



Team Code - 1892

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**XVIII K.K. LUTHRA MEMORIAL MOOT COURT, 2022**

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*Before*  
**Hon'ble High Court of Kildare**

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**CRIMINAL APPEAL NO. 1111 OF 2022**

**Cristo .....Appellant**

**v.**

**State... Respondent**

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**ABOVE MENTIONED APPEAL HAS BEEN PREFERRED AGAINST THE  
JUDGEMENT/ORDER PASSED BY THE TRIAL COURT OF CALUMNY**

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**WRITTEN SUBMISSION ON BEHALF OF THE RESPONDENT**

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**STATEMENT OF FACTS**

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**INTRODUCTION TO THE PARTIES**

Killdare, a small state in south of Frisk, is a developing country with one of the lowest populations in the world and recently crimes have been on the rise in Killdare with the local Police failing to tackle the law and order situation arising.

Cristo is a post-graduate student at the University of Killdare and is friends with Lionel, a local resident who comes from a renowned family. Cristo and Lionel, both are teammates in University Football Team.

**UNFOLDING OF EVENTS**

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Lionel after facing shortage of funds, asks Cristo to repay the amount previously lent to him. Cristo expressed his inability initially and promised to pay however he did not repay despite reminders.

One Night, while returning from Bob's Butchery, Cristo and Lionel stopped for a smoking break where they smoked 'Lucky Strike' cigarettes of imported quality carried by Lionel a few blocks from Lionel's house in an isolated area after which Cristo left. However, Lionel never returned home after that, considering which his parents informed Police and reported their missing son.

The Police while investigating found a dead body in a narrow ditch in an isolated area near Lionel's Home. The Police informed Lionel's parents of the reason of death being blow on head and Lionel's parents confirmed the personal belongings of their son after which the body was sent for Post-mortem.

Police inquired Cristo where he revealed that he was in a rush to get back home and therefore had dropped Lionel a few blocks from his home. Further, Mr. Kun and Mr. Sergio revealed that Cristo owed money to Lionel. Under suspicion, Police took Cristo for questioning at the local Station.

As per Police, Cristo gave an alleged statement admitting to killing Lionel due to anger and jealousy on account of Coach Jose. M's biased behavior and Lionel's repeated demands for money. He was placed under arrest.

After a short investigation, the Police filed an investigation report accusing Cristo of offences under sections 302 and 201 of the Frisk Penal Code, 1860. The trial court Calmuny gave its indictment against the accused for prima facie commission of offences to which he pleaded not guilty.

After perusal of State Evidence, the trial court convicted Cristo stating that the State has successfully proven the indictment against him beyond reasonable doubts while stating that Cristo has failed to prove the hypothesis of his sudden disappearance.

The court accepted State's case on last seen and its arguments and sentenced Cristo to undergo rigorous imprisonment 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.

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**STATUS QUO**

Aggrieved by this, Cristo has preferred appeal before this Hon'ble High Court where the court has identified specific issues to be addressed.

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**ISSUES RAISED**

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**Issue 1:** Whether the trial court has correctly applied the applicable test of proving facts “beyond all reasonable doubt”?

**Issue 2:** Whether the essentials ingredients of section 299/300 and 201 of the frisk penal code have been met in the facts and circumstances of the instant case?

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**WRITTEN PLEADINGS**

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**A ISSUE 1: THE TRIAL COURT HAS CORRECTLY APPLIED THE APPLICABLE TEST OF PROVING FACTS ‘BEYOND REASONABLE DOUBT’**

1. It is most humbly submitted before the hon'ble HC that while it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary to be perfect.<sup>1</sup> There is no absolute standard of proof in a criminal trial and the question whether charges against the appellant have been proved beyond all reasonable doubt must depend upon the facts and circumstances of the case and the quality of evidence adduced and the materials placed on record.<sup>2</sup> Therefore the credibility of testimony, oral or circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny.<sup>3</sup> In the instant case the prosecution relies on the evidence of last seen together based on circumstantial evidence, all the links in the chain of events establish the guilt of Cristo beyond the shadow of doubts and the established chain of circumstances are consistent with the only hypothesis of the guilt of the accused and totally inconsistent with his innocence.<sup>4</sup> The test of proving facts beyond reasonable doubt has been

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<sup>1</sup> Sardul Singh v. State of Haryana, AIR 2002 SC 3462.

<sup>2</sup> State of West Bengal v. Orilal Jaiswal, (1994) 1 SCC 73.

<sup>3</sup> Inder Singh v. State (Delhi Administration), AIR 1978 SC 1091.

<sup>4</sup> State of Rajasthan v. Kashi Ram AIR 2007 SC 144.



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distinctly met here; moreover, Cristo has failed to justify the burden of proof under section 106 of FEA<sup>5</sup> which has been shifted on him on account of the theory of last seen together.

**A.1 Establishing guilt of the appellant against homicidal death of Lionel gleaned from last seen theory**

2. It is most humbly submitted before the hon'ble HC that the last seen theory comes into play where the time-gap between the point of time<sup>6</sup> when the accused and the deceased were last seen alive and when the deceased is found dead is so small that the possibility of any person other than the accused being the author of the crime becomes impossible.<sup>7</sup> Contrary to this, it is submitted that from the principle laid down by the apex court in the judgement of *Ramreddy Rajesh Khanna Reddy and Anr. v. State of Andhra Pradesh*<sup>8</sup> that, in all cases, it cannot be said that the evidence of last seen together is to be rejected merely because the time gap between the accused persons and the deceased was last seen together and the crime coming to light is after a considerable long duration.<sup>9</sup>
3. It is most humbly submitted that the theory of last seen for convicting an accused has been relied on worldwide.<sup>10</sup> In the case of *Madu v. State*<sup>11</sup> (2012), the court of Nigeria explained “that according to this doctrine, the presumption is taken that the person last seen with the deceased owes them absolute responsibility of death. And if the accused was last seen and the circumstantial evidence against him is overwhelming then the Court can convict the person based on the last seen doctrine.” It is most humbly submitted that in the case of the *State of Rajasthan v. Kashi Ram*<sup>12</sup> where the court observed that “Following conditions are fulfilled then the person can be convicted on the basis of the last seen theory only: 1. If the fact of last seen theory is established then the accused needs to prove and provide sufficient explanation under what circumstances he departed from the deceased; and...2. If the motive for the murder is also proved then it establishes a vital link in the chain of evidence.”
4. Henceforth, the respondent in the light of the facts and circumstances of the case referred hereinafter, points towards the fact that there was no possibility of any other person meeting or

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<sup>5</sup> The Frisk Evidence Act, 1872, §106.

<sup>6</sup> Anjan Kumar Sarma and Ors. v. State of Assam, AIR 2017 SC 2617.

<sup>7</sup> State of U.P. v. Satish AIR 2005 SC 1000.

<sup>8</sup> Ramreddy Rajesh Khanna Reddy and Anr. v. State of Andhra Pradesh, AIR 2006 SC 1656.

<sup>9</sup> State of Goa v. Sanjay Thakran (2007) 3 SCC 755.

<sup>10</sup> R. v. Martin, (2005) VSC 121.

<sup>11</sup> Madu v. State, (2012) 15 NWLR (PT 1324) 405, 202.

<sup>12</sup> State of Rajasthan v. Kashi Ram, AIR 2007 SC 144.

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approaching Lionel at the place of incident or before the commission of the crime, in the intervening period, the proof of last seen together would be relevant evidence.

5. It is humbly submitted that statements made by an accused person which are not admission of guilt are regarded as admissions and are admissible under section 21 of FEA<sup>13</sup>. Statements made by an accused, which is exculpatory, but admits his presence at the place of occurrence does not amount to a confession, but it can be treated as an admission about his presence on the spot.<sup>14</sup>In the instant case Cristo has admitted to the police that on the insistence of the deceased, he dropped Lionel a few blocks before his house and ‘that was the last he saw of him.’<sup>15</sup>The statement clearly indicates in the instant case last seen together is established on account of the admission by the accused that it was he, who last saw the deceased and further the duration of the accused and deceased last seen together and the recovery of the dead body is so minimal that the possibility of any another person interfering in the intervening period is ruled out<sup>16</sup> and the likelihood of the appellant being the author of the crime is firmly established.

**A.2 Chain of circumstantial evidences taken cumulatively to prove the hypothesis of guilt**

6. It is most humbly submitted before this hon’ble HC that circumstantial evidence means a fact on which an inference is to be founded.<sup>17</sup> Evidence which proves or tends to prove the *factum probandum* indirectly by means of certain inferences or deductions to be drawn from its existence and their connection with *factum probantia* is circumstantial evidence.<sup>18</sup> It is further submitted that for a crime to be proved, it is not necessary that the crime must be seen to have been committed and must, in all circumstances, be proved by direct ocular evidence by examining before the court those persons who had seen its commission.<sup>19</sup> The offence can be proved by circumstantial evidence also taking the principle laid down in the landmark judgement of *Sharad Birdichand Sarda v. State of Maharashtra*<sup>20</sup> into consideration, according to which the circumstantial evidence should be complete and cogent. The guilt of the

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<sup>13</sup> The Frisk Evidence Act, 1872, §21.

<sup>14</sup> Chintamani Das v. State, AIR 1970 Ori 100.

<sup>15</sup> Page 2 Para 9, Statement of Facts.

<sup>16</sup> State of U.P. v. Satish AIR 2005 SC 1000.

<sup>17</sup> Mohd. Arif v.State of NCT of Delhi (2011)13 SCC 621; State of Rajasthan v. Raja Ram AIR 2003 SC 3601.

<sup>18</sup> Dhira Choudhury v. State of Assam 1982 Cr LJ 572.also see in Bantu v. The State of U.P. (2008) 11 SCC 113.

<sup>19</sup> Sir John Woodroffe & Syed Amir Ali, Law of Evidence, (LexisNexis, 21st edn.,2020).

<sup>20</sup> Sharad Birdichand Sarda v. State of Maharashtra AIR 1984 SC 1602.

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accused should be unerringly established and any other inference except the guilt of the accused cannot be drawn from the circumstances.

7. The counsel for respondent humbly submits that the respondent further attempts to highlight the circumstantial evidence in the instant case so as to prove the guilt of the appellant. To prove the chain of circumstances reference is made to the factual aspect of the present case, which starts from the instance of Cristo insisting Lionel to join him for dinner on the fateful night of the gruesome murder. The chain of circumstances unerringly establishing guilt of the appellant are on the following lines:
8. It is humbly submitted that preparation consists in devising or arranging means necessary for the commission of an offence.<sup>21</sup> As far as preparation is concerned, extension of invitation falls within the sphere of 'preparations.'<sup>22</sup> In the instant case Cristo 'insisted' Lionel to join him for dinner at their favourite restaurant Bob's Butchery. Under section 14 of FEA, facts pointing to the state of mind such as intention and ill will constitute relevant facts.<sup>23</sup> It is indisputable that Cristo was unable to repay Lionel the money he owed for daily expenses and other recreational outings. Cristo's invitation to Lionel only escalated his debt fairly, and this somewhere points to the ill will of Cristo to undertake such actions that could release the burden of repaying infinitely. It is further submitted that under section 60 of FEA, Ms. Antonella hereinafter referred as PW 1, a 'long serving waitress' is an ocular witness for confirming having seen Lionel in the company of Cristo on the night of murder. It is also submitted that *en route* Lionel's home, Mr Pique hereinafter referred as PW 2, also confirmed seeing Cristo in the company of Lionel, he specifically recalled seeing them as both were not wearing helmets. Deposition made by PW 1 and PW 2 respectively are direct evidence under section 60<sup>24</sup> and firmly establishes the fact of spotting the appellant and the deceased in the company of each other on the night of murder. Further, due reference shall be made to the deposition made by Chancerton hereinafter referred as PW 3 who is a chance witness, by the matter of coincidence happens to pass by the site of crime committed which in the instant case is the same isolated area where the dead body of Lionel was found and is the same place where PW 3 witnessed two people of same age indulged in a quarrel.

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<sup>21</sup> Aman Kumar & Ors v. State of Haryana, AIR 2004 SC 1497.

<sup>22</sup> Ramabai v. Nivrutti Nimbhaji Chavan and Ors 1988 (2) Bom CR 161.

<sup>23</sup> The Frisk Evidence Act, 1872, §14.

<sup>24</sup> The Frisk Evidence Act, 1872, §60.

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9. To sum up it is most humbly submitted that the real test to evaluate evidence is how consistent the story is with itself, how it stands the test of cross-examination and how far it fits in with the rest of the evidence and the circumstances of the case. Direct evidence of a person who saw the fact, if that proof is offered upon the testimony of men whose veracity you have no reason to doubt, is the best proof.<sup>25</sup> In the instant case the version of the PW 3 should be found reliable by this hon'ble court as he had no motive to implicate the accused falsely as he was not related to either of the parties and thus there was no interest of PW 3 while deposing against the appellant. In *Sachchey Lal Tiwari v. State of U.P.*<sup>26</sup> the apex court held that "while considering the evidentiary value of the chance witness in a case of murder which had taken place in a street and passer-by had deposed that he had witnessed the incident, observed as under: If the offence is committed in a street only passer-by will be the witness. His evidence cannot be brushed aside lightly or viewed with suspicion on the ground that he was a mere chance witness. However, there must be an explanation for his presence there." In the instant case PW 3 was out to procure medicines, the documentary proof of which has been taken into record.<sup>27</sup> It is further submitted that the police have recovered the body of Lionel from a narrow ditch in an isolated area, a few blocks before Lionel's house. Apparently, it is the same isolated area where Cristo 'suggested' Lionel to take a halt to smoke a cigarette. In the trial PW 3 has deposed the same isolated area.
10. It is most humbly submitted that confessions by the accused person shall not be proved under section 25<sup>28</sup> and 26<sup>29</sup> of FEA, however section 27<sup>30</sup> provides for an exception to such admissions.<sup>31</sup> It has been held by the Supreme Court that "the basic idea embedded in section 27 of the Frisk Evidence Act is the doctrine of confirmation by subsequent events, i.e. if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true."<sup>32</sup> It is humbly submitted that recovery of the lucky strike box<sup>33</sup> substantiates the admission of the accused as to his presence with the deceased at the spot where Lionel was found dead. It is further submitted that information

<sup>25</sup> Towell's case (1854) 2 C. K. 309 also see in Anant Chintaman Lagu v. The State of Bombay AIR 1960 SC 500.

<sup>26</sup> Sachchey Lal Tiwari v. State of U.P AIR 2004 SC 5039.

<sup>27</sup> Raju v. State of Maharashtra, 2016 (2) BOMCR (CRI) 452. also see Jarnail Singh v. State of Punjab, 2005 (3) RCR (CRIMINAL) 314.

<sup>28</sup> The Frisk Evidence Act, 1872, §25.

<sup>29</sup> The Frisk Evidence Act, 1872, §26.

<sup>30</sup> The Frisk Evidence Act, 1872, §27.

<sup>31</sup> State of U.P. v. Deoman Upadhyaya AIR 1960 SC 1125.

<sup>32</sup> Rumi Bora Dutta v. State of Assam, AIR 2013 SC 2422.

<sup>33</sup> Page 3 Para 11 Sub para iv. Statement of Facts.

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given by an accused person to a police officer leading to discovery of a fact may or may not be incriminatory, nevertheless, admissible in evidence by this section.<sup>34</sup> In the instant case, Cristo admitting about taking a halt for smoking is not confessional but incriminatory. However, this does not bar the statement's admissibility.

11. It is most humbly submitted that the chain of circumstantial evidences mentioned hereinabove points the needle to the isolated place which gives Cristo an opportunity to commit an offence of murder, a *factum probandum* under section 7 of FEA<sup>35</sup>. When an act is done and a particular person is alleged to have done it, it is obvious that his physical presence, within a proper range of time and place, forms one step on the way to the belief he did it. By the very showing of an opportunity, countless hypotheses are negated; and the person charged who might otherwise have been one of the limited numbers, who were in a position to do this particular act. In short, opportunity alone and not exclusive opportunity, is sufficient for admissibility.<sup>36</sup> It is most humbly submitted that this is a general proposition of law that no offence can be committed without a proper opportunity. In furtherance of this the respondent attempts to prove opportunity on the end of Cristo to commit the act of murder in the instant case, thereby forging an important link in the chain of evidence against Cristo.

12. It is humbly submitted that the conduct of a party must be in reference to the suit or proceedings, or in reference to any fact in issue therein or relevant thereto. The conduct of the accused is relevant under section 8 of FEA<sup>37</sup> as it influences the inference of guilt of the accused. Cristo's insistence to Lionel to join him for dinner late at night followed by his suggestion to take a halt for smoking a cigarette at a place far from anybody's field of view is notably contradicting to his justification of dropping off Lionel and rushing back to his residential complex as his colony guard often shut the main gate restricting his entrance. The respondent calls the attention of this court to his conflicting conduct which shall be taken into account to nothing but Cristo's guilt.

**A.3 Medical evidence adds as a link to the chain of circumstances proving the guilt of the accused.**

13. It is most humbly submitted that when police discovered Lionel's dead body, they informed his parents that their son had been killed from what appeared to be a blow to his head. It is submitted

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<sup>34</sup> State of Bombay v. Kathi Kalu Ogadh, AIR 1961 SC 1808.

<sup>35</sup> The Frisk Evidence Act, 1872, §25.

<sup>36</sup> Sir John Woodroffe & Syed Amir Ali, Law of Evidence, (LexisNexis, 21st edn., 2020).

<sup>37</sup> The Frisk Evidence Act, 1872, §8.

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that the evidence of the doctor is relevant as an expert under section 45 of FEA.<sup>38</sup> Medical evidence, as is well settled, is an opinion evidence given by an expert and deserves respect by a court.<sup>39</sup> Thus it can be taken as a piece of supportive evidence to support other direct or circumstantial evidence showing case of murder.<sup>40</sup> It is not only an opinion evidence but it is often direct evidence of the fact found upon the victim's person.<sup>41</sup> The injuries caused on the head of the deceased were quite serious and highly improbable to be regarded as a self-inflicted injury. Dr Arsene, hereinafter referred to as PW 4, a medical expert, has deposed in the trial that Lionel died after being hit on his head with a blunt object. It is submitted that the cause of death of the deceased was injury on the head as a result from blunt force trauma by a hard and blunt object, one possibly being a stone.<sup>42</sup> It is humbly submitted that the Police in the instant case has not recovered the weapon of attack however, it is not necessary in every case that the weapon of attack must have to be recovered in a case of murder and non recovery of the weapon would not affect the otherwise evidence.<sup>43</sup> Due reference shall be made to the landmark judgement of **Rakesh v. The State of UP**<sup>44</sup>, where it was held by the apex court that “*for convicting an accused recovery of the weapon used in the commission of offence is not a sine qua non*”. In **Krishna Gope v. State of Bihar**<sup>45</sup> the SC held that “non recovery of the weapon of offence is not fatal to the case of the prosecution, when there is direct, cogent and reliable evidence and trustworthy testimony of the prosecution witnesses. The accused would still be liable for punishment.” As is culled out in various decisions of the Hon'ble SC it is evident that mere absence of the recovery of the weapon used for the offence or absence of the incriminating material by itself does not entitle the accused the benefit of doubt.<sup>46</sup> Further, it is submitted that the PM report also denotes the time of death between 12.AM to 2.00 AM, nearly the same time when Lionel was in the company of Cristo, a few blocks before his house. It is most humbly submitted that the contents of the PM report comprehensively substantiate the hypothesis of Cristo's guilt in the instant case.

**A.4 Motive assumes great significance in a case based on circumstantial evidence.**

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<sup>38</sup> The Frisk Evidence Act, 1872, §40.

<sup>39</sup> Rokad Singh v. State of Madhya Pradesh 1994 MPLJ 57.

<sup>40</sup> Digambar Gope v. State of West Bengal 1997 Cr LJ 2072 (Calcutta High Court) .

<sup>41</sup> Machindra v. Sajjan Galfa Rankhamb and Ors. (2018) 1 SCC (Cri) 381; also see Nagindra Bala Mitra v. Sunil Chandra Ray AIR 1960 SC 706.

<sup>42</sup> Tejas Gajendra Kschirsajer v. State of Maharashtra 2020 ALLMR (Cri) 4163.

<sup>43</sup> Mangal Hansada v. State 1985 Cri LJ 1589.

<sup>44</sup> Rakesh v. The State of UP, CrA 556 of 2021 (SC).

<sup>45</sup> Krishna Gope v. State of Bihar AIR 2003 SC 3114.

<sup>46</sup> Ummar Mahamad and Ors. v. State of Rajasthan (2007) SCC 711.



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14. It is most humbly submitted before the hon'ble HC that in a case which hinges upon circumstantial evidence, motive plays an important role. The proof of motive satisfies the judicial mind about the likelihood of authorship of crimes and assumes some relevance in the circumstances of the case.<sup>47</sup> Motive is not an indispensable link in the chain of circumstantial evidence, nevertheless, it is a strand that runs through all the links and helps to forge a complete chain.<sup>48</sup> The motive established can form a relevant background for the assessment of other evidence produced by the prosecution.<sup>49</sup> To this effect reference shall be made to the meaning of motive as ascribed in Murray's Dictionary "...that which moves or induces, a person to act in a certain way; a desire, fear, or other emotion, or a consideration of reason which influences or tends to influence, a person's volition."<sup>50</sup> The respondent humbly attempts to foreground facts which directly or indirectly point towards the existence of motive, under section 8 of FEA, on the part of Cristo that has driven him to commit the offence of murder, which constitutes relevant fact.
15. It is mostly humbly submitted that in the instant case, the appellant nursed a grudge towards the deceased. The intensity of the grudge was known only to himself. If the accused decided to kill his very good friend Lionel in such a savage manner by throwing a heavy stone, that itself shows the superlative degree of gravity of his wrath towards Lionel. The Appellant's extra judicial confession points to his state of mind simmering with acerbity from which his motive to kill the respondent can be very well observed.<sup>51</sup> The motive in the instant case is indicated to heighten the probability of the offence that Cristo was impelled by that motive to commit the offence. Thus, proof of motive only adds to the weight and value of evidence adduced by the prosecution<sup>52</sup> similar to the respondent's contention in the present case. Therefore, it is humbly submitted that the presence of motive led by the existence of a loan against Lionel as deposed by Mr. Kun and Mr Sergio hereinafter referred as PW 5 and PW 6 respectively<sup>53</sup> in the trial and jealousy for not being treated equally as deposed by Coach Jose M hereinafter referred as PW 7 about his belief for Lionel to be a better player<sup>54</sup> becomes the strongest link to connect the chain of circumstantial evidence and is relevant in abundance. It is also submitted that the fact of Cristo and Lionel never

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<sup>47</sup> Ahmad Lone v. State 1988 SLJ (NOC) (HC) 14.

<sup>48</sup> Sivarajan v. State ILR 1959 Ker 319.

<sup>49</sup> Shivaji Genu Mohite v. State of Maharashtra, AIR 1973 SC 55.

<sup>50</sup> Murray's Dictionary

<sup>51</sup> State of Tamil Nadu v. Suresh and Anr. 1998 SCC (Cri) 751.

<sup>52</sup> Vijay Shankar v. The State of Haryana, AIR 2015 SC 3686; also see Ashoksinh Jayendrasinh v. State of Gujrat AIR 2019 SC 2615.

<sup>53</sup> Page 4 Para 12 Sub para i. Statement of Facts.

<sup>54</sup> Page 4 Para 12 Sub para ii. Statement of Facts.

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quarrelling during training does not disconnect the appellant with the crime.<sup>55</sup> It is submitted that motive in the instant case is a ratiocinative aid in the assessment of evidence to fix up criminality projected on the appellant. The motive of Cristo as ascertained from the fact showing transactions between accused and deceased and that they had some accounts to be settled, is sufficient to point out involvement of some mental element to commit the offence of murder.<sup>56</sup> Thus, it is most humbly submitted that the existence of motive will guide the hon'ble court to negate the otherwise presumption of innocence of Cristo.

16. Henceforth, the counsel in its most humble submission submits that the probative value of the motive established<sup>57</sup>, supports the respondent's case as when Cristo was frustrated by repetitive demands for repayment of money and jealousy for not being able to secure a position in the football team, he reacted with an extreme violence. This propensity evidence could also be seen as supporting the credibility and reliability of the confessions made by Cristo.<sup>58</sup>

**A.5 Shifting of onus on the accused to prove his innocence**

17. It is humbly submitted that the non-production of the Guard as a witness shall not be taken into consideration for drawing adverse inference against the respondent. Before an inference, unfavourable to a party, can be drawn under section 114 (g), there are certain conditions preliminary to the inference. It is humbly submitted that the respondent's case is not established on the statement of the guard rather on the theory of last seen together which has been substantially proven by the testimonies of other witnesses on record. In the instant case the guard is neither an eye witness to the incident nor would have unfolded the respondent's case or could have thrown light on the matter in question if his testimony as a witness would have been taken into record.<sup>59</sup> Therefore, no adverse inference can be drawn against the prosecution for omission to examine him.<sup>60</sup>
18. Further it is submitted that the appellant asking the court to draw against the respondent an adverse inference of the nature indicated by illustration (g) of section 114 of FEA by reason of the non-examination of the guard by the respondent must lay the foundation for it by eliciting evidence to show that the witness in question was available to the respondent for the purpose

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<sup>55</sup> Kesar v. State of Rajasthan (1988) 2 RLW 196 (Raj).

<sup>56</sup> Ravinder Kumar v. State of Punjab AIR 2001 SC 3570.

<sup>57</sup> Section 43(2) of Newzealand Evidence Act,2006.

<sup>58</sup> Stephen Thomas Hudson v The Queen MANU/NZSC/0106/2011.

<sup>59</sup> Bombay Agarwal Co. v. Ram Chand Diwan Chand, AIR 1953 Nag 154.

<sup>60</sup> State of Maharashtra v. Vithal, 1985 Cr LJ 664.



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of giving evidence at the time of hearing.<sup>61</sup> It humbly submitted that the appellant in the instant case has not brought any evidence to prove the same.

19. It is most humbly submitted that the fact of last seen theory is very well established in the instant case and thus the accused needs to prove and provide sufficient explanation under what circumstances he departed the deceased and if he is not able to give lucid and sufficient explanation about his innocence then the presumption of him being the author of crime becomes even stronger,<sup>62</sup> then the Court can convict the appellant based on the last seen doctrine. The respondent has presented a complete linkage of Cristo with the murder of the deceased i.e. there was an opportunity with him as they were last seen together, he had the motive to do the crime and even other circumstantial evidence like his conduct, non-explanation of the situation to prove his innocence. To this effect reference shall be made to the legal maxim of *et incumbit probatio qui dicit, non qui negat*, meaning that the proof of any particular fact lies on the party who alleges it, not on him who denies it. Under section 106 of FEA when the appellant, instead of denying what is alleged against him, relies on some new matter, the burden lies on him.<sup>63</sup> The circumstances so established exclude every other possible hypothesis except the one proved beyond all reasonable doubt under section 3 of FEA. It is submitted that in the instant case the circumstantial evidence is a close companion of factual matrix<sup>64</sup>, creating a fine network through which there can be no escape for the accused, primarily because the said fact, when taken as a whole, does not permit the respondent to arrive at any other inference but one, indicating the guilt of Cristo.

**ISSUE 2: THE ESSENTIAL INGREDIENTS OF SECTION 299/300 AND 201 OF THE FRISK PENAL CODE HAVE NOT BEEN MET IN THE FACTS AND CIRCUMSTANCES OF THE INSTANT CASE**

20. It is most humbly submitted before this Hon'ble HC that causing of death of a human being by doing an act with the intention of causing death; or with an intention of causing such bodily injury as is likely to cause death; or with the knowledge that the doer is likely by such act cause death is culpable homicide. In a criminal trial it is a duty casted on the prosecution to prove the

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<sup>61</sup> Sir John Woodroffe & Syed Amir Ali, Law of Evidence, (LexisNexis, 21st edn.,2020).

<sup>62</sup> Kishore Bhadke v. State of Maharashtra AIR 2017 SC 279 also see Ashok vs. State of Maharashtra 2015(2)BomCR (Cri)8.

<sup>63</sup> The Frisk Evidence Act, 1872, §8.

<sup>64</sup> Munish Mubar v. State of Haryana AIR 2013 SC 912.

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guilt of the accused beyond all reasonable doubt. In the instant case the prosecution by relying on a cogent chain of circumstance have proved that it is none other than the accused- appellant who had the opportunity to commit the offence u/s 299/300 and 201 of FPC coupled with an engrossed intention to end Lionel's life. The Trial court has appreciated the fact that the cumulative effect of the circumstances is such that it has negated the innocence of the accused and brought the offences home beyond reasonable doubt. The actus reus combined with mens rea of the appellant squarely meet the ingredients of the offences appellant has been charged under. Furthermore, u/s 201 FPC, he has attempted to further false information and has caused disappearance of evidence with an intention to screen himself from legal punishment.

**B.1 Essential Ingredients of offence under Section 299/300 are met, proving the guilt of the accused**

21. In the leading case of **State v. Rayavarapu Punnayya**<sup>65</sup> the apex court stated that “it emerge that whenever a court is confronted with the question whether the offence is “murder” on the facts of the case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such a causal connection between the act of the accused amounts to “culpable homicide” as defined in section 299 FPC. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of section 300, Penal Code is reached. This is the stage at which the court should determine whether the fact proved by the prosecution brings the case within the ambit of any of the four clauses of the definition of the murder contained in section 300. If the question is found in the positive, the offence committed by the accused will amount to murder.
22. It is humbly submitted before this hon'ble court that it is a general proposition of law that following are the two important elements that constitute a crime, from the point of view of the offender are : (1) conduct on his part or act or action as it is known forming the physical act which is objective, and (2) a state of mind or mental element that is blameworthy according to law which is necessarily subjective, usually proved as an inference from the facts and circumstances of a case or with the aid of presumptions, such as that, a man intends the natural consequences of his act.<sup>66</sup> In the instant case Lionel has died due to an injury caused by a hit of a blunt object. Relying on the established chain of circumstance Cristo undertook the physical

<sup>65</sup> State v. Rayavarapu Punnayya, AIR 1977 SC 45.

<sup>66</sup> R v. Sheppard, 1810 R & R 169.

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act of hitting Lionel with a heavy stone on his head, consequently causing him an injury with an intention to cause death. It is submitted that if the probability of death is very great then the requirements of third clause of Sec. 300 are satisfied.<sup>67</sup> This clause speaks of an intention to cause bodily injury which is sufficient in the ordinary course of nature to cause death. The emphasis here is on the sufficiency of the injury in the ordinary course of nature to cause death.<sup>68</sup> The sufficiency is the high probability of death in the ordinary way of nature and when this exit and death ensues and the causing of such injury is intended the offence is murder.<sup>69</sup> In Naga Khan<sup>70</sup> the accused killed a person by striking him one blow on the head with a long and heavy bamboo. The nature of the injury indicated that very great force was used. It was held that although the weapon used was not one that would of necessity cause fatal injury, the force used was so great as to show that the accused intended to cause injury sufficient in the ordinary course of nature to cause death, and that he was guilty of murder. There can be no doubt that Cristo delivering a violent blow with a lethal weapon like a stone on a vulnerable part of the body such as the head must be deemed to have intended to cause such bodily injury as he knew was sufficient to cause death of Lionel.<sup>71</sup>The SC followed in two leading cases<sup>72</sup> that a single blow on the head was held not to fall under section 304 FPC but to fall under clause thirdly of section 300 and observed that these decisions are destructive of the theory that a solitary blow on the head, reduced the offence to culpable homicide not amounting to murder. In this case the fact that the appellant aimed a blow on the head of the deceased with the lathi, would go to show that it was the intention of the appellant to cause the precise injury which was found on the head of the deceased.<sup>73</sup>

23. The counsel for the respondent humbly submits before this hon'ble court that the Intention is one of the most essential elements of the offence of murder. Intention to kill a person brings the matter so clearly within the general principle of mens rea as to cause no difficulty. Intention is a subjective element which is not *ex-facie* present in any conduct. In all cases, the culpable homicide may lead to the inference that the accused intended to cause death.<sup>74</sup> The ingredient, intention in clause (3) of 300 is very important and that gives the clue in a given case whether

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<sup>67</sup> Ratanlal & Dhirajlal, The Indian Penal Code, (Wadhwa Nagpur, 30th edn., 2006).

<sup>68</sup> Mathew Alias Mathachan v. State of Kerala, AIR 1991 SC 1376.

<sup>69</sup> Anda and Ors. v. State of Rajasthan, AIR 1966 SC 148.

<sup>70</sup> Naga Khan v. Emperor, (1922) 23 Cri LJ 111.

<sup>71</sup> Bishnu Charan Das v. State of Orissa, 1985 Cr LJ 1118.

<sup>72</sup> Gudur Dosadh v. State of Bihar AIR 1972 SC 952 and Chahat Khan v. State of Haryana, AIR 1972 SC 2574.

<sup>73</sup> Ratanlal & Dhirajlal, The Indian Penal Code, (Wadhwa Nagpur, 30th edn., 2006).

<sup>74</sup> Ratanlal & Dhirajlal, The Indian Penal Code, (Wadhwa Nagpur, 30th edn., 2006).

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offence involved is murder or not. It is humbly submitted that in the landmark judgement of **Virsa Singh**<sup>75</sup> the test laid down for the applicability of clause thirdly has become part of the rule of law. Under clause thirdly of section 300 culpable homicide is murder if both the following conditions are satisfied that is, (a) that the act which causes death is done with the intention of causing death or is done with an intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. In the instant case the injury found to be present on Lionel's dead body was the injury intended to cause death of Lionel. Thus, according to the rule laid down in **Virsa Singh case** even if the intention of the accused is limited to the infliction of bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death the offence would be murder.<sup>76</sup>

24. It is most humbly submitted that in the instant case Cristo's conduct prior to hitting Lionel to death, fairly points towards his intention to kill. Despite running out of money to carry out his daily chores, Cristo insists Lionel on his repeated denials to accompany him for dinner late at night. While returning back to their home it was Cristo who suggested Lionel to take a halt to smoke a cigarette in an isolated place where he could possibly commit his murder without coming into notice of any third person. Cristo's statement to the police and in the trial court to leave in hurry goes contrary to all his prior conduct. Intention cannot be drawn categorically however, can only be gathered from the conduct and circumstantial evidence in the present case. It is humbly submitted that the trial court has duly taken note of presence of intention from the injury Cristo has caused<sup>77</sup>, weapon used to commit the offence and above all Cristo's highly suspicious conduct to further his ultimate intention to cause death of Lionel.

**B.2 Essential elements of Section 201 FPC are well founded in the conduct of Cristo with an ulterior motive to screen himself from legal punishment**

25. It is humbly submitted that the ingredients of an offence u/s 201 FPC are four-fold. Firstly, there must be some offence that had already been committed; secondly, it must be proved that the accused knew or had reason to believe the commission of that offence; thirdly, he gave information relating to that offence, which he then knew or believed to be false and fourthly, the same was done with an intention of screening the offender from legal punishment. Giving

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<sup>75</sup> Virsa Singh v. State of Punjab, AIR 1958 SC 465.

<sup>76</sup> Abdul Waheed Khan v. State of Andhra Pradesh (2002) 7 SCC 175; Ruli Ram v. State of Haryana, AIR 2002 SC 3360.

<sup>77</sup> Rajwant and Anr. v. State of Kerala, AIR 1966 SC 1874.

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information respecting an offence which the informant knew to be false or believed to be wrong with a view to screen the offender is an offence and the offender is guilty u/s 201 FPC. Assuming that an offence was committed, and that there is an offender awaiting justice, the next thing which the prosecution has to prove, for invoking the provisions of this section, is that the accused knew, or had reason to believe, that an offence had been committed.<sup>78</sup>

26. It is humbly submitted that in the instant case the appellant was the last person to be seen with Lionel before his death. He was out with him late at night and he suddenly disappeared right after parting appellant's company. The condition Lionel was found in, the injury sustained by him and PM report about the injury explicitly disclose that he was dead due to a hit on his head. Circumstantial evidence of the case in hand, is complete and sufficient to lead to a conclusion that accused had culpable involvement in murdering his friend and getting rid of the evidence (the stone). Furthermore, on information sought by Lionel's parents and later the IO, the appellant furthered false information about him parting the company of Lionel. The investigating report disclose that the appellant threw the stone, employed to hit Lionel on his head in the nearby stream to screen the offence he committed with an intention to jeopardise the proceedings and not bring justice to the victim in the present case.
27. Furthermore, it is submitted that in a SC case there was dearth of evidence to show that accused caused the death of the victim, but there were un-impeccable circumstances to show his eagerness to cause disappearance of evidence of murder. The SC convicted the accused for having committed the offence punishable under section 201.<sup>79</sup> In another judgement of Ranjeet Kumar Jha v State of Bihar<sup>80</sup> there was reliable evidence that the accused-appellant was last seen in the company of the deceased. Half burnt discarded clothes of the accused were recovered by the police. The alibi taken by the accused-appellant was not established and appellant was convicted for offence under section 201 and 302, FPC. In the instant case the recovery of the Lucky Strike Box from the possession of appellant distinctly points towards the fact that Lionel was in the company of the appellant shortly before he died. It is humbly submitted that the appellant had also pointed to the spot where he dumped Lionel's dead body and recovery of the body of a person murdered, on its being pointed out by the accused, would be very strong evidence of an offence under this section.<sup>81</sup>

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<sup>78</sup> Nanhe Singh v State of Uttarakhand, 2012 Cr LJ 3128 (Utr).

<sup>79</sup> Ram Dahin Singh v. State of UP, AIR 1971 SC 2013.

<sup>80</sup> Ranjeet Kumar Jha v. State of Bihar 2012 Cr LJ 759.

<sup>81</sup> Ramkishan Mithanlal Sharma v. State of Bombay, AIR 1955 SC 104.

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28. The counsel humbly submits that in the instant case, this has been cogently established that before being found dead Lionel was out with the appellant for having dinner and took a halt in an isolated area to smoke on the insistence of the appellant. Further, the appellant's stand about him parting the company of the deceased in the trial is largely groundless without any bona fide explanation. To the similar effect are the observations of the apex court in *Mohibur Rahman and Anr. v State of Assam*.<sup>82</sup> It has been held in the preceding case that accused's failure to offer any reasonable explanation of any of the inculcating circumstances would be sufficient to conclusively point to the commission of the alleged offence by the accused. Lastly, it is humbly submitted that in the case of *Mani Kumar Thapa v State of Sikkim*<sup>83</sup> the hon'ble SC has held that where the accused gives false answers to the questions under section 313, FCrPc, the court will have to proceed on the basis that the accused has not explained the inculcating circumstances established by the prosecution against him and such failure to explain would form an additional link in the chain of circumstances.

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<sup>82</sup> Mohibur Rahman and Anr. v. State of Assam, (2002) 6 SCC 715.

<sup>83</sup> Mani Kumar Thapa v State of Sikkim AIR 2002 SC 2920.

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**PRAYER**

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WHEREFORE IN THE LIGHT OF THE ISSUES RAISED, ARGUMENTS ADVANCED AND AUTHORITIES CITED, IT IS HUMBLY PRAYED THAT THIS HON'BLE COURT MAY BE PLEASED TO:

To uphold the impugned judgement/order as furthered by the Trial Court of District Calumny convicting the appellant under section 299/300 and 201 of Frisk Penal Code on the ground that:

1. Prosecution herein the Respondent has established its case against the accused beyond reasonable doubt and;
2. The ingredients of offence under section 299/300 and 201 of Frisk Penal Code are clearly made out.

And pass any order, direction or relief that this Hon'ble Court may deem fit in the interests of justice, equity and good conscience.

All of which is humbly prayed,  
Counsels for the Respondent.