statement of Facts (n 2) 6 para 14.
[15] *Geejaganda Somaiah v State of Karnataka* (2007) 9 SCC 315; *Mohd. Inayatullah v State of Maharashtra* (1976) 1 SCC 828.
[16] Statement of Facts (n 2) 3 para 11(iv).
[17] Statement of Facts (n 2) 2 para 8.
[18] *Takki Mohd v State of Himachal Pradesh* 2015 (3) Crimes 327 (H.P.); *Mohd. Inayatullah v State of Maharashtra* (1976) 1 SCC 828; Law Commission of India, *185th Report on Review of the Indian Evidence Act 1872 Part II* (2003) Ratanlal & Dhirajlal, *The Law of Evidence* (27th edn, LexisNexis 2019) 153.

be a witness against himself."[19] It follows that, only the statements that were made voluntarily and freely by the appellant would be admissible.[20] As observed in *R v Devibe*, police questioning can be said to be 'oppressive' and make the disclosure statement inadmissible if, due to its nature or other attendant circumstances, it excites hope or fear in the appellant-accused or affects his mind such that he loses his will and speaks when he would have otherwise remained silent.[21] The fact of custody is a relevant attendant circumstance.[22] Presently, the appellant-accused was not only brought into police custody at the local station but was also subject to fierce questioning by the police.[23] It was only pursuant to this fierce questioning in police custody that he allegedly made the disclosure statements.[24] It can reasonably be inferred that, the police by employing 'fierce' questioning after taking the appellant-accused into police custody, subjected him to pressure that deprived him of his free will and made him speak when he would have otherwise remained silent.[25] Therefore, the voluntariness of the disclosure statements made by the appellant-accused in police custody pursuant to such fierce questioning is highly suspicious and the statements cannot be said to be admissible.

2. THE CREDIBILITY OF THE RESPONDENT WITNESSES IS HIGHLY SUSPICIOUS

The appellant does not contest the fact that the appellant and deceased went on the appellant's motorcycle to Bob's Butchery on the night of the incident and the deceased was being dropped back by the appellant.[26] Therefore, the testimonies of Ms. Antonella and Mr. Pique confirming seeing the deceased in the appellant's company at the restaurant and past the toll booth on the night of the incident[27] is not disputed by the appellant. However, the contention that the deceased was last seen in the company of the appellant, as indicated by the identification evidence of Mr. Chancerton is weak and manifestly unreliable.

It is a well-settled principle of law, that evidence of visual identification creates an inherent danger of wrongful conviction.[28] In *R v. Burchielli* the show-up identification was ruled inadmissible

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[19] Constitution of Frisk 1950, art 20(3); *Saunders v. United Kingdom* (1996) 2 BHRC 358; *State of Bombay v. Kathi Kalu Oghad* AIR 1961 SC 1808; *Jones v Owens* [1870] 34 JP 759; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 14(g); Talha Abdul Rahmam, 'Fruits of the Poisoned Tree: Should Illegally Obtained Evidence be Admissible?' (2011) The Practical Lawyer, 38.

[20] *R v Devibe* [2021] NICA 7*; R v Brown* [2012] NICA 14; *Rammi v State of MP* (1999) 8 SCC 649; *State of Punjab v. Baldev Singh*, (1999) 6 SCC 172; *State v Shikunga* 1997 NR 156 (SC); *Regina v Corr* [1968] NI 193; *State of Bombay v. Kathi Kalu Oghad* AIR 1961 SC 1808; *Ibrahim v R* [1914] A.C. 599; Ratanlal & Dhirajlal, *The Law of Evidence* (27th edn, LexisNexis 2019) 157; Khagesh Gautam, 'Unfair Operation Principle and the Exclusionary Rule: On the admissibility of Illegally Obtained Evidence in Criminal Trials in India' (2017) 27 Indiana Int'l & Comp. Law Review 147, 183.

[21] [2021] NICA 7.

[22] ibid.

[23] *Regina v Corr* [1968] NI 193; Statement of Facts (n 2) 2-3 para 9-10.

[24] Statement of Facts (n 2) 3 para 10.

[25] Regina v Corr [1968] NI 193.

[26] Statement of Facts (n 2) 1-2 para 5,9.

[27] Statement of Facts (n 2) 5 para 12(iv).

[28] Batuk Lal, *The Indian Evidence Act* (Central Law Agency 2018) 133; Richard Wise, Clifford Fishman and Martin Safer, 'How to Analyze the Accuracy of Eyewitness Testimony in a Criminal Case' (2009-2010) 42 Connecticut Law

on the basis that it involved a high risk of mistaken identification.[29] In *Satpal v. State of Haryana* it was cautioned that in the absence of corroboration of the fact of last seen, this fact would by itself be weak evidence.[30] Given that the correctness of the identification of an accused-appellant is of obvious importance, its evidentiary value is important to establish.

2.1. *Explanation Regarding the Circumstances in Which Appellant Departed the Deceased's Company*

When the fact of last seen has been established, the accused-appellant must provide an explanation under Section 106 of the FEA regarding the circumstances in which he departed the deceased's company on the night of the incident.[31] It is however sufficient if this explanation is proved on the basis of preponderance of probabilities and not beyond reasonable doubt.[32] In the event of doubt or break in the chain of events, the benefit of doubt is in the favour of the accused.[33] Once a plausible explanation has been provided for by the appellant, the burden of disproving the same shifts to the respondent.[34] If the respondent fails to disprove the same, no adverse inference can be drawn against the accused-appellant.[35]

Presently, it is consistently submitted by the appellant that, on the night of the incident, he departed from the company of the deceased a few blocks away from the deceased's house upon the deceased's request and was in a rush home for fear of the guard closing the main gate.[36] While the respondent alleges that the Guard revealed that a smaller entry point was always open and did not restrict the entry/exit of motorcycles in any manner,[37] the Guard was suspiciously dropped as a witness and did not testify before the Court or undergo examination/cross-examination.[38] There is, therefore, no cogent evidence on record that has been submitted by the respondent to disprove the explanation provided by the appellant.

Furthermore, the respondent does not have the liberty to "pick and choose" the witnesses but must fulfil the criterion of fair conduct.[39] In the present case, the guard is a material witness as his statement to the Police[40] would disprove the explanation provided by the appellant and thus, negate any reasonable doubt casted by the appellant. However, by dropping the Guard, the respondent

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Review 435, 511.
[29] [1981] VR 611.
[30] (2018) 6 SCC 610.
[31] *Satpal v State of Haryana* (2018) 6 SCC 610; *Kiriti Pal v State of WB* (2015) 11 SCC 178; Ratanlal & Dhirajlal, *The Law of Evidence* (27th edn, LexisNexis 2019) 465.
[32] *Harbhajan Singh v State of Punjab* AIR 1966 SC 97; *V.D. Jhingan v State of U.P.* AIR 1966 SC 1762.
[33] *Satpal v State of Haryana* (2018) 6 SCC 610.
[34] Evidence Act (n) s 106; Sucha Singh v State of Punjab (2001) 4 SCC 375.
[35] *Satpal* (n 33) 610.
[36] Statement of Facts (n 2) 2,6 para 7, 9, 13.
[37] Statement of Facts (n 2) 2 para 9.
[38] Statement of Facts (n 2) 6 para 12(viii).
[39] *Rohtash Kumar v State of Haryana* (2013) 14 SCC 434.
[40] Statement of Facts (n 2) 2 para 9.

withheld evidence that could be produced and indicates oblique motive.[41] Consequently, the Court may, following Section 114(g) of the FEA, adversely infer from the respondent that the testimony of the Guard, if produced, could be unfavourable to the respondents.[42]

It is also imperative to note that there were other crimes on the rise leading to a law and order situation in Killdare.[43] This was also corroborated by the investigating officer.[44] and the evidence submitted by the respondent does not conclusively negate the possibility of any other person other than the appellant inflicting the injury on the deceased. Given the suspicious circumstances in which the Guard was dropped and the associated doubt in the chain of events, the benefit of such doubt must go to the appellant.[45] Thus, no adverse inference can be made against the appellant on the basis of them allegedly being last seen together by Mr. Chancerton.

2.2. ***Absence of Test Identification Parade Significantly Diminishes the Credibility of Mr. Chancerton's Testimony***

There is another reason to suspect the case of the respondent. Under Section 9 of the FEA, the identity of the accused person is relevant.[46] The mere identification of an accused in court for the first time by a witness who is a total stranger and had a fleeting glimpse of the person identified is inherently a weak and unreliable piece of evidence unless corroborated by a test identification parade ("TIP").[47] A TIP conducted under Section 9 of the FEA tests the veracity of the witness in terms of his ability to identify a stranger and thus strengthens the credibility of that evidence.[48] Furthermore, in the event that such a witness merely had a fleeting glimpse of the accused-appellant, especially in difficult circumstances, "it was incumbent on the respondent to hold a test identification parade".[49]

Presently, no evidence has been submitted by the respondent to show that Mr. Chancerton was acquainted with the appellant or had reason to know him before the occurrence of the event. During his cross-examination, Mr. Chancerton also admitted that he did not know the deceased from before.[50] It follows that Mr. Chancerton and the appellant were strangers to each other, at the time of occurrence. On the night of the occurrence, Mr. Chancerton was rushing to the medical store to purchase medication for his son and it is during then that he alleges to have crossed the place of crime where he saw two boys roughly of the same age as the appellant and the deceased.[51] Given that the

[41] *Rohtash* (n 39) 434.
[42] ibid.
[43] Statement of Facts (n 2) 1 para 1.
[44] Statement of Facts (n 2) 5-6 para 12(vii).
[45] *Satpal* (n 33) 610.
[46] Ratanlal & Dhirajlal, *The Law of Evidence* (27th edn, LexisNexis 2019) 74-76.
[47] *Gulab Chand v State of U P* 2018 (103) ACC 565; *Malkhan Singh v State of Madhya Pradesh* (2003) 5 SCC 746.
[48] *Devinder Singh v State of Himachal Pradesh* (2003) 11 SCC 488; *Malkhan Singh v State of Madhya Pradesh* (2003) 5 SCC 746.
[49] *Devinder Singh v State of Himachal Pradesh* (2003) 11 SCC 488.
[50] Statement of Facts (n 2) 5 para 12(vi).
[51] Statement of Facts (n 2) 4 para 11(viii).

witness was in a rush to the medical store, it can at best be said that he must have caught a fleeting glimpse of who is alleged to be the appellant on the night of the incident. Even this appears to be doubtful because the circumstances in which the witness alleges to have seen the appellant makes it highly improbable for the witness to do so. Given that the witness crossed the place of crime late at night when it was dark and there was no evidence submitted by the respondent regarding the presence of sufficient lighting or the distance between the place and vehicle, it is highly improbable that the witness had the opportunity to identify the appellant.[52] Further, since Mr. Chancerton was in a rush to get medicines for his son,[53] his mental state as a worried and stressed parent, could not have been sufficient for him to have gained an enduring impression of the accused's identity.[54] This is thus not a case where the occurrence took place in broad daylight with the witness having ample opportunity to notice the appellant's features.[55] Thus, the testimony of the witness is highly susceptible to errors and a miscarriage of justice.

Furthermore, the testimony of the witness that he saw two boys 'roughly' around the same age as the deceased and appellant[56] is vague, at best, with no specific features identified. Given the rise in crimes in Killdare, it cannot be concluded from this that the only possibility/hypothesis is that it must have been the appellant and the deceased and consequently leaves room for doubt. The benefit of this doubt will be in the favour of the appellant.[57] In such circumstances, it was necessary to conduct a TIP.[58] The absence of the TIP and the fleeting and difficult circumstances in which Mr. Chancerton alleges to have seen the appellant, casts a serious doubt on the veracity of his testimony.[59]

3. THE RECOVERY OF THE CIGARETTE PACK IS PROCEDURALLY DEFECTIVE AND IRRELEVANT TO ESTABLISH GUILT

The respondent alleged that a packet of the rare and imported Lucky Strike Cigarettes that the deceased was known to carry was recovered from the residence of the appellant.[60] The appellant submits that (i) the procedural defect while preparing the recovery memo casts doubt on its credibility and (ii) the recovery of cigarettes is not proof of culpability of the appellant.

3.1. *The Improper Filing of the Cigarette Packet Recovery Memo Casts Doubt on Its Credibility*

The alleged recovery of the deceased's packet of Lucky Strike Cigarettes from Cristo's residence is governed by Section 100 of the CrPC. Section 100(4) requires the investigating officer

[52] *Gulab Chand v State of U P* 2018 (103) ACC 565; *Devinder Singh v State of Himachal Pradesh* (2003) 11 SCC 488; *State of Uttar Pradesh v Boota Singh* (1979) 1 SCC 31.
[53] Statement of Facts (n 2) 4 para 11(viii).
[54] *Sushil Arora v State* 2017 SCC OnLine Del 6952.
[55] *Devinder Singh* (n 49) 488.
[56] Statement of Facts (n 2) 4 para 11(viii).
[57] *Satpal* (n 33) 610.
[58] *Devinder Singh* (n 49) 488.
[59] ibid.
[60] Statement of Facts (n 2) 3 para 11(iv).

to call upon the presence of two independent witnesses of the locality in which the place to be searched is situated or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search. Presently, there was a failure of the police to call upon any witness at the time of preparation of recovery memos for the cigarette packet.[61]

Even if public witnesses are not joined, there must be an effort to call upon them[62] and this sincere effort must be shown by the police.[63] The investigating officer cited that there were no public persons present since the memos were prepared at night.[64] However, the mere fact that the memos were prepared at night, with no evidence indicating that efforts were made by the Police to call upon public witnesses, cannot be said to sufficiently justify the not joining of independent witnesses. Furthermore, it cannot be suggested that there existed no public persons available at that time in the locality of the appellant's residence, which is the place of search, as the facts indicate that there did in fact usually exist a guard who was awake during the night.[65]

It has been held by the Apex Court of Frisk that non-compliance with the provisions of Section 100 amounts to an irregularity and the effect of this irregularity on the main case is dependent on the facts and circumstances of each case and whether prejudice has been caused to the accused as a result of this defect.[66] It has also been held that the irregularity in the investigation casts a duty upon the court to scrutinise the evidence regarding the search very carefully.[67]

Therefore, given that the present appeal is of circumstantial evidence, the Court must consider the defect in this investigation when considering whether the recovery of the cigarette can be said to have been established beyond all reasonable doubt so as to form a reliable and cogent link in the chain of circumstances put forth by the prosecution-respondents.

3.2. *The Cigarette Pack Recovered is Not a Relevant Fact Establishing the Guilt of the Appellant*

A fact is relevant under Section 8 of FEA if it demonstrates previous or subsequent conduct in relation to a fact in issue or relevant fact. Presently, the friendship between the appellant-accused and the deceased has been established by the deposition of Mr. Pep and Coach José M.[68] It is common for good friends to share their goods and products and there is an implied consent between friends to borrow from each other.[69] Moreover, this act of sharing or exchanging belongings could have happened at any point in the duration of their friendship. Additionally, the appellant choosing to keep

[61] Statement of Facts (n 2) para 12(vii).
[62] *Sadhu Singh v State of Punjab* (1997) 3 Crimes 55 (PH).
[63] *Anoop Joshi v State* 1999 (2) C.C. Cases 314 (HC).
[64] Statement of Facts (n 2) 5 para 12(vii).
[65] Statement of Facts (n 2) 2 para 9.
[66] *State of Punjab v Balbir Singh* (1994) 3 SCC 299.
[67] *Radha Kishan v State of UP* (1963) AIR 1954 All 553.
[68] Statement of Facts (n 2) 4-5 paras 12(ii), 12(v).
[69] The Frisk Penal Code 1860 s 378 illustration (m); PSA Pillai, *Criminal Law* (12th edn, LexisNexis 2014) 96-97.

it hidden is not surprising given that the cigarettes were imported and rare.[70] Moreover, given the young age of the parties it is also not uncommon for them to hide their smoking habit from the members of their family. This provides a plausible explanation for the recovery of the cigarettes from a hidden chest at the residence of the appellant and negates the conclusion that there exists only one possible hypothesis that can be arrived at from the recovery of the cigarette packet. There is no evidence on record proving that the cigarette packet came into the possession of the appellant and was hidden in his chest as part of the same chain of events that led to the death of the deceased.

Thus, the presence of a pack of Lucky Strike cigarettes in the residence of the appellant, let alone whether they were hidden or not, is not conclusive in nature and cannot be relied upon by the respondent as an incriminating link in the chain of circumstances. The appellant, therefore, submits that the packet of Lucky Strike cigarettes recovered from the home of the appellant is not a relevant fact under Section 8 of the FEA and does not allude to the culpability of the appellant.[71] There is no independent evidence put forth by the prosecution-respondent that connects the cigarette to the death of the deceased or sheds light on any circumstance that establishes a fact in relation to it.

3.3. ***Procedural Defects in the Report Prepared at Time of Recovery of Deceased's Body***

Section 174 of the CrPC mandates the presence of two independent local witnesses during the preparation of the report at the time of the recovery of a dead body. The term 'there' in Section 174 (1) of CrPC suggests that the report should be prepared at the spot where the dead body is found.[72] Presently, the deceased's parents reported their son missing to the Police around noon and it was on the same day that Police recovered the deceased's body.[73] Given that the Police arrived at the appellant-accused's house on the evening of the same day the complaint was made and the body was discovered,[74] it can be reasonably concluded that the deceased's body was discovered by the Police in a narrow ditch between noon and evening of that day. However, the report under Section 174 of CrPC was not prepared by the Police at the spot when the body was discovered but later that night.[75] Moreover, there is no evidence on record proving that any effort was made by the Police to join any independent witnesses at the time of preparation of the report[76] and thus it can be concluded that the report was prepared in contravention to Section 174. When an investigation is defective the Court must be circumspect in evaluating the evidence.[77] Thus, the proof of defect in the preparation of

[70] Statement of Facts (n 2) 2, para 6.
[71] *Knapp v State* 168 Ind. 153, 79 N.E. 1076 (1907).
[72] *Kodali Puranchandra Rao v Public Prosecutor AP* (1975) 2 SCC 570.
[73] Statement of Facts (n 2) 2 para 7-9.
[74] ibid.
[75] Statement of Facts (n 2) 5 para 12(vii).
[76] ibid.
[77] *Karnel Singh v State of MP* (1995) 5 SCC 518.

memos by the investigating authorities directs the Court to be circumspect in evaluating the evidence that was presented by the investigating authorities in the Trial proceedings to establish the alleged guilt of the accused-appellant.

4. THERE IS NO MOTIVE OR *MENS REA* TO CAUSE DEATH

It is submitted that, upon re-appreciation of evidence, it can be proved that the appellant had no motive or *mens rea* to cause the death of the deceased.

4.1. ***The Appellant Did Not Have Motive***

It is indisputable that the accused's motive plays a vital role as the present facts and circumstances of the case devolves upon circumstantial evidence.[78] It is also true that the significant role played by motive is only limited to adding to the chain of circumstances and it cannot form the basis of criminal liability.[79] Moreover, the alleged motive of the accused cannot be warranted unless the prosecution proves its case beyond all reasonable doubt.[80] Presently, it is submitted that the respective testimonies of Coach Jose and the common friends do not *prima facie* indicate the appellant's motive to cause the death of the deceased.

It was alleged that the appellant had motive on two-accounts—*firstly*, that the appellant owed money to the deceased and *secondly*, that the appellant was jealous of the deceased in terms of football skill.[81] The Trial Court relied upon the testimonies of Mr. Kun and Mr. Sergio to reach the conclusion that debt was one of the motives.[82] Under Section 8 of FEA, motive is a relevant fact and is generally proved by the conduct of the accused, including previous threats and altercations.[83] In the present case, the appellant and deceased were never known to have any animosity, hostility, or enmity between them by any of the witnesses.[84]

Moreover, it was alleged that the appellant was angry and jealous that the deceased was the Coach's favourite[85] and that he was not getting any time on the pitch.[86] Even though certain teammates felt that the appellant should play ahead of the deceased,[87] there is no evidence presented by the prosecution-respondent, including from the testimonies of the said teammates,[88] corroborating that the appellant shared the same belief/sentiment or developed any resentment towards the deceased.

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[78] *Ramesh Durgappa Hirekerur v State of Maharashtra* (2017) SCC OnLine Bom 9109; *Amitava Banerjee v State of West Bengal* (2011) 12 SCC 554.
[79] *Tara Devi v State of U.P.* (1990) 4 SCC 144; Ratanlal & Dhirajlal, *The Law of Evidence* (27th edn, LexisNexis 2019) 69.
[80] *Shivaji Chintappa Patil v State of Maharashtra* (2021) 5 SCC 626.
[81] Statement of Facts (n 2) 3,6 para 11(i), 14.
[82] ibid.
[83] Ratanlal & Dhirajlal, *The Law of Evidence* (27th edn, LexisNexis 2019) 69.
[84] Statement of Facts (n 2) 4-5 para 12(ii), 12(v).
[85] Statement of Facts (n 2) 3 para 10.
[86] Statement of Facts (n 2) 1 para 3.
[87] ibid.
[88] ibid.

Moreover, this belief of the teammates is based on their subjective assessment and is highly speculative in that regard. If this line of reasoning is supported, it may lead to the conclusion that every other player that the deceased was chosen over, is jealous of the deceased and a suspect in this instance. Thus, paving way for multiple hypotheses to co-exist.

Coach José simply made a subjective assessment and comparison of the football skills of the appellant and the deceased. He did not, however, in his testimony allude to any resentment or animosity between the deceased and the appellant.[89] On the contrary, both him and the father of the deceased, deposed to the fact that the appellant and the deceased were good friends and had never fought before.[90] Therefore, any inference that there existed any animosity or resentment between the appellant and the deceased due to the loan or football and thus indicating motive is uncorroborated and weak. On the other hand, no inference of motive from the accused-appellant's confession can be drawn as the confession is in itself inadmissible as established earlier. Thus, the evidence of motive is purely conjecture put forth by the respondent and is uncorroborated by any independent evidence. Following the well-settled legal principle, the absence of motive in a case of circumstantial evidence is a fact that weighs in favour of the accused-appellant.[91]

4.2.***The Appellant Did Not Have Mens Rea to Cause Death***

The intention makes up a part of the *mens rea* or mental element of an act and constitutes as an essential element of a crime and a central aspect of criminal liability.[92] The burden of proving the intention also lies on the prosecution.[93]

Presently, there is no evidence on record proving that the appellant intended to cause the death of the deceased or had knowledge that the death of the deceased is likely to be caused. The alleged confession of the appellant admitting to having caused the death of the deceased with a heavy stone is inadmissible as established earlier and cannot be relied upon to establish the intention of the appellant.

According to the post-mortem report corroborated by Doctor Arsene, the death of the deceased was due to a head injury caused by a blunt object and took place between 12am to 2am on the night of the occurrence.[94] It has been observed by the Supreme Court that, for determining whether the accused had the required intention or knowledge that death was likely to be caused, the nature of injury, weapon used, and the circumstances and manner in which the injury was caused are all relevant

[89] Statement of Facts (n 2) 2 para 12(ii).
[90] Statement of Facts (n 2) 4-5 para 12(ii), 12(v).
[91] *Anwar Ali and Anr v The State of Himachal Pradesh* (2020) 10 SCC 116; *Pannayar v State of Tamil Nadu by Inspector of Police* (2009) 9 SCC 152.
[92] *Kartar Singh v State of Punjab* (1994) 3 SCC 569.
[93] PSA Pillai, *Criminal Law* (12th edn, LexisNexis 2014) 96-97.
[94] Statement of Facts (n 2) 3-4 para 11(iii), 12(iii).

considerations.[95] The mere existence of a single injury on the head of the deceased, that too not with any deadly weapon but a 'blunt' object, cannot lead to the conclusion that there existed an element of intention to cause the deceased's death or knowledge that it would likely cause the deceased's death.[96]

Further, it has been observed that, "Ordinarily the value of medical evidence is only corroborative and proves that the injuries could have been caused in the manner alleged and nothing more".[97] The character of medical evidence is merely advisory[98] Presently, the scope of the post-mortem report and the testimony of the medical expert is limited and does not provide any insight into the sufficiency of the injury to cause the death of a person or the manner or force with which it was inflicted to further draw any inference about the existence of required intention or knowledge. It is also to be noted that the murder weapon was not recovered which further diminishes the credibility of the medical evidence put on record.[99]

Further, it has been established in Part 2.1 that the appellant was not present at the scene of the crime or in the company of the deceased at the time of the murder thus the consequences brought about on the deceased's body cannot be said to be caused by the deceased. It is also submitted that the deceased asked the appellant to pick him up for dinner which indicated that the deceased had no resentment against meeting the appellant.[100] The fact that the suggestion for the appellant to pick up the deceased was made by the deceased itself at not the appellant further proves that there was no preconception, or preparation by the appellant to cause the death of his friend. The fact that they were friends and often hung out is not far-fetched and negates the conclusion that the dinner suggested was a preconceived plan by the appellant to cause the death of his friend. Further, any hesitation by the deceased to go out that night was due to the probability of the restaurants being closed and not meeting the appellant itself.[101]

Moreover, there is no evidence on record or sufficient corroboration provided to establish that the appellant had planned or intended to make a stop in an isolated place with the deceased. The factual matrix and the repeated and consistent testimony of the appellant establishes that the deceased was dropped off a few blocks from his house at his own insistence as he wanted to walk.[102] Therefore, the existence of the element of *mens rea* has not been conclusively established by the evidence on record.

B. THE ESSENTIAL INGREDIENTS UNDER SECTION 299/300 OF THE FPC ARE NOT

[95] *Stalin v State* (2020) 9 SCC 524.
[96] *Vijay Pandurang Thakre v State of Maharashtra* (2017) 4 SCC 377; K D Gaur, *Criminal Law* (9th edn, LexisNexis 2019) 345; The K.K. Luthra Memorial Moot Court 2022, Statement of Facts 3 para 11(iii).
[97] *Chimanbhai Ukabhai v State of Gujarat* (1983) 2 SCC 174.
[98] ibid.
[99] *State of Kerala v Sooraj S Kumar* (2021) Kerala Sessions Case No. 820/2020; Statement of Facts (n 2) 6 para 14.
[100] Statement of Facts (n 2) 1-2 para 5.
[101] ibid.
[102] Statement of Facts (n 2) 2,6 para 7,13.

MET

Given that every voluntary culpable homicide is murder unless it falls under the exceptions outlined in the FPC, the essential ingredients of voluntary culpable homicide under Section 299 FPC and murder under Section 300 FPC are the same.[103] The essential ingredients of Section 299 of FPC are as follows, (i) there must be death of a person; (ii) the death should have been caused by the act or illegal omission of another person; and (iii) the act or omission causing death should have been done with: (a) the intention of causing death; or (b) with knowledge that such act is likely to cause death.

The prosecution-respondent has not conclusively proved beyond reasonable doubt that there was *mens rea* on part of the appellant, either in the form of motive or intention as established in Part 4. Thus, the ingredient of intention to cause death is not satisfied. Alternatively, the prosecution-respondent has not proved that the appellant had knowledge that the death of the deceased was likely to be caused by any of his acts or omission. Furthermore, the respondent by relying upon inadmissible evidence and unreliable and suspicious witness testimonies has failed to conclusively establish a complete chain of circumstance proving that the appellate had caused the death of the deceased or was even present in the vicinity of the deceased at the time of occurrence.

On the other hand, the appellant has provided a plausible explanation under Section 106 for having departed from the company of the deceased before the occurrence of the incident and the same has not been disproved by the respondent. Thus, it is established that it would have been impossible for the appellant to have committed any act or omission which could have resulted in the death of the deceased and therefore, the appellant does not satisfy the essential ingredients of Section 299 and is not liable for voluntary culpable homicide nor murder under Section 300.

C. **THE ESSENTIAL INGREDIENTS OF SECTION 201 OF THE FPC ARE NOT MET**

For the appellant to be guilty of the offence under Section 201 of the FPC he should, intending to screen the offender from legal punishment, cause the disappearance of any evidence of an offence that he knows or has reason to believe to have been committed.[104] Alternatively, he must, with the same intention, provide information respecting the offence which he knows or believes to be false.[105] Presently, there was no recovery of murder weapon[106] and the alleged confession of the appellant regarding the disposal of the murder weapon in a nearby stream is inadmissible. Further, the alleged identification of the spot where the deceased's body was allegedly disposed of by the appellant is also inadmissible, as observed earlier. Therefore, who actually had disposed of the deceased's body in the

[103] The Frisk Penal Code 1860 s 300.
[104] K D Gaur, *Criminal Law* (9th edn., LexisNexis 2019) 847.
[105] The Frisk Penal Code (n 69) s 201.
[106] Statement of Facts (n 2) 6 para 14.

narrow ditch in the isolated area is unknown to the respondent.[107] Given this, there is no evidence on record submitted by the respondent proving that the appellant either disappeared or dismantled any evidence to screen himself from legal punishment.[108]

Moreover, the appellant has consistently stated that, on the night of the incident, he had dropped the deceased a few blocks before his house on the deceased's suggestion and was also in a rush to return home for fear that he may not be able to enter his residential complex since it was late and the Guard often shut the main gate and went to sleep.[109] While the respondent alleges that the Guard revealed that a smaller entry point was always open and did not restrict the entry/exit of motorcycles in any manner,[110] the Guard was dropped as a witness and did not testify before the Court or undergo examination/cross-examination.[111] There is, therefore, no cogent evidence that has been submitted by the respondent to prove that the information provided by the appellant was inconsistent or false.[112] Given this, the essential ingredients of the offence constituted under Section 201 of the FPC has not been satisfied against the appellant. The trial court, therefore, erred in convicting the appellant for the offence punishable under Section 201 of the FPC.[113]

D. GUILT OF THE APPELLANT NOT PROVED BEYOND REASONABLE DOUBT AND TRIAL COURT FAILED TO APPRECIATE EVIDENCE CORRECTLY

As already established, this is a case based on circumstantial evidence. In cases of circumstantial evidence, before conviction, the Court has to satisfy itself completely that there is no other inference consistent with the innocence of the accused possible nor is there any plausible explanation and the inferences from the circumstances must be made based on clear and irrefutable logic.[114]

It has been established by the appellant by proving that the alleged confession made by the appellant admitting the commission of the offence, the motive, the weapon used and its disposal, and the identification of the spot of disposal of deceased's body are all inadmissible as evidence for being unreliable and tutored and therefore, cannot be relied upon to establish the chain of events. Furthermore, there exists reasonably high doubt in the credibility of the material witnesses Chancerton, placing the deceased for the last time in the company of the appellant, and the Guard, who was suspiciously dropped as a witness by the respondent. The prosecution-respondent has thus

[107] *Sunil Kumar Ghosh v State of West Bengal* 2008 SCC OnLine Cal 288.
[108] *Gajendra Singh v State of Madhya Pradesh* 2019 SCC OnLine MP 5766.
[109] Statement of Facts (n 2) 2,6 para 7, 9, 13.
[110] Statement of Facts (n 2) 2 para 9.
[111] Statement of Facts (n 2) 6 para 12(viii).
[112] *Somnath Sharma v State of Sikkim* 2018 SCC OnLine Sikk 213.
[113] *Sunil Kumar Ghosh v State of West Bengal* 2008 SCC OnLine Cal 288.
[114] *Sharad Birdhichand Sarda v State of Maharashtra* (1984) 4 SCC 116.

failed to prove that the appellant and the deceased were together at the time of the incident. The relevance and credibility of the cigarettes recovered from the possession of the appellant in connection to the offence is also highly doubtful. The prosecution-respondent has also failed to cogently prove any motive, in the absence of any hostility between the deceased and appellant. The prosecution-respondent has also failed to prove that there was an element of intention with the appellant to cause the death of the deceased. It has also not been conclusively proved by the evidence on record that the appellant had knowledge that the death of the deceased is likely to be caused. Therefore, the evidence when considered in its totality indicates that the circumstances relied upon by the prosecution-respondent has not been conclusively proved such that no other hypothesis other than the guilt of the appellant can be derived from any and all of them.[115]

Given the highly unreliable and insufficient evidence on record combined with the rise in crimes in Killdare, there definitely exists more than one hypothesis that can be derived from the evidence on record, including those establishing the innocence of the appellant. The prosecution-respondent has failed to establish that the chain of circumstances is complete. Therefore, in light of at least two possible views capable of being derived from the evidence on record, the prosecution-respondent have neither met the threshold of establishing conviction based on circumstantial evidence nor established the guilt of the appellant under Sections 299, 300, and 201 of the FPC beyond reasonable doubt.[116]

It is also to be noted that the prosecution may not rely on the weakness of the case of the defense and must prove its case beyond a reasonable doubt[117] and the Trial Court had a duty to ensure that suspicion must not take the place of substantial legal proof.[118] Therefore, the Trial Court by convicting the accused based on such highly inadmissible and unreliable evidence failed to appreciate the evidence on record correctly and erred by wrongfully convicting[119] the appellant under Section 201 and 302 of the FPC.[120]

PRAYER

[115] ibid.
[116] *Sharad Birdhichand Sarda v State of Maharashtra* (1984) 4 SCC 116; *T. Subramanian v. State of Tamil Nadu* (2006) 1 SCC 401;
[117] *Somnath Sharma* (n 112) 223.
[118] *Somnath Sharma v State of Sikkim* 2018 SCC OnLine Sikk 213; Ratanlal and Dhirajlal, *The Law of Evidence* (27th edn, LexisNexis 2019) 36-37.
[119] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 10; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 14-15; The K.K. Luthra Memorial Moot Court 2022, Statement of Facts 6 para 14.
[120] *Rakesh Shah v State of H P* 2019 SCC OnLine HP 1075.

Wherefore, in light of the facts stated, issues raised, arguments advanced, and authorities cited, it is most humbly and respectfully prayed before this Hon'ble High Court that it may be pleased to:

A. Declare that the essential ingredients of Sections 299/300 and 201 of the Frisk Penal Code have not been met in the facts and circumstances of the instant case

B. Declare that the judgement of the Trial Court of Killdare had incorrectly applied the applicable test of proving the facts 'beyond all reasonable doubt' and is liable to be struck down as being contrary to the process of law

C. Hold the conviction of Cristo under Section 302 and 201 of the Frisk Penal Code 1860 as being contrary to the process of law and must be set aside

D. Declare acquittal of Cristo from allegations of offences under Sections 299, 300, and 201 of the Frisk Penal Code 1860 and to reverse the decision of the Trial Court

And pass any other order, direction, or relief that it may deem fit in the best interests of justice, fairness, equity and good conscience.

All of which is humbly prayed,
URN 1825
Counsels for the Appellant