

Court No. - 43

Case :- CRIMINAL APPEAL No. - 186 of 1993

Appellant :- Ram Bharosey And Others

Respondent :- State of U.P.

Counsel for Appellant :- Apul Misra,Devendra Pratap

Counsel for Respondent :- A.G.A.,Ashvani Tripathi,Brijesh Sahai(Senior Adv.),Jai Singh Yadav,Jitendra Singh,Pradeep Kumar Mishra,Raghuvansh Misra

Hon'ble Vivek Kumar Birla,J.

Hon'ble Mohd. Azhar Husain Idrisi,J.

1. Heard Shri Apul Mishra alongwith Shri Vivek Shukla, learned counsel for the appellants, Shri Vinay Saran, learned Senior Counsel assisted by Shri Pradeep Kumar Mishra, Shri Ashvani Tripathi, learned counsel for the informant as well as Shri Rahul Asthana, learned AGA for the State of U.P. and perused the record.

2. Present Criminal Appeal is being preferred against the judgment and order dated 28.01.1993, passed by learned Additional Sessions Judge/Special Judge E.C. Act, Budaun in Sessions Trial No.176/87 convicting and sentencing the appellants- Ram Bharosey and Bankey with life imprisonment, under Section 302 read with section 149 IPC and 5 years Rigorous Imprisonment, under Section 148 IPC, and appellants- Shishu Pal, Yogendra, Bhup Singh, Shiv Lal and Ashok alias Rohtash are sentenced for life imprisonment under section 302 IPC read with Section 149 IPC and 3 years Rigorous Imprisonment under section 147 IPC.

3. Vide order dated 05.03.2025 the appeal stood abated in respect of appellant no.1-Ram Bharosey son of Vikram Singh and Appellant no.5-Shiv Lal son of Kundal Singh. Now the appeal is surviving only in respect of appellants no.2- Shishupal son of Latoori Singh, appellant no.3-Yogendra son of Latoori Singh, appellant no.4-Bhoop Singh son of Mahendra Singh, appellant no.6-Bankey son of Nita and appellant no.7-Ashok alias Rohitash son of Ragubir Singh.

4. The prosecution story, in brief, is that the complainant-Durwasa, resident of village Raipur married Babu Singh resident of Kurrao, police station Ujhani. The complainant was the sole daughter of her parents. The parents of the complainant had already expired due to which the entire movable and immovable property were inherited by Durwasa, due to which the other family members of the father of Durwasa had an enmity because they were in search to usurp the landed property inherited by Durwasa, but they could not succeed in their aims. Hence Bhoop Singh and others used to remain in search of any opportunity to cause damage to Durwasa and her husband in any manner whatsoever. On 15.04.1984 Babu Singh at about 8.00 p.m. went to attend a Lagun ceremony at the house Ruddar Murao in Village Baholia. After a short distance Chhotey, Ram Bharosey, Shishu Pal, Yogendra, Bhoop Singh, Harinandan Singh, Ashok, and Shiv Lal also followed him accompanying with Bankey Mehtar, who was servant of Bhoop Singh. Out of them Ram Bharosey was armed with his licensee gun, Bankey Mehtar was armed with *Gandasa* and others were armed with *lathis*. The husband of the complainant Babu Singh did not return back to his house till morning. In the morning complainant felt some doubt and sent her son Jogpal Singh to village Baholia to enquire Ruddar Murao in respect of Babu Singh. Ruddar Murao told that Babu Singh did not attend Lagun ceremony. Thus, he could not reach there. Then Jogpal Singh, Dhakan Singh, Udiaivir and Omkar Singh started to make search in jungle (forest) and they found some blood lying at the pathway nearby the field of Thakuri. One empty cartridge was also found there. On further search some fire was seen then all the aforesaid persons reached nearby the fire. When they reached there, they found that one *chita* (pyre) was burning and a frame of spectacle was also lying there. They became certain that Babu Singh has been murdered by aforesaid persons and has been burnt to destroy the evidence of murder. A *Tehrir* was got written by Jogpal Singh upon the instructions of complainant -Durwasa. An F.I.R. was lodged in police station Moosajhag on 16.04.1984 at about 12.15 noon. Thereafter, a case under sections 147, 148, 302 read with section 149 and 201 I.P.C. was lodged in police station and investigation was started by the Investigating Officer who

investigated the matter and after concluding investigation submitted a charge-sheet against the accused persons.

5. The prosecution has examined as many as nine witnesses, namely, Amba Sahai-P.W.1, Sukhpal-P.W.2, Durwasa-P.W.3, Omkar son of Chiraunji-P.W.4, Omkar son of Hameer Singh-P.W.5, Jogpal Singh- P.W.6, Ram Bharosey son of Bheem-P.W.7, Mishri Lal, Retired S.I., I.O.- P.W.8 and Head Constable- Charan Lal Sharma-P.W.9.

6. The prosecution has also submitted documentary evidences, i.e., Written Report- Ext.Ka-1, Chick F.I.R.-Ext. Ka-2, Site-plans-Ext. Ka-3 and Ka-4, Fards (3) Ext.Ka-5 to Ka-8, F.I.R. Ext.Ka-9, Police Report- Ext. Ka-10, Site-plan Ext. Ka-11, Fards (6) Ext. Ka-12 to Ka-16-A. Copy of General Diary- Ext. Ka-17 and Charge-sheets- Ext. Ka-18 and Ka-19. The prosecution has also submitted material exhibits Broken frame of Chashma Ext 1., Bent -Ext- 2, Empty Cartridge- Ext.3, Blood Stained Earth- Ext. 4, Simple Earth Ext. 5, Bones- Ext.6 and Ashes- Ext.7.

7. Submission of the learned counsel for the appellants is that undisputedly it is a case of circumstantial evidence and the chain of circumstances is completely broken, therefore, the accused appellants could not have been convicted for the charges levelled against them. It is further submitted that virtually it is case of no evidence. The trial court has recorded categorical finding that prosecution has miserably failed to prove the charge under Section 201 IPC against accused persons and all were acquitted from the charge under section 201 IPC. Therefore, clearly the murder of the deceased-Babu Singh could not be proved, hence the entire prosecution has proceeded only on incorrect presumption. Further submission is that PW-1- Amba Sahai, PW-2-Sukhpal, PW-4-Omkar son of Chiraunji and PW-5- Omkar son of Hameer Singh turned hostile and the recovery of articles, namely, half-broken frame of spectacle and blood-stained stick (*bent*) allegedly belonging to deceased Babu Singh was also not proved. It is next submitted that although recovery of one empty cartridge, blood-stained soil, bone and ashes from pyre has been shown, however, no weapon was recovered and as such, alleged recovery of empty cartridge (exhibit-6) is of

no relevance. The blood-stained soil was not put to forensic laboratory for chemical examination, and it is, therefore, not known that even such blood was human blood apart from the fact that even the dead body was not recovered and was allegedly burned on pyre. Similarly, recovery of blood-stained stick (*bent*) is also of no relevance as the same was also not put to forensic laboratory for chemical examination. It is further submitted that although PW-8-Investigating Officer, Mishri Lal has stated that the bones and blood were sent to chemical examination, however, there is no such report on record and as such, it was not proved that the bones, ashes or the blood were of alleged deceased Babu Singh, husband of the informant. It is also submitted that there is contradictory statement in respect of motive as the property inherited by the informant is alleged to be the motive to commit the murder whereas the contradictory statement was made by PW-3-Durwasa, informant, who had inherited the property that a suit for partition was filed by her father, however, the same was settled as the accused persons had no objection to the partition. He further pointed out that it has also figured in the statement of PW-6-Jogpal Singh, son of deceased Babu Singh that a suit was filed for partition and shares were demarcated and after partition no other suit was filed. Submission, therefore, is that the motive is also not proved. It is next submitted that the chain of circumstances is completely broken right from the initial stage, therefore, judgment of the trial court convicting and sentencing the appellants-accused cannot be sustained and is liable to be set aside.

8. *Per contra*, Shri Vinay Saran, learned Senior Counsel for the informant submitted that PW-3-Durwasa, informant, has categorically proved the first information report and submitted that when her husband Babu Singh left for village Baholia on the invitation of Ruddar Murao, the accused persons, who were having litigation with the deceased, had followed him. Accused Ram Bharosey was carrying licensee gun, Bankey Mehtar was carrying *Gandasa* and other were carrying *lathis* and PW-3-Durwasa, informant had seen them going after her husband and when she felt scared, she sent her son Jogpal Singh to resident of Ruddar Murao for village Baholia where he found that Babu Singh had not reached there. Thereafter she along with others started

searching her husband and found the blood-stained soil and empty cartridge nearby the field of Thakuri. During search some fire was also seen and when they reached near fire, they found that one *chita* (pyre) was burning and one broken frame of spectacle of her husband was lying there and she had categorically stated that as the litigation was pending between her and accused persons and due to enmity, they have committed murder of her husband and burned his dead body. She has also named the persons who had seen the accused persons going behind her husband and therefore, it is submitted that last seen evidence is proved in clear terms. Learned Senior Counsel, therefore, submitted that the factum that four witnesses have turned hostile is of no consequence. PW-3-informant submitted that police has recovered half-broken frame of spectacles and blood-stained stick of the deceased as well as blood-stained soil, empty cartridge, burnt bones and ashes, therefore, it is proved that murder of Babu Singh had taken place and evidence has also been destroyed by burning the dead body. It is submitted that in the present case, the chain of circumstances is complete and conviction of the accused persons warrant no interference.

9. Shri Rahul Asthana, learned AGA for the State has also opposed the appeal by adopting the arguments advanced by the learned Senior Counsel appearing on behalf of the informant.

10. We have considered the rival submissions and perused the records.

11. The law on the issue that the chain of circumstances must be so complete that there was no escape from the conclusion, that within all human probability, the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence as held by Hon'ble Supreme Court in the case of ***Sharad Birdhichand Sarda vs. State of Maharashtra, 1984 4 SCC 116***. Relevant Paragraphs 153, 154, 155 and 156 whereof are quoted as under:-

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

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

It may be noted here that this Court indicated that the circumstances concerned ‘must or should’ and not ‘may be’ established. There is not only a grammatical but a legal distinction between ‘may be proved’ and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047] “Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

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

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

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

(5) *there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*

154. *These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.*

155. *It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in King v. Horry thus:*

Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for.

156. *Lord Goddard slightly modified the expression ‘morally certain’ by “such circumstances as render the commission of the crime certain”.*

(Emphasis Supplied)

12. The aforesaid legal position is being consistently followed up till now. However, reference to the some of the latest judgments may be noted:-

(i) Anjan Kumar Sharma vs. State of Assam, (2017) 14 SCC 359

(ii) Pradeep Kumar vs. State of Chattisgarh, (2023) 5 SCC 350

(iii) Laxman Prasad vs. State of M.P., (2023) 6 SCC 399

(iv) Abdul Nassar vs. State of Kerala, 2025 LiveLaw (SC) 61

13. A three Judge Bench in *Darshan Singh vs. State of Punjab*, (2024) 3 SCC 164 has held in paragraphs 9 and 37 as follows:-

“9. There is no eye-witness to the incident. The case of the prosecution rests on circumstantial evidence. The normal approach in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion, that within all human probability, the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.

37. Seen in this background, we need not go further and consider the evidence qua other circumstances sought to be proved by the prosecution since the failure to prove a single circumstance cogently can cause a snap in the chain of circumstances. There cannot be a gap in the chain of circumstances. When the conviction is to be based on circumstantial evidence solely, then there should not be any snap in the chain of circumstances. If there is a snap in the chain, the accused is entitled to benefit of doubt. If some of the circumstances in the chain can be explained by any other reasonable hypothesis, then also the accused is entitled to the benefit of doubt.”

(Emphasis Supplied)

14. The same view was taken by several Division Benches of this Court including the case of *Shrinivas vs. State of U.P.*, 2022 (10) ADJ 202 (DB); 2022 SCC OnLine All 87, of which one of us (Justice Vivek Kumar Birla) is a member.

15. The judgment of *Sharad Birdhichand Sarda (supra)* has been considered in the latest judgement of Hon’ble Apex Court in *Abdul Nassar vs. State of Kerala (supra)*, also, wherein the Hon’ble Apex Court has held that courts must adhere to following principles while appreciating and evaluating evidence in cases based on the circumstantial evidence. Paragraph 30 of the said judgment reads as under:-

“30. We deem it essential to enunciate the principles that courts must adhere to while appreciating and evaluating evidence in cases based on circumstantial evidence, as follows:

(i). The testimony of each prosecution and defence witness must be meticulously discussed and analysed. Each witness's evidence should be assessed in its entirety to ensure no material aspect is overlooked.

(ii). Circumstantial evidence is evidence that relies on an inference to connect it to a conclusion of fact. Thus, the reasonable inferences that can

be drawn from the testimony of each witness must be explicitly delineated.

(iii). Each of the links of incriminating circumstantial evidence should be meticulously examined so as to find out if each one of the circumstances is proved individually and whether collectively taken, they forge an unbroken chain consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

(iv). The judgment must comprehensively elucidate the rationale for accepting or rejecting specific pieces of evidence, demonstrating how the conclusion was logically derived from the evidence. It should explicitly articulate how each piece of evidence contributes to the overall narrative of guilt.

(v). The judgment must reflect that the finding of guilt, if any, has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reasonable hypothesis.

(Emphasis Supplied)

16. The trial court has acquitted all the accused persons of the charge under section 201 IPC, their acquittal under Section 201 IPC is not under challenge. This is the first link of circumstances which it is not proved by proving beyond doubt that in fact the bone and ashes recovered from the pyre are of Babu Singh, husband of the informant, allegedly murdered by the accused persons. It may be noted that there was no examination of the blood-stained soil or at least no report is on record although investigating officer, PW-8 Mishri Lal had stated that blood-stained soil was sent for chemical examination. Admittedly, there is no recovery of weapon, therefore, recovery of empty cartridge (exhibit-6) loses its importance as the use of the same in the murder of Babu Singh is also not proved as there was no recovery of any bullet or pellets from the pyre or on the spot. In the absence of murder of Babu Singh having been proved, the charge of murder of Babu Singh is also not proved.

17. The prosecution has sought to prove the murder of Babu Singh by connecting the same with the recovery of half-broken frame of spectacle of right eye and broken blood-stained stick(*bent*) of Babu Singh from the spot. The recovery memo of half-broken frame of spectacle is exhibit Ka-8, dated 16.04.1984. In the first information report, it has been stated that the same was lying near the pyre and it has been shown to have been recovered from

the spot by the Investigating Officer, whereas PW-3-Durwasa, the informant had stated that she had taken away the half-broken frame of spectacle with her from the spot and she had not handed over the same to the Diwanji (Investigating Officer) and that she was not aware who has given the same to Investigating Officer, therefore, recovery of half-broken frame of spectacle of the deceased from the spot also become doubtful.

18. Insofar as the recovery of blood-stained stick allegedly belonging to the deceased Babu Singh is concerned, it was stated by Jogpal Singh, PW-6, son of deceased Babu Singh that there was no specific mark in the stick belonging to Babu Singh. Moreover, the blood-stained stick was also not chemically examined, as such, the recovery of blood-stained stick is not enough to indicate that the body, which was burned on pyre, was of deceased and the accused were involved in the offence.

19. Insofar as the motive is concerned, it is not in dispute that PW-3-Durwasa has received the property belonging to her father by inheritance. In her cross-examination, she has stated that there was no land dispute with the accused persons. She has further stated that her father had filed a suit for partition so that separate shares may be made to which all the accused persons have agreed and no further litigation in this regard with the accused persons have taken place and after death of her father, her name was mutated in the revenue records and the accused persons have not raised any objection in this regard. There was no allegation in the first information report that on the previous night any scuffle took place between the deceased and the accused persons or any other person, however, it was asserted by her and PW-6- Jogpal while making statement that one NCR was lodged in respect of scuffle that had taken place on the previous night on 15.04.1984 and this was the reason that Babu Singh was eliminated by the accused persons. Further, as already noticed earlier PW-6-Jogpal Singh, son of Babu Singh had also stated that after partition shares were demarcated and no other suit was pending. We, therefore, are of the opinion that this story was developed subsequently. The relevant police station is Musajhag, District Budaun whereas the NCR was lodged on 15.04.1984 in a different police station, i.e.,

Police Station Civil Lines, Budaun a copy whereof was handed over to Investigating Officer. We find that in case any such incident had at all taken place just one day before the alleged murder of Babu Singh, this should have been the first fact to have been mentioned in the first information report. Therefore, clearly this story has been developed subsequently to attribute some kind of motive behind the murder of Babu Singh.

20. PW-1-Amba Sahai and PW-2-Sukhpal were stated to be the witnesses of burning of the body of the deceased Babu Singh on pyre by the accused persons. They have denied the same and were declared hostile and nothing came out from their examination. PW-4 Omkar s/o Chiraunji was also declared hostile as he had stated that the police had not brought the accused Bankey in custody/arrest and stick of deceased-Babu Singh was not recovered in his presence. PW-5 Omkar s/o Hameer Singh was also declared hostile. In his cross-examination, PW-6 Jogpal Singh s/o deceased Babu Singh had stated that he along with his brother Alok and mother Durwasa (informant-PW-3) have gone upto the door to see off his father-deceased Babu Singh. However, his real brother Alok was not examined as prosecution witness. It is pertinent to note that Jogpal Singh-PW-6, stated that he had gone to some relation on 16th April and his brother Alok had not gone to the police station for lodging the first information report although he and his brother Alok were present in the village on the date of incident. It is also worth noting that on one hand, allegedly his father was murdered on 15th April whereas on 16th itself after he had gone to the house of Ruddar Murao in village Baholia and found that Babu Singh had not reached there, he returned home and informed his mother about this and thereafter he had left the village to visit some relative, which is absolutely unexpected from a son whose father is missing and he had seen the pyre. Insofar as the recovery of broken spectacles of the deceased is concerned, in his cross examination he has stated that he did not remember as to whether his mother had taken the same to police station, while she had gone for lodging report. He has further stated that the entire body was turned into ashes and certain bones were left but the same was not recovered by the police in his presence. Therefore, nothing came out from his statement to complete the chain of

circumstances. PW-7 Ram Bharosey son of Bhim had stated that he had seen the accused persons abusing Babu Singh and threatening him not to turn his head towards the land in Raipur or he would be killed. He was, however, not the named witness and stated in his cross-examination that he had come on his own to make the statement. PW-8 Mishri Lal, Investigating Officer had stated in his cross examination that the informant never told him that Babu Singh had any dispute/scuffle between the accused persons one day prior to the incident.

21. We have also gone through the statements of accused persons recorded under Section 313 Cr.P.C. Nothing incriminating could be noticed.

22. From the discussion made hereinabove, we are of the opinion that there is absence of the dead body of Babu Singh in the present case. The charge of destroying the evidence was not proved by the prosecution and therefore, the very first link of circumstances is missing and broken; the motive for committing such murder is also missing as once it comes out that her father filed a suit for partition and shares were made and all the accused persons have agreed to the same. The alleged incident of scuffle one day prior to the incident was also not alleged in the first information report, which should have been actually done in case any such scuffle had taken place one day prior to the incident. The recovery of articles, namely, half-broken spectacle and blood-stained stick of Babu Singh from the spot is also doubtful and PW-3-Durwasa in her statement had not referred to the stick in the first information report and in any case, same was not sent for chemical examination and in her cross-examination she admitted that she had taken the broken spectacle frame from the spot and does not know as to who has handed over the same to the Investigating Officer and that she had not handed over the same to the I.O., therefore, recovery of said half-broken frame from the spot is not worth belief. No weapon was recovered, and therefore, the empty cartridge also could not be connected with the offence. We therefore, find that the prosecution has miserably failed to prove its case; the chain of circumstances is not complete in the present case, therefore, judgment of conviction is liable to be set aside.

23. The present appeal is accordingly **allowed**. The impugned judgment and order of the trial court dated 28.01.1993 convicting and sentencing the appellants is hereby set aside and the appellants are acquitted of the all charges levelled against them. Bail bonds are discharged. They need not surrender.

24. Copy of this judgment be sent to the court concerned for necessary compliance.

Order Date :- 6.3.2025

Nitendra