URN: 1825

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 *for* RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF FACTS

BACKGROUND: The accused-appellant, Cristo had moved to the state of Killdare located in a developing country of Frisk. The appellant befriended the deceased, Lionel in the University of Frisk. The two were part of the football team but Lionel was the leading goal-scorer while Cristo was put in the reserves for every game despite being the main player in the teams of his previous academic institutions. Further, Lionel routinely lent money to Cristo. Of late when Lionel approached Cristo to fulfil the debt, Cristo expressed that he was unable to do so. Lionel kept reminding Cristo of the debt.

THE INCIDENT: Late one night, Cristo called Lionel and insisted they go out for dinner. Despite his initial hesitation, Lionel gave in to Cristo's insistence and the two went to Bob's Butchery. On their way back, Cristo suggested that they make a stop in an isolate place to smoke. The deceased was known to carry an imported pack of cigarettes called Lucky Strike. Lionel did not return home that night. On the following day, the police found Lionel's body in a narrow ditch; in an isolated area, a few blocks from Lionel's home. His parents identified the body and stated that all his belongings seemed to be on him. Later that day, the police questioned Cristo at his home.

THE INVESTIGATION: Cristo stated to the police that he had dropped the deceased a few blocks from his home and hurried back home before the colony guard closed the main gate of his residential complex for the night. The colony guard revealed that the entry point to the appellant's complex that allowed the entry of motorcycles remained open through the night. The existence of debt was also disclosed to the police by common friends of Cristo and Lionel and thereby the appellant was taken for questioning. Cristo disclosed that he murdered Lionel on account of jealousy and debt. He also disclosed that he hit Lionel with a heavy stone which he then threw in a nearby stream. To this extent, Cristo identified the spot where he dumped Lionel's body and the police also recovered a packet of Lucky Strike from Cristo's room. In addition to the identification by Ms. Antonella (waitress at Bob's Butchery), Mr. Pique (toll booth operator), one Mr. Chancerton also confirmed seeing the two boys arguing at the spot where the body was recovered. Investigation report was created and Trial began.

THE TRIAL COURT PROCEEDINGS AND THE APPEAL: The testimonies of Coach Jose, Mr. Kun and Sergio were held to establish and confirm motive. Ms. Antonella, Mr. Pique and Mr. Chancerton identified Cristo in court. The Investigating Officer restated the contents of the investigation report and displayed corroborating documents. He added that no independent

witnesses or public persons were present during preparation of memo at night. As for the defence, the accused merely reiterated that the deceased chose to be dropped off a few blocks from his home. No other defence evidence was led by him. The Trial Court held that the case had been proved beyond reasonable doubt. Cristo was held liable under Section 302 and 201. Cristo appealed the decision on the ground of failure to establish the essential ingredients of Section 299/300 of the Frisk Penal Code and contented that chain of events was not established beyond reasonable doubt.

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

ISSUE 1: THAT 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

It is submitted that the essential ingredients of Section 299/300 of the Frisk Penal Code have been satisfied. To this extent, the respondent established that the appellant had motive and intention to murder the deceased. It is established that the appellant owed money to the deceased and was jealous of him. The kind of injury sustained by the deceased indicates pre-conception. Further, as deposed by the witnesses, the deceased was last seen in the company of the accused. The proximity of this circumstance to the recovery of the body was so negligible that it is impossible that any other individual could have committed the crime. Subsequently, it is established that the facts and circumstances do not invite any of the exceptions under Section 300.

ISSUE 2: THAT THE TRIAL COURT CORRECTLY APPLIED THE APPLICABLE TEST OF PROVING FACTS 'BEYOND ALL REASONABLE DOUBT'

It is submitted that the present case is one of circumstantial evidence and the respondent has satisfied the standard of proof in accordance with the five golden principles of circumstantial

evidence. The circumstances relied upon by the prosecution conclusively establish an unbreakable chain of circumstances that is consistent *only* with the guilt of the accused.

ARGUMENTS ADVANCED

I. THAT THE PROCEEDINGS OF THE TRIAL CANNOT BE VITIATED ON ILLEGALITY AND INCOMPETENCY

It is submitted that the accused-appellant was rightly convicted by the Trial Court under Section 302 and 201 of the Frisk Penal Code, 1860 ('FPC'). The instant case is based on circumstantial evidence that placed a greater degree of burden on the prosecution before the Trial Court. During the Trial proceedings the respondent had proved the single chain of circumstances that incriminate the appellant beyond reasonable doubt. No substantial evidence was led by the appellant to indicate his innocence, which further credited the case to the prosecution.

It has been observed by the Supreme Court that the Trial Court is the best place to holistically appreciate the demeanour of witnesses and evidence on record.[1] Further, the Supreme Court has persistently reiterated that the conviction by the Learned Trial Court immunizes the accused from his presumption of innocence before the Appellate Court.[2] It is well-settled that the miscarriage of justice can also arise from the acquittal of the guilty.[3] The respondent pleads that the appellant should not be granted presumption of innocence as the appreciation of evidence by the Trial Court remains substantial in the eyes of law and should act as a cornerstone for High Court's appellate powers.[4]

II. THAT THE TRIAL COURT HAS CORRECTLY APPLIED THE TEST OF PROVING FACTS 'BEYOND ALL REASONABLE DOUBT'

The standard of beyond all reasonable doubt is defined as one that need not reach certainty but carries a high degree of probability.[5] To constitute a reasonable doubt, a doubt cannot be trivial, imaginary or a mere possibility, instead it must be premised on reason and common sense and must be free of any abstract speculation.[6]

---

[1] *State of Gujarat v. Bhalchandra Dave* (2021) 2 SCC 735.
[2] *Mujendra Langeshwaran v. State* (2013) 3 SCC (Cri) 266; *G Parsavnath v. State of Karnataka* (2010) 8 SCC 593.
[3] *Shivaji Sahabrao Bobade & Others v. State of Maharashtra* (1973) 2 SCC 793.
[4] *Shakuntala Shukla v. State of U.P*. (2021) SCC OnLine SC 672.
[5] Ratanlal & Dhirajlal, *The Law of Evidence* (27th edn, LexisNexis 2019) 173.
[6] *State of MP v. Dharkole* (2004) 13 SCC 308.

The Supreme Court in *Hanumant v. State of Madhya Pradesh*[7] laid down the golden principles which have to be established to prove the case beyond reasonable doubt, when a case is based on circumstantial evidence. Firstly, the circumstances relied upon to establish guilt must be fully established. Secondly, these facts that have been established must exclude every other hypothesis except the one consistent with the guilt of the appellant. Thirdly, the facts must be of a conclusive nature and tendency. Fourthly, the circumstances must form a complete chain of events that incriminates the appellant beyond all reasonable doubt.

It is submitted that the evidence put forth by the prosecution-respondent proves beyond reasonable doubt, a chain of evidence that is consistent only with the guilt of the appellant. Each circumstance has been conclusively established and allows only the inference of guilt on part of the appellant. The independent merit of each circumstance in the chain of evidence is analysed below.

2.1 MOTIVE ON THE PART OF THE APPELLANT IS ESTABLISHED

Motive induces a person to act in a certain way.[8] It is recognised that motive alone is not sufficient to impose criminal liability but remains a relevant factor in forming intention.[9] In the cases of circumstantial evidence, it was observed that an enquiry into motive presumes prime importance.[10] In the instant case, motive is highlighted through two circumstances-

i. The appellant owed money to the deceased; and

ii. The appellant was jealous of the deceased

The testimonies of Mr. Kun and Mr. Sergio along with Mr. Jose, jointly prove the existence of a loan and jealousy[11] on part of the accused-appellant thereby establishing his motive to commit the murder.

Motive is not judged on its seriousness or adequacy, given that atrocious crimes have been committed for very insignificant gains as well.[12] An unsettled monetary transaction such as a debt between the deceased and the accused has been held sufficient to prove that a mental

[7] *Sharad Birdhi Chand Sarda v. State of Maharashtra* (1984) 4 SCC 116; *Hanumant v. State of Madhya Pradesh* (1952) 1 SCR 1091.
[8] *State v. Willis* (1982) 632 S.W.2d 63.
[9] *Basdev v. The State of Pepsu* AIR 1956 SC 488; K.D. Gaur, *Textbook on Indian Penal Code* (7th edn, LexisNexis 2020) 119; Batuk Lal, *The Indian Evidence Act* (Central Law Agency 2018).
[10] *Nath Uni v. State of Bihar* (1998) 9 SCC 238.
[11] The K.K. Luthra Memorial Moot Court 2022, Statement of Facts 4 para 11(viii).
[12] *R v. Palmer* [1886] 115 N.Y. 506.

element existed to cause murder[13] Thus, under Section 8 of the Frisk Evidence Act 1872 ("FEA"), the existence and non-repayment of debt owed by the appellant to the deceased is a relevant fact that formulates motive.[14]

Moreover, the appellant's jealousy of the deceased, as established by the testimony of Coach Jose, alludes to strained relations between the parties. A strained interpersonal relationship between parties, as presently found between the appellant and the deceased, has been held to constitute motive for murder.[15]

Thus, the strained relationship between the parties along with the impending debt, established motive on the part of the appellant and the motive so established is relevant under Section 8 of FEA and provides an additional link in the incriminating chain of evidence that establishes the guilt of the appellant.[16]

2.2 THE TESTIMONIES OF THE WITNESSES ARE CREDIBLE BY THE REASON OF DOCK-IDENTIFICATION

The identification evidence of a witness is admissible under Section 9 of the FEA. As a general rule, the substantive evidence of a witness is the statement made in court.[17] The identification before the Trial Court has to be preceded by a Test Identification Parade ("TIP") but there is no provision in the Code which confers a right upon the accused to claim a TIP.[18] The testimony of a witness cannot be discarded or become inadmissible on the ground that no TIP was conducted before the dock identification.[19] Further, in regard to identification of an accused by a witness, the Supreme Court has held that the testimony of a witness in the court constitutes substantive testimony and the identification of an accused in the TIP is only confirmatory of the testimony made before the court.[20] TIP is not obligatory and does not render the identification evidence inadmissible[21] nor is it fatal to the case of the prosecution.[22] Presently, the accused-appellant was identified by three witnesses in the court. The testimonies of these witnesses are established to be credible:

---

[13] Ratanlal & Dhirajlal (n 6) 68.
[14] The Frisk Evidence Act 1872 s 8.
[15] *Sushil Kumar v. NCT of Delhi* (2014) 4 SCC 317.
[16] Evidence Act (n 14) s 8.
[17] *Munshi Singh Gautam v. State of M.P* (2005) 9 SCC 631; *Santokh Singh v. Izhar Hussain* (1971) 2 SCC 75.
[18] *Hari Nath v. State of U.P.* (1988) 1 SCC 14; *Budhsen v. State of U.P.* (1970) 2 SCC 128.
[19] *Harbajan Singh v. State of J&K* (1975) 4 SCC 480; *Jadunath Singh v. State of U.P* (1970) 3 SCC 518.
[20] *State Of Andhra Pradesh v. K. Venkata Reddy & Others* (1976) 3 SCC 454.
[21] *Raju Manjhi v. State of Bihar* (2019) 12 SCC 748.
[22] *Harbhajan Singh v. State of J&K* (1975) 4 SCC 480.

2.2.1 Testimonies of Ms. Antonella and Mr. Pique are Admissible and Credible:

The accused-appellant picked up the deceased from his home and they went to Bob's Butchery where they were seen by Ms. Antonella.[23] When the accused is known to the witness and is identified by the witness in Court, a TIP is not essential.[24] Given that Ms. Antonella was a long serving waitress at Bob's Butchery and it was the favourite eatery of the appellant and the deceased, it can be concluded that the appellant and the deceased were known to the witness and thus a TIP was not essential in her case.[25] The appellant and the deceased left Bob's Butchery and were spotted on the appellant's bike by the toll booth operator Mr. Pique *en route* to the deceased's home.[26] A TIP is required only when the witness does not have a particular reason to remember the appellant.[27] Presently, Mr. Pique deposed that he *particularly* recalled seeing them because they were not wearing helmets.[28] Thus, it can be concluded that Mr. Pique had a specific reason to remember the appellant and a TIP was not required in his case.

Therefore, the credibility of these two witness testimonies cannot be suspected on the ground that a TIP was not held.

2.2.2 Mr. Chancerton's Testimony is Credible:

Mr. Chancerton witnessed the appellant and the deceased at the same isolated place where the body of the deceased was discovered.[29] Mr. Chancerton's dock identification,[30] is corroborated by the receipts of the medical store he was visiting that night.[31] This confirms that the appellant was in the company of the deceased as he did not immediately leave for his house. The Supreme Court observed that the court-identification (dock) of the accused without TIP is admissible if the court finds it trustworthy.[32] The trustworthiness of Mr. Chancerton's testimony is established by the fact that he is an independent witness having no affinity with the deceased and no animosity towards the appellant. Therefore, there is no reason to suspect any falsity in this witness's statement or identification of the accused by way of any personal inducement or

[23] Statement of Facts (n 11) 1-2 para 5.
[24] *State Of Himachal Pradesh v. Prem Chand* (2002) 10 SCC 518.
[25] Statement of Facts (n 11) 3 para 11(vi).
[26] Ibid.
[27] *Malkhansingh & Ors v. State of MP* (2003) 5 SCC 746.
[28] Statement of Facts (n 11) 5 para 12(iv).
[29] ibid
[30] The K.K. Luthra Memorial Moot Court 2022, Queries and Clarifications, A21.
[31] Statement of Facts (n 11) 4 para 11 (viii).
[32] *Musheer Khan v State of M.P.* (2010) 2 SCC 748.

interest. This trustworthy statement would thus not be adversely affected in the absence of a TIP.

2.3 THE DECEASED WAS LAST SEEN WITH THE APPELLANT

The 'Last Seen Theory' functions on the presumption that if the deceased was last seen in the company of the accused right before his death, the accused is said to have caused the death.[33] The presumption becomes conclusive if the existence is corroborated by the surrounding circumstances, relations between the accused and the deceased, non-explanation of death by the accused etc.[34] The Last Seen Theory can be established as:

2.3.1 There was Close Proximity of Time and Place

The intervention in the proximity of time when the deceased and the appellant were last seen alive together and when the deceased was discovered to be dead is of essence.[35] It is submitted that the appellant was in the company of the deceased at the time of the murder as they made a stop to in an isolated place, upon the suggestion of the appellant, on the pretence of smoking without being seen by the deceased's parents.[36] This is corroborated from the fact that the deceased's packet of 'Lucky Strike' Cigarettes was recovered by the police from the appellant's room.[37] Since it was a rare and imported item, the appellant could not have purchased it himself.[38] Thus, it was either stolen from the deceased or given to him by the deceased on the night of the murder indicating their close proximity. The recovery of the cigarettes become relevant under Section 8 as they form part of the appellant's subsequent conduct. [39]

The post-mortem report in the instant case confirmed the time of death to be between 12am to 2am.[40] Further, Mr. Chancerton witnessed the deceased and the appellant together on the same night and at the same spot where the body of the deceased was recovered.[41] This confirms that the time when the appellant departed from the deceased's company was proximate. The time when the appellant departed from the deceased's company is solely in the knowledge of the

[33] *State of Rajasthan v. Kashi Ram* (2006) 12 SCC 254.
[34] *Ashok v. State of Maharashtra* (2015) 4 SCC 393.
[35] *Bodh Raj Alias Bodha v. State of Jammu and Kashmir* (2002) 8 SCC 45.
[36] Statement of Facts (n 11) 2 para 6.
[37] Ibid.
[38] Ibid.
[39] Evidence Act (n 14) s 8.
[40] Statement of Facts (n 11) 3 para 11(iii).
[41] ibid.

appellant, his failure to provide a reasonable explanation forms an additional link in the chain of events towards the establishment of his guilt.[42]

2.3.2 The Appellant Failed to Establish the Plea of Alibi

The Supreme Court observed that the conviction of the appellant last seen with the deceased can be upheld if the accused-appellant is unable to offer any explanation as to circumstances in which he departed from the company of the deceased and there is motive to commit the crime.[43] The motive was established under Part 2.1. Subsequently, The burden of proving the circumstances in which the appellant departed the company of the deceased is on the appellant under Section 106 of the FEA.[44]

The appellant took the plea of alibi[45] and stated that he had dropped Lionel at an isolated spot a few blocks from his home and was in a rush to return home before the closure of the main entry gate of his residential complex.[46] Where the plea of alibi is taken, the burden of proof is on the accused to prove his innocence using the plea[47] and it must be proved with absolute certainty that the accused was absent from the crime scene.[48] Presently, apart from his own statement, the accused-appellant provided no corroborating evidence to suggest that he was absent from the crime scene.[49] In fact, no evidence was led by the appellant in the Trial proceedings.[50] Where the plea of alibi is not proved the Court is entitled to draw adverse inference against the appellant.[51] The plea of alibi has not been established with absolute certainty and thus, the appellant has failed to prove the circumstances in which he departed the company of the deceased. The failure of the accused-appellant to provide a reasonable explanation under Section 106 forms a strong presumption against him[52] and entitles the court to draw an adverse inference against the appellant on these grounds.[53]

2.3.3. The Present Circumstances Do Not Amount to Fleeting Glance

---

[42] *Bappa Banerjee v. State of West Bengal* (2011) 12 SCC 554; *State of Rajasthan v. Kashi Ram* (2006) 12 SCC 254; Evidence Act (n 14) s 106.
[43] *Surajdeo Mahto v. State of Bihar* (2021) SCC OnLine SC 542.
[44] *Ammu v. State of Maharashtra* (2003) 8 SCC 93.
[45] Evidence Act (n 14) s 11.
[46] Statement of Facts (n 11) 2 para 9.
[47] *Satya Vir v State AIR* 1958 All 746; *State of Haryana v. Sher Singh* (1981) 2 SCC 30; *Shaikh Sattar v. State of Maharashtra* (2010) 8 SCC 430; Evidence Act (n 14) s 103.
[48] *State of Maharashtra v. Narsingrao Gangaram* (1984) 1 SCC 446.
[49] Statement of Facts (n 11) 6, para 13.
[50] ibid.
[51] *Jitender Kumar v. State of Haryana* (2012) 6 SCC 204.
[52]*State of Rajasthan v. Kashi Ram* (2006) 12 SCC 254; *Trimukh Maroti Kirkan v. State of Maharashtra* (2006) 10 SCC 681.
[53] *Satpal Singh v. State of Haryana* (2018) 6 SCC 610.

The Court of Appeal in the United Kingdom case of *R v Dossett* (2013)[54] has given a narrow interpretation of fleeting glance. It held that, taking in a person's features was an instinctive process and was separated from conscious mental processes.[55] It was also held that it is not necessary to look at an individual's face for long to gauge their essential features, especially when there is good reason for it to be imprinted on the mind of the observer.[56] The quality of such an observation was held good enough to constitute an identification.[57] The loud heated conversation between the two boys[58] acted as a good enough reason to draw Mr. Chancerton's attention, at that late hour of the night, to the isolated spot where the appellant and the deceased were standing and led him to accurately take in their essential features such as age and gender[59]. Thus, his identification of the appellant by Mr. Chancerton cannot be classified as a fleeting glance and is an independent witness as conclusively established circumstances.

2.4 THAT THE ACCUSED HAD INTENTION TO MURDER THE DECEASED

Intention is the purpose or design with which an act is done.[60] In *R v Moloney*, it was observed that the foresight of the consequences of the actions by the accused can be admitted to infer intent of the offender.[61] In the present case, the post mortem report indicated that the deceased died as a consequence of a head injury. An injury on the head of the deceased signified that the appellant was in-fact aware of his actions because the nature of the injuries found on the body of the deceased are of determinative significance.[62] The Supreme Court reiterated that the nature of weapon used and vital part of the body where the injury was caused prove beyond reasonable doubt the intention of the accused to cause death of the deceased.[63] It was held that when death is caused by a single blow on vital part of the body, the accused can be charged with murder under the Penal Code.[64]

Such as in the instant case, the injury on the head of the deceased implied the intention to murder the deceased. To this extent, it is established that the appellant caused a head injury to the deceased with an intention of causing murder.

---

[54] *R v. Steven Edward Dossett* [2013] EWCA Crim 710.
[55] ibid.
[56] ibid.
[57] ibid.
[58] Statement of Facts (n 11) 4 para 11(viii).
[59] Statement of Facts (n 11) 4 para 11(viii).
[60] CJ M Monir, *Commentary on the Indian Evidence Act, 1872* (14th edn, Universal Law Publishing 2021) 589.
[61] *R v Moloney* [1985] AC 905 (HL).
[62] *Krishna Mahadev Chavan v State of Maharashtra* 2021 SCC OnLine Bom 191.
[63] *Arun Raj v Union of India* (2010) 6 SCC 457.
[64] *State of Madhya Pradesh v Kalicharan & Ors* (2019) 6 SCC 809.

2.5 NO ADVERSE INFERENCE CAN BE DRAWN FROM THE GUARD BEING DROPPED AS A WITNESS

In the initial enquiries of the police, the guard of the residential complex had revealed the existence of a gate of the complex that was perpetually open and allowed the movement of motorcycles thereby disproving the excuse of the appellant that he had to get back in time for the closure of the main gate.[65] While the guard was dropped as a witness,[66] the Trial Court had the discretion to not take any adverse inference from the same under Section 114(g) of FEA. [67]

There is no general rule that every witness must be examined[68] and the prosecution-respondent need not produce multiple witnesses to the same point.[69] As stated above, the burden of proving the circumstances in which the appellant parted the company of the deceased is on the accused-appellant and not on the prosecution-respondent.[70] To this end, the prosecution-respondent has already reasonably established that the appellant failed to provide an explanation in Part 2.3.2 and has also established the presence of the appellant at the crime scene in Part 2.2.2. Thus, the need for the guard to corroborate this point is eliminated and would result in a multiplicity of witnesses to the same point. Even the Trial Court did not choose to use its power to draw an adverse inference given that there were no facts or circumstances that could justify the same. The appellant was free to examine the witness as its own[71] but no defence evidence was led by the appellant in the Trial[72] which allows the inference that the appellant too, did not choose to examine the guard.

2.6 THE ABSENCE OF INDEPENDENT WITNESSES DURING THE PREPARATION OF MEMOS DOES NOT INVALIDATE THE INVESTIGATION

In his deposition, the investigating officer stated that no independent witnesses were present during the preparation of the memos.[73] The Code of Criminal Procedure ('CrPC') provides that the report on the recovery of a dead body and the memo on the recovery of an item seized during a search under Section 174(1) and Section 100(4), respectively, must be made in the presence of two respectable inhabitants of the locality.

---

[65] Statement of Facts (n 11) 2 para 9.
[66] Statement of Facts (n 11) 6 para 12(viii).
[67] *Harpal Singh v. Devinder Singh & Anr* (1997) 6 SCC 660.
[68] *Masalti v. State of UP* AIR 1965 SC 202.
[69] *Banti v. State of MP* (2004) 1 SCC 414.
[70] *Ammu* (n 44) 93.
[71] *Banti v. State of MP* (2004) 1 SCC 414; *Bir Singh & Ors v. State of U.P*. (1977) 4 SCC 420.
[72] Statement of Facts (n 11) 6 para 13.
[73] Statement of Facts (n 11) 5 para 12(viii).

With respect to Section 174, the term 'there' in Subsection 1 suggests that the inquest must be held at the spot where the dead body is found.[74] The investigating officer explained that no public persons were available given that the memos were prepared at night.[75] Given that the spot where the body was recovered was an isolated area[76] and the memo was prepared at night,[77] it is a reasonable possibility that no individual in the locality could make themselves available for this purpose. Public witnesses may not be joined but the effort to join them must be there[78] and the explanation of the officer implies that there were attempts made to join independent witnesses but there was no public person available given the lateness of the hour. Moreover, in a country such as Killdare, with one of the lowest populations in the world,[79] it is presumably difficult to find one witness, let alone two, that too at night time.

Any defect in the investigation or omission on part of the investigating officer, cannot be used to the benefit of the accused.[80] The Court cannot begin with the presumption that the police findings are unreliable, instead, the opposite should be presumed.[81] It is also presumed that the official acts of police have been regularly performed[82] and in the event that there is an irregularity or illegality in the investigation, it does not cast doubt on the alleged hypothesis nor can the trustworthy and reliable evidence be set aside to record acquittal on that account.[83] Additionally, with respect to Section 100(4), the presumption that a person acts honestly extends to police officers as well[84] and the case cannot be doubted on the sole ground that no public witness was joined.[85] It is also submitted that such an investigative defect constitutes a harmless error under the *harmless error doctrine*.[86] In American jurisprudence, a harmless error under the doctrine is one which may be a valid error of law but is not sufficient for the appellate court to reverse the original verdict in favour of the losing party alleging the error.[87] The test was laid down by the Supreme Court of Wyoming to enquire whether a reasonable possibility exists that in the absence of the error, the verdict might have been more favourable

[74] *Vide Kodali Puranchandra Rao v. Public Prosecutor, A.P.* (1975) 2 SCC 570.
[75] Statement of Facts (n 11) 5 para 12(viii).
[76] Statement of Facts (n 11) 2 para 8.
[77] Statement of Facts (n 11) 5 para 12(viii).
[78] *Sadhu Singh v. State of Punjab* (2009) 13 SCC 776.
[79] Statement of Facts (n 11) 1 para 1.
[80] *Sahabuddin & Anr v. State Of Assam* (2012) 13 SCC 213.
[81] *Deyyala Suryanarayana Suribabu v. The State of A.P.* (2021) AP HC Cri App 1035 of 2021.
[82] ibid.
[83] *State of Rajasthan v. Kishore* (1996) SCC (Cri) 646.
[84] *Aher Raja Khima v. State of Saurashtra* AIR 1956 SC 217.
[85] *Appabhai and Anr. v. State of Gujarat* AIR 1988 SC 696.
[86] *Jones v. State* (1987) 735 P.2d 699, 703.
[87] ibid.

to the appellant.[88] Thus, in the present case, the absence of independent witnesses during the preparation of the memos is harmless and not a substantive defect in the investigation that is sufficient to cast doubt on the recovery. Consequently, the same would not materially alter the credibility of the evidence.

2.7 THE RECOVERY OF PACK OF 'LUCKY STRIKE' CIGARETTES FROM APPELLANT'S ROOM IS RELEVANT

On the night of the incident, the deceased and the appellant, on the appellant's suggestion, stopped in an isolated area a few blocks away from the deceased's home to smoke cigarettes[89] It is a well-known fact that the deceased used to carry a rare[90] and imported[91] cigarette packet called Lucky Strike. During the search conducted at the appellant's residence, the Police recovered this pack of Lucky Strike cigarettes which was found to be carefully hidden in a chest in his room.[92] While the deceased's parents deposed that all the belongings of the deceased appeared to be on him,[93] the fact that the appellant and deceased stopped in an isolated area before the deceased's house to avoid being seen smoking by the deceased's parents establishes that the parents of the deceased were not aware of his smoking habit and could not have reasonably pointed out that the packet of Lucky Strike was not on the body of the deceased.

Under Section 8 of the FEA, any property acquired by the accused-appellant in the commission of the crime constitutes subsequent conduct and is thus a relevant fact.[94] Given that the cigarette packet recovered was rare and imported it cannot be inferred that someone in the same debt-ridden[95] position as the appellant could afford to purchase it himself. It also follows from the facts that the last time the accused-appellant and deceased smoked together was the night of the murder.[96] The recovery of the cigarettes in the possession of the appellant being in such close proximity to the last time the appellant and the deceased smoked together suggests that the cigarettes changed hands the last time the appellant was in the company of the deceased, that is, the night of the murder. The subsequent conduct[97] of the appellant hiding the cigarettes,

[88] ibid.
[89] Statement of Facts (n 11) 2 para 6.
[90] Statement of Facts (n 11) 3 para 11(iv).
[91] Statement of Facts (n 11) 2 para 6.
[92] Statement of Facts (n 11) 3 para 11(v).
[93] Statement of Facts (n 11) 2, para 8.
[94] Evidence Act (n 14) s 8 illustration (i).
[95] Statement of Facts (n 11) 1 para 4.
[96] Ibid at 2 para 5.
[97] Evidence Act (n 14) s 8.

an article obtained from the deceased on the night of murder, is relevant for being an incriminating circumstance that places him at the scene of the crime. Thus, the recovery of the cigarettes is a relevant fact in the chain of circumstances that establish the guilt of the appellant under Section 8 of FEA. The recovery of the cigarettes is not only a relevant fact but also a circumstance that establishes that the appellant and deceased stopped to smoke, the cigarettes changed hands on the night of the murder and the appellant then hid them in his room.

2.8 STATEMENTS MADE BY THE APPELLANT WERE VOLUNTARY

During the investigation of the crime, the appellant identified the place where the *corpus delicti* was concealed by him and this is a relevant fact under Section 9 of the FEA.[98] This disclosure by the appellant-accused was made voluntarily and without any compulsion and serves as evidence against him.[99]

It was observed by the Supreme Court in *State of Bombay v Kathi Kalu Oghad* that the mere questioning of an accused in police custody by a police officer resulting in an incriminatory statement is not compulsion.[100] The Court further observed that, for establishing compulsion, the element of 'duress' must be proved to have existed.[101] 'Duress' can be said to have existed, if it can be proved that the appellant was either forced to provide the information "by injury, beating or unlawful imprisonment" or by the 'threat' of death, grievous harm to body, or unlawful imprisonment.[102] Presently, there is no evidence on record to prove that there was any injury or harm caused to the person of the appellant or that he was unlawfully imprisoned by the police. There is also no evidence on record to prove that the police threatened him with death, grievous bodily harm, or unlawful imprisonment to force him to falsely provide incriminating statements out of 'fear' or 'hope'. There is no evidence of use of any extraneous process by the Police to condition the mental state of the appellant to make involuntary and extorted statements. Therefore, there is no evidence on record proving the existence of the element of 'duress' and consequently, it cannot be said that the appellant was compelled by the Police to provide involuntary incriminatory statements.

As already stated above, the very fact that the appellant shared the information in police custody upon 'fierce' questioning is not sufficient to draw an adverse inference as to the nature of the

[98] Ratanlal & Dhirajlal (n 6) 109.
[99] Ratanlal & Dhirajlal (n 6) 110-111.
[100] *State of Bombay v. Kathi Kalu Oghad* AIR 1961 SC 1808.
[101] ibid.
[102] ibid; 'Duress', Jowitt's Dictionary of English Law (2nd edn., Sweet & Maxwell 1977).

questioning and does not inherently or implicitly lead to the conclusion that it was shared out of compulsion.[103] There is no evidence on record to indicate that the nature and duration of the police questioning was such that it excited hope or fear in the appellant to make involuntary statements that he would have remained silent to otherwise and was consequently, oppressive.[104] Therefore, the appellant cannot be said to have been compelled or deprived of his free and voluntary agency of refusing to answer merely because questions were posed to him by the Police in custody.

2.9 NO INFERENCE ABOUT THE PRESENCE OF ANOTHER PERPETRATOR CAN BE ESTABLISHED

In his deposition, the investigating officer stated that petty crimes have been on the rise in Killdare.[105] Petty crimes, however, by definition, are minor crimes[106] such as theft, trespassing or jaywalking.[107] The present petition is on the atrocious crime of murder and thus cannot be relevant for being the occasion, cause or effect of the fact in issue. Moreover, the presence of the accused-appellant in the company of the deceased at the scene of the crime has been established beyond all reasonable doubt by the respondents and does not leave any room for the possibility that a third party could have intervened and caused the death of the deceased.

The respondents allege that given the close proximity of time, motive and the kind of injury that caused the deceased's death point towards the culpability of the appellant. In the given facts and circumstances, it would amount to an imaginary doubt to be casted upon the chain of events. The presence of another criminal is also not corroborated because all the belongings appeared on the deceased indicating that he did not encounter any other criminal.[108] The culpability of the appellant is further corroborated by his intention as established under 2.4.

III. THAT 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

It is submitted that the accused-appellant can be charged with the offence of committing voluntary culpable homicide amounting to murder and causing disappearance of evidence. The

---

[103] ibid.
[104] *R v. Devibe* [2021] NICA 7; *R v. Brown* [2012] NICA; *R v. Corr* [1968] NI 193.
[105] Statement of Facts (n 11) 5 para 12(viii).
[106] 'petty crime' (Collins English Dictionary) <www.collinsdictionary.com/dictionary/english/petty-crime> accessed 25 November 2021.
[107] *Pawan Kumar v. State of Haryana* (1996) 4 SCC 17.
[108] Statement of Facts (n 11) 3.

essential ingredients enlisted under Section 299, 300, and 201 of the FPC have been met in the present facts and circumstances.

2.10 3.1 THAT THE ESSENTIAL INGREDIENTS OF SECTION 299 HAVE BEEN

Homicide is defined as the killing of a human being by another human being.[109] Under Section 299 of the FPC, homicide becomes 'voluntary culpable' when, (i) a human being causes another human being's death; (ii) by committing or omitting an act which he is legally bound to do; (iii) with the intention of thereby causing or knowledge that he is likely to cause the death of any person.[110] In the present case, the post mortem report confirmed that Lionel, the deceased, died after being hit on his head with a blunt object.[111]

3.1.1 That the Appellant Had Pre-requisite Mens Rea Towards Committing the Crime

Mens Rea is the mental element of the crime that formulates the whole essence of the crime.[112] The fact in issue entails the commission of murder with no direct evidence. To this extent, the respondent has conclusively established that:

1. *The appellant had a Motive to Commit Murder:* The motive plays an important role in the present facts and circumstances. The motive as a 'drive force' for the actions of the appellant has been established by placing reliance upon the fact that he was indebted to the deceased and that he was jealous of the deceased. The testimonies of Mr. Kun, Mr. Sergio and Coach Jose became relevant under Section 7 of the FEA which formulated motive under Section 8 of the FEA.
2. *The Appellant was Last Seen with the Deceased:* It has been established through close proximity of time and place that the appellant and the deceased were last seen together by Mr. Chancerton. The testimony of Mr. Chancerton was corroborated by the dock-identification. Further, it was conclusively established that it was not a mere fleeting glance.
3. *The Appellant had Intention to Commit Murder:* It was established that the appellant had intention to murder the deceased. The criminal intent was established through the injury as the deceased died after being hit on the vital body organ, head. The intention

[109] *Halsbury's Laws of England* (4th edn, 2005) vol 2 para 1151.
[110] *Rampal Singh* v *State of U.P.* (2012) 8 SCC 289; The Frisk Penal Code 1860 s 200.
[111] Statement of Facts (n 11) 3 para 11(iii).
[112] *Halsbury's Criminal Law* (5th edn, 2020) vol 21.

being the drive force during the commission of the offence was conclusively established under Part 2.4.

3.1.2 That the Physical and Voluntary Conduct of the Appellant Caused the Deceased's Death

The second essential ingredient to be proven is *actus reus. Actus Reus* is the physical element of the crime which signifies that the voluntary act or omission of the appellant caused a harm condemned under the criminal law.[113] In the cases of circumstantial evidence, the lack of direct evidence enables the reliance to be placed solely on surrounding circumstances.[114] Such as in the present case, the existence of intention of the appellant to commit the offence can be used to establish the element of *actus reus.*

It has been established that the appellant had intention to murder. This also denotes that at the time of the commission of an offence, the accused-appellant was aware about the consequences his actions would result in. Lack of evidence in the favour of the appellant also establishes a link in the chain of events alleged by the respondents.[115]To this end, no evidence was led by the appellant to establish that he had in-fact departed from the company of the deceased immediately after dropping the deceased. The respondents, therefore, submit that given the close proximity of time, the kind of injury that caused the deceased's death and the corresponding intention establish that the physical and voluntary conduct of the appellant caused the deceased's death.

3.1.3 That the Actions of the appellant Resulted in the Unlawful Death of the Deceased

It is submitted that the appellant had premeditated his actions to cause the death of the deceased. Premeditation of an offence if shown to be preceded by preparation gains importance under Section 8 of the FEA.[116] In the instant case, the intention of the appellant has been conclusively established.

The facts indicate that the appellant insisted on having dinner with the deceased despite him being hesitant. On their way back, the appellant deliberately suggested that he and the deceased should stop in an isolated area under the pretence of avoiding being seen smoking by the deceased's parents.[117] At this isolated place the appellant murdered the deceased with a blunt

[113] J.W. Cecil Turner, *Russell on Crimes* (11th edn vol 1 Stevens & Sons Ltd 1958)18.
[114] *Sanjeev v. State of Haryana* (2015) 4 SCC 387.
[115] *Munshi Ram v. Delhi Administration* AIR 1968 SC 702.
[116] *Malkiat Singh v. State of Punjab* (1969) 1 SCC 157.
[117] Statement of Facts (n 11) 2 para 6.

object and threw away the same in the nearby stream. Under Section 8of the FEA these facts become admissible and can be further shown to contain probative force. The probative force of preparation manifestly rests upon the intention to commit the offence which persisted until the power and opportunity were found to carry it into execution.[118] Such as in the present case, the appellant had an intention backed by a motive to murder the deceased.

It can be therefore concluded that by virtue of last seen theory, motive and intention the culpability of the appellant to cause unlawful death of the deceased is established. The facts further indicate that the appellant had pre-meditation to murder the deceased and to that end made preparations of calling him for dinner, stopping at an isolated place.

2.11 3.2 THAT THE ESSENTIAL INGREDIENTS OF SECTION 300 HAVE BEEN MET IN THE FACTS AND CIRCUMSTANCES OF THE INSTANT CASE

Under Section 300 of the FPC, a voluntary culpable homicide under Section 299 of the FPC is murder, unless it falls under any of the mitigating circumstances provided for. As established in 3.1, the essential ingredients of an offence under Section 299 have been met in the present case and consequently, it is submitted that the essential ingredients for an offence under Section 300 have also been met. It is also submitted that the present case does not fall under any of the mitigating circumstances listed under Section 300 and therefore, the appellant is guilty of the offence of voluntary culpable homicide amounting to murder.

3.2.1 That there was No Grave and Sudden Provocation

The phrase "grave and sudden provocation" constitutes an act or series of acts, which, by their very nature, would induce sudden and temporary 'loss of self-control' in a reasonable man so that it can be said that he is no longer master of his own mind.[119] If the appellant had caused the death of the deceased, who had gravely and suddenly provoked him, then this would amount to a voluntary culpable homicide by manslaughter and not murder. The test for grave and sudden provocation as laid down in *K.M. Nanavati v. State of Maharashtra*, *inter alia* requires, that not only should the deceased have provoked the appellant but this provocation must have been 'grave' and 'sudden' and there must be no pre-mediation on part of the accused-appellant.[120]While determining the existence of grave and sudden provocation, "the mental background, created by the previous act(s) of the victim" may also be considered.[121]

[118] *Appu v. State* AIR 1971 Mad 194.
[119] *R v. Duffy* [1949] 1 All ER 932.
[120] *K.M. Nanavati v. State of Maharashtra* AIR 1962 SC 605.
[121] ibid.

The circumstances have to be viewed carefully so as to not extend provocation beyond the limits which the safety of the public requires.[122] It remains an indisputable rule that the mode of resentment must bear some proper and reasonable relation to the provocation given.[123]

Firstly, it has already been established under Part 3.1.3 that the appellant had premeditated the murder of the deceased, given his intention, motive and subsequent conduct to cause the death of the deceased. Mr. Chancerton also deposed that the deceased and appellant were engaged in a heated argument on the night of the murder.[124] However, there is no evidence on record to indicate that there existed any provocation by the deceased that was grave and sudden enough for the appellant to lose his self-control and cause the death of the deceased. Even if it had to be presumed that the deceased demanded the repayment of loan from the appellant on the night of the murder, this cannot be said to be sufficient to have caused any 'sudden' provocation to the appellant. The factual matrix clearly indicates that the appellant was aware of the loan owed to the deceased. Further, it is only natural for a lender to seek the repayment of his loan at the earliest and there is no evidence on record to prove that there existed any prior acts of threat by the deceased for repayment so as to prove a reasonable man placed in a similar footing as the appellant. Therefore, there was no grave and sudden provocation and this is not a case of voluntary culpable homicide amounting to manslaughter and not murder.

3.2.2 THAT THERE WAS NO SUDDEN FIGHT AND HEAT OF PASSION

It is submitted that in-order to bring a case within the exception of sudden fight, three facts have to be proved: (1) sudden fight; (2) absence of premeditation; and (3) absence of undue advantage or cruelty.[125]

Firstly, it has already been established under Part 3.1.3 that the appellant had premeditated the murder of the deceased, given his intention, motive and subsequent conduct to cause the death of the deceased thereby failing to satisfy the essential ingredient of this exception. While Mr. Chancerton saw the appellant and the deceased engaged in a 'loud heated conversation,' the suddenness of the quarrel cannot be determined. The mere existence of a quarrel is not sufficient to attract Exception 4.[126] Further, there is no evidence on record to indicate that the deceased was armed and as established in I.1.3, there is no evidence of any threat by the

[122] *Ulla Mahapatra v. King* AIR 1950 Ori 261, 264.
[123] ibid.
[124] Statement of Facts (n 11) 4 para 11 viii.
[125] *Radhey Shyam And Another v. State of U.P* (2005) 53 All. HC 138; *P.P. v. Chan Kim Choi* (1989) Singapore Supreme Court 404.
[126] *Samuthram alias Samudra Rajan v. State of Tamil Nadu* (1997) 2 Mad 185.

deceased either on the night of the occurrence or prior to that.[127] In such circumstances, it cannot be said that the voluntary culpable homicide by the appellant was without premeditation in a sudden fight in the heat of passion upon a sudden quarrel.

3.2.3 THAT THE RIGHT OF SELF-DEFENCE DID NOT ARISE IN THE PRESENT CASE

The appellant can be said to have acted in exercise in good faith of the right of private defence of his person when, in the absence of any aid from the State machinery, he suddenly faces an attack to his person or property and for the purposes of defending the same, inflicts necessary harm on the attacker.[128] However, it is a settled law that the right to private defence cannot be claimed by the appellant, if disproportionate harm has been caused, while defending himself or his property.[129] Presently, there is no evidence on record to prove that there was any threat of harm to the person or property of the appellant by the deceased, let alone one justifying causing the death of the deceased as a proportionate harm. It can be therefore concluded that none of the exceptions under Section 300 of the FPC are applicable and the appellant was rightly charged with the offense of voluntary culpable homicide amounting to murder.

2.12 3.3 THAT THE ESSENTIAL INGREDIENTS OF SECTION 201 HAVE BEEN MET IN THE FACTS AND CIRCUMSTANCES OF THE INSTANT CASE

For the appellant to be convicted of an 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.[130] Alternatively, he must, with the same intention, provide information respecting the offence which he knows or believes to be false.[131] Presently, as established in Part 3.2, the appellant committed the offence of voluntary culpable murder amounting to murder under Section 300 of the FPC. Consequently, there exists an offence that has been committed. Further, the Supreme Court has held that Section 201 of FPC is applicable not only to third persons who screen the offender, but the actual offender themselves.[132] Since it is established that the appellant committed the said offence under Section 300 of the FPC himself, it can reasonably be concluded that the appellant had knowledge of the offence committed.

---

[127] *Narayanan Nair Raghavan Nair v. State of Travancore-Cochin* AIR 1956 SC 99; *Umar Khushal v. Emperor* AIR 1940 Pesh 1.
[128] *Darshan Singh v. State of Punjab* (2010) 2 SCC 333.
[129] *Bhanwar Singh v. State of Madhya Pradesh* (2008) 16 SCC 657.
[130] *V L Tresa v. State of Kerala* (2001) 3 SCC 549.
[131] *V L Tresa v. State of Kerala* (2001) 3 SCC 549; The Frisk Penal Code 1860 s 201.
[132] *Kalawati v. State of Himachal Pradesh* AIR 1953 SC 131.

The appellant then deliberately and knowingly threw away the murder weapon used in the commission of the offence in a nearby stream to cause the disappearance of evidence related to the offence of murder committed by him, to protect himself from legal punishment under the FPC. Further, the body of the deceased was disposed of by the appellant in a narrow ditch in an isolated area. Additionally, the appellant also provided false pleas regarding the circumstances in which he departed the deceased's company. This is because the factual matrix clearly indicates that it was upon the appellant's suggestion and pre-meditation that he and the deceased stopped in an isolated area a few blocks before the deceased's house on the pretence of smoking cigarettes without getting seen by the deceased's parents. The appellant then deliberately, knowingly, and carefully hid the deceased's rare 'Lucky Strikes' cigarette packet in his room. The statement provided by the Guard in the appellant's residential complex about there being a smaller entry gate open for motorcycles[133] also proves that the information provided by the appellant about having to rush home for fear of the gate closing is false.

To this extent, it is also submitted that the recovery of the murder weapon used in the commission of the offence is not a *sine qua non* for a conviction of the appellant.[134] Therefore, the non-recovery of murder weapon in the present case cannot exempt the appellant from the liability of murder and causing the disappearance of the murder weapon and the surrounding circumstances indicate the guilt of the appellant.

It is therefore concluded that in the light of these circumstances and evidence on record, it is fully established that all the essential ingredients of an offence under Section 201 of the FPC have been met and the appellant was rightly convicted by the Trial Court under this section for causing disappearance of evidence of offence under Section 300 of FPC and for giving false information to screen himself.

[133] Statement of Facts (n 11) 4 para 11 vii.
[134] *Rakesh v. State of U P* (2021) 7 SCC 188.

PRAYER

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

1. The circumstances of the present case satisfy the essential ingredients of Section 299/300 and 201 of The Frisk Penal Code, 1860. and uphold the Trial Court conviction of Cristo under Section 302 and 201 of The Frisk Penal Code 1860.
2. That the facts and circumstances of the case establish the guilt of Cristo beyond reasonable doubt and the Trial Court had correctly applied this test while convicting the accused-appellant.

AND PASS ANY OTHER ORDER, DIRECTION, OR RELIEF THAT IT MAY DEEM FIT IN THE INTEREST OF JUSTICE, FAIRNESS, EQUITY AND GOOD CONSCIENCE

All of which is humbly prayed,

URN 1825

Counsels for the Respondent