

Neutral Citation No. - 2025:AHC:7578-DB

Court No. - 45

1. Case :- CRIMINAL APPEAL No. - 7002 of 2024

Appellant :- Narendra Singh And 2 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- S.P.S. Chauhan, Smt. Meenakshi Chauhan

Counsel for Respondent :- G.A.

WITH

2. Case :- CRIMINAL APPEAL No. - 1650 of 2020

Appellant :- Lakhan Singh And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- Jitendra Pal Singh Jadaun, Krishna Mohan

Tripathi, Pushpendra Kumar, Ramdhan, S.P.S. Chauhan, Smt. Meenakshi Chauhan

Counsel for Respondent :- G.A., Ganesh Shanker Srivastava

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Dr. Gautam Chowdhary, J.

(Per : Hon'ble Dr. Gautam Chowdhary, J.)

1. The above-captioned appeals have been preferred by the accused-appellants, Narendra Singh, Nagendra Singh, Rupendra Singh (appellants of Criminal Appeal No. 7002 of 2024), Lakhan Singh and Lokendra Singh (appellants of Criminal Appeal No. 1650 of 2020), filed under Section 14A(1) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as, 'SC/ST Act'), against the judgment and order dated 22.01.2020 passed by learned Special Judge, SC/ST (Prevention of Atrocities) Act, Aligarh, in C.C. No. 44 of 2016 (State Vs. Lakhan Singh and another) and C.C. No. 300006 of 2016 (State Vs. Nagendra Singh and others), arising out of Case Crime No. 06 of 2016, under Section 364, 506 I.P.C. read with Section 3(2)(V) of SC/ST Act, Police Station Akraabad, District Aligarh, whereby learned Special Judge, Aligarh has convicted and sentenced all the five accused-appellants to undergo ten years rigorous imprisonment under

Section 364 I.P.C. with a fine of Rs. 10,000/- each and in default of payment of fine three months additional imprisonment was sentenced. Further all the accused-appellants have been convicted and sentenced under Section 3(2)(V) of SC/ST Act to undergo life imprisonment with a fine of Rs. 20,000/- each and in default of payment of fine six months imprisonment was sentenced. All the sentences were directed to run concurrently.

2. In brief, prosecution case is that the informant-Rambeti (P.W.1) moved an application dated 19.11.2015 under Section 156(3) Cr.P.C. before the court of learned Additional Chief Judicial Magistrate, Court No. 7, Aligarh, stating therein that she had solemnized marriage of her daughter namely Rajni with one Harischandra about fifteen years ago. Out of the said wedlock three children namely Km. Muskan, Himanshu and Km. Khushi, were born out, who are now 12, 07 and 03 years, respectively. On 15.05.20215 the informant received a phone call of her daughter-Rajni who informed her that she is going with Lakhan Singh (one of the accused-appellants herein) to Noida for the purpose of employment in a reputed company. On receiving this information, the informant sent her husband to her daughter's house on the same day, who reached there at 4:00 p.m. situated at Dorinagar, where he found accused-appellant-Lakhan Singh, and his sons-Nagendra Singh, Rupendra Singh, Lokendra Singh and Narendra Singh, sitting. The husband of the informant inquired from his daughter as to when they are going to Noida, then all the aforesaid four persons stated that they will arrange employment for his daughter and son-in-law and today they are taking them. On finding his son-in-law, Harishchandra not appearing well, the husband of the informant suspected and asked to take Km. Muskan along with him and tried to talk with his son-in-law, then Rajni informed that he had consumed liquor and is in drunken condition. Thereafter, husband of the informant took Km. Muskan along with him,

to his house. Thereafter, after some time Rajni used to keep calling the informant and whenever the informant asked about her son-in-law then Rajni did not say anything about him and after sometime phone calls did not come. On suspicion, the informant sent her husband to inquire the matter and when he reached at the house of accused persons, he could not find his son-in-law and on making inquiry about him all the accused-persons threatened him for dire consequences by hurling abuses by caste. The husband of the informant tried his best to know whereabouts of his son-in-law but it could not be ascertained. The informant was fully convinced that while her daughter is involving in adultery, she had got disappeared her son-in-law and it is also possible that he might have been murdered and his body has got disappeared by the accused persons because these people are having criminal antecedents and dozens of cases are registered against them in various places. These people have trapped her daughter in their clutches and lives of her daughter's two children Himanshu and Khushi are also in danger because it has also been heard by her that the aforesaid persons are also involved in the smuggling of body parts of human beings.

3. On the basis of above application moved by the informant, the F.I.R. was directed to be registered by the court concerned which came to be lodged on 05.01.2016 as Case Crime No. 06 of 2016, under Sections 364, 506 I.P.C. read with Section 3(2)(V) of SC/ST Act at Police Station Akrabad, District Aligarh, against all the accused-appellants. Chik report (Ext.Ka-3) was scribed by the Head Constable Sharad Kumar and it has been got registered in G.D. entry (Ex.Ka.-04).

4. After registration of the first information report, the site plan (Ex.Ka.-5) was prepared by the Investigating Officer and after recording statements of witnesses the investigation was concluded and charge sheets were forwarded against Nagendra Singh, Lokendra Singh and Rupendra Singh, separately under Sections 364, 506 I.P.C. read with

Section 3(2)(V) of SC/ST Act, whereafter charges were framed against the all the accused-appellants in the aforesaid sections. The accused denied their guilt and claimed to be tried.

5. To bring home the guilt of the accused appellants, the prosecution has produced documentary evidence in the form of application moved by the informant under Section 156(3) Cr.P.C. (Ex.Ka.-1), affidavit of informant (Ex.Ka-2), F.I.R. (Ex.Ka.-3), G.D. Entry (Ex.Ka.-4) and site plan (Ex.Ka.-5), and examined as many as four prosecution witnesses, viz.- informant-Rambeti (P.W.-1) and Dansahay (P.W.-2) who is the husband of informant, and they have supported the prosecution case; Constable Brajmohan (P.W.3) and Hemraj Meena (P.W.4), who are the police personnel and proved police papers.

6. After completion of prosecution evidence, statements of accused-appellants were recorded under Section 313 Cr.P.C. They were confronted with the incriminating evidence adduced against them during the course of trial, which they denied and pleaded innocence and stated that they were falsely implicated due to rivalry. In support of their innocence the accused-appellants also produced documentary evidence in their defence, viz.- application (paper No. 26-Kha/1) along with the copy of statement of P.W.2-Rajni alias Ragini, Case Crime No. 50/17 (State Vs. Monu), under Sections 364, 506 I.P.C. and Section 3(2)(V) of SC/ST Act, Police Station Gandhi Park, District Aligarh (Paper No. 20-Kha/2 including 20-Kha/4), copy of statement of Rajni @ Ragini under Section 164 Cr.P.C. (Paper No. 20-Kha/5 including 20-Kha/7), copy of F.I.R. (Paper No. 20-Kha/8 including 20-Kha/11), copy of application under Section 156(3) Cr.P.C. Police Station Gandhi Park District Aligarh (Paper No. 20-Kha/12 including 20-KhA/14), copy of statement of Ragini under Section 164 Cr.P.C. (Paper No. 20-Kha/15 including 20-Kha/16), copy of statement of Rajni under Section 164 Cr.P.C. (Paper No. 20-Kha-17), copy of report of Police Station Gandhi Park (Paper

No. 20-Kha/18 including 20-Kha/20), copy of order dated 06.12.2016 passed by this Court (Paper No. 20-Kha/21), copy of report of Public Information Officer of District Jail (Paper No. 20-Kha/22) and its envelope (Paper No. 20-Kha/23), copy of F.I.R. of Case Crime No. 348/15 under Sections 376D, 506 I.P.C. and Section 3(2)(12) & 3(2) SC/ST Act Police Station Kwarsi District Aligarh (Paper No. 20-Kha/24 including 20-Kha/27) and copy of report of Police Station Gandhi Park (Paper No. 20-Kha/28 including 20-Kha/29). No other oral evidence has been produced on behalf of accused-appellants.

7. The trial court after examining the evidence available on record, believed the evidence of prosecution witnesses as trustworthy and reliable, and hence by means of the impugned judgment and order convicted and sentenced the accused-appellants for the aforesaid offence, as stated hereinabove.

8. Hence, these two appeals are at the behest of convicted appellants.

9. Since the above-captioned appeals arise out of the common factual matrix and the judgment and order, therefore, both the appeals are being decided by a common judgment.

10. Heard Shri S. P. S. Chauhan, learned counsel for the appellants, Shri L. D. Rajbhar, learned A.G.A.-I appearing on behalf of State and Shri Ganesh Shanakar Srivastava, learned counsel for the informant in both the appeals and scanned the entire records as well as considered the arguments advanced before the Court.

11. Learned counsel for the appellants has submitted that the accused-appellants have been convicted and sentenced under Sections 364 I.P.C. read with Section 3(2)(V) of SC/ST Act, without there being any concrete and cogent evidence against them. The judgment of trial court is based on surmises and conjectures. None of the witnesses had

seen the appellants going either with the daughter of informant, her son-in-law or her grand children. Thus, it was a case of circumstantial evidence and without there being a complete chain of circumstances, the appellants have been convicted wrongly.

12. To substantiate the aforesaid submission, it has been argued by the learned counsel for the appellants that for the alleged incident of missing of daughter of informant namely, Rajni, her two children and her husband on 15.05.2015, on the basis of suspicion, the informant moved an application under Section 156(3) Cr.P.C. on 19.11.2015 without there being any plausible explanation of delay in moving such application, whereupon the court concerned without enquiring into the facts and circumstances, specially the fact that the alleged incident has taken place at Aligarh and Noida and no incident took place within the jurisdiction of Police Station Akraabad, ignoring the police report and without applying its judicial mind, has allowed the said application vide order dated 12.12.2015, pursuant to which the present F.I.R. has been lodged on 05.01.2016. Learned counsel for the appellants further submits that from the statements of P.W.1 & P.W.2 it is evident that they are not the eye witness of the alleged incident; and they have not seen their daughter and her husband going with the accused-appellants to Noida; and while passing the impugned judgment and order the trial court has wrongly and illegally not taken into consideration of the aforesaid facts and convicted the accused-appellants. As per prosecution case, informant and her husband were having specific knowledge of the alleged incident but neither the informant, nor her husband-Dansahay, nor anyone else informed the police or any authority with regard to the alleged incident, therefore, non lodging of any missing report or F.I.R. for the alleged incident for a long period, proved sufficiently that the whole prosecution story is totally false and frivolous.

13. Learned counsel for the appellants further submits that from perusal of entire case diary it is evident that during the course of investigation, except recording of statements of P.W.1 & P.W.2, the Investigating Officer neither tried nor recorded statement of any independent person of the locality where informant's daughter and her husband were residing at the time of alleged incident, i.e., 15.05.2015. Even the Investigating Officer has also failed to visit the place at Noida where the daughter of informant with her husband and children were allegedly resided and from where son-in-law of the informant was allegedly missing and even the Investigating Officer has also failed to record statement of any independent person at Noida during whole investigation, which facts sufficiently proved that whole prosecution story appears to be dubious.

14. Learned counsel for the appellants further submits that the statements of witnesses recorded during investigation and their testimony deposed during trial are self contradictory and are not corroborated with the prosecution case in any manner, thus, their deposition are not reliable and trustworthy. It has further been argued that after completion of prosecution evidence the statements of accused-appellants were recorded wherein they denied their accusation and they also submitted aforesaid papers in their defence but the trial court has not considered the aforesaid papers and convicted the accused-appellants, illegally.

15. The substratum submission of learned counsel for the appellants is that that there is no evidence occurring on record, which may establish commissioning of offence under Section 364 I.P.C. by the accused-appellants, inasmuch as necessary ingredients thereof are clearly missing in view of the testimony deposed by the prosecution witnesses, i.e., P.W.1 and P.W.2, as per which they were not the eye witness of the alleged incident and they have not seen their daughter, her two

children and husband, going with the accused-appellants to Noida, as such without there being any concrete and clinching evidence of last seen the punishment imposed upon the accused-appellants is highly excessive. Thus the trial court had convicted the accused appellants by misappreciation of evidence adduced by the prosecution.

16. Learned Counsel for the appellants further argued that there is no ingredients of Section 364 or 365 I.P.C. as has been averred from the testimony of P.W.1 and P.W.2 during trial. The evidence of last seen is a weak evidence and the case rests upon circumstantial evidence as far as they were seen present in the house of the informant's daughter on the alleged date, but none of the circumstances from which inference of guilt against the accused appellants could be drawn had been proved by any cogent evidence.

17. Learned A.G.A. for the State, on the other hand, submits that the accused-appellants are habitual offender inasmuch as there are as many as 15 criminal cases against the accused-Nagendra Singh, 13 cases against the accused-Rupendra Singh, 12 cases against the accused-Lokendra Singh and 10 cases against the accused-Lakhan Singh, which criminal cases include kidnapping, cheating, murder, loot, rape, and Gangster Act, etc., and therefore, there would be no chance of false implication.

18. In addition to above submission advanced on behalf of State, the learned counsel appearing for the informant submitted that there is cogent evidence of last seen against the accused as to when P.W.2 reached at the house of his daughter at Dorinagar and found all the accused persons sitting there. Learned counsel for the informant further submits that even though for the sake of argument if the submission of learned counsel for the appellants is taken to be true on its face value that the case rests on circumstantial evidence, even then chain of circumstances is established on the basis of cogent evidence available

on record which clearly indicate active involvement of the accused-appellants in the commissioning of crime.

19. Learned counsel for the informant has pointed out that there is evidence of P.W.2 that when he reached at the house of his daughter on 15.05.2015 all the accused-appellants were sitting in the house situated at Dorinagar and when P.W.2 inquired from his daughter as to when they are going to Noida, then all the aforesaid four persons stated that they will arrange employment for his daughter and son-in-law and today they are taking them. Thus, this evidence adduced by P.W.2 itself establishes the guilt of the accused-appellants in commissioning of crime. In support of his submission learned counsel placed reliance upon para-6 & 9 of a judgment rendered of Hon'ble Supreme Court in the case of **Ram Gopal, S/o Mansharam Vs. State of Madhya Pradesh (Special Leave Petition (Crl.) No. 9221 of 2018, decided on 17.02.2023) : 2023 LiveLaw (SC) 120**, which paras are being reproduced as under:

“6. It may be noted that once the theory of “last seen together” was established by the prosecution, the accused was expected to offer some explanation as to when and under what circumstances he had parted the company of the deceased. It is true that the burden to prove the guilt of the accused is always on the prosecution, however in view of Section 106 of the Evidence Act, when any fact is within the knowledge of any person, the burden of proving that fact is upon him. Of course, Section 106 is certainly not intended to relieve the prosecution of its duty to prove the guilt of the accused, nonetheless it is also equally settled legal position that if the accused does not throw any light upon the facts which are proved to be within his special knowledge, in view of Section 106 of the Evidence Act, such failure on the part of the accused may be used against the accused as it may provide an additional link in the chain of circumstances required to be proved against him. In the case based on circumstantial evidence, furnishing or nonfurnishing of

the explanation by the accused would be a very crucial fact, when the theory of “last seen together” as propounded by the prosecution was proved against him.

9. In view of the afore-stated legal position, it is discernible that though the last seen theory as propounded by the prosecution in a case based on circumstantial evidence may be a weak kind of evidence by itself to base conviction solely on such theory, when the said theory is proved coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused does owe an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death might have taken place. If the accused offers no explanation or furnishes a wrong explanation, absconds, motive is established and some other corroborative evidence in the form of recovery of weapon etc. forming a chain of circumstances is established, the conviction could be based on such evidence.”

20. Thus, learned counsel for the informant argues that in view of above principle rendered by Hon’ble Apex Court the appellants had actively participated in commission of crime, therefore, they do not require any indulgence and the present appeal is liable to be dismissed.

21. We have heard learned counsel for the parties and gone through the material brought on record. It is manifestly clear that the Court of Sessions has convicted the accused-appellants merely on the basis of testimonies of informant P.W.1-Rambeti and P.W.2-Dansahay as well as on the basis of past criminal history of accused-appellants.

22. To examine the guilt of the accused appellants, we must appreciate the evidence adduced by the prosecution. The allegation in the present case is that on 15.05.20215, the informant received a phone call of her daughter-Rajni, who informed her that she is going with the accused-apellant, Lakhan Singh, to Noida for the purpose of

employment in a reputed company. And on receiving this information the informant sent her husband to her daughter's house on the same day who reached there at the same day at 4:00 p.m. situated at Dorinagar and who saw that all the accused-appellants were sitting there. The husband of the informant inquired from his daughter as to when they are going to Noida, then all the aforesaid four accused persons stated that they will arrange employment for his daughter and son-in-law and today they are taking them. On seeing the son-in-law of the informant not well, the husband of the informant suspected and asked to take Km. Muskan with him and tried to talk with his son-in-law, then Rajni informed that he had consumed liquor and is in drunken condition. Thereafter, husband of informant took Km. Muskan along with him to his house. Thereafter, after some time Rajni used to make phone calls to the informant and whenever she asked about her son-in-law, Rajni did not say anything about him, and after sometime phone calls did not come. On suspicion the informant sent her husband to inquire the matter and when he reached at the house of accused-appellants he could not meet with his son-in-law, her daughter and her children. On making inquiry about them all the accused persons threatened him for dire consequences by hurling abuses by castes. The husband of the informant tried his best to know whereabouts of his son-in-law but it could not be known. Thus the informant got convinced that while her daughter involving in adultery, had got disappeared her son-in-law and it is also possible that he might have been murdered and his body has got disappeared because these people were having criminal antecedents and dozens of cases were registered against them in various places and these people have trapped her daughter in their clutches and her daughter's two children Himanshu and Khushi's lives are also in danger because it has also been heard that the aforesaid persons are also involved in the smuggling of body parts of human beings.

23. For the sake of convenience, the testimonies which have been relied upon by the trial court are being referred hereinafter, which would go to show that there are material contradictions in their statements, which cannot be thrown away lightly.

24. In the present case, Rambeti (P.W.1) has lodged the F.I.R. for disappearance of her son-in-law namely Harishchandra, her daughter namely, Rajni and their children namely Himanshu and Khushi and supported the version of F.I.R. In her cross-examination, the informant (P.W.1) had deposed before the trial Court that she does not collect the date of incident, thereafter she stated the date of incident was 15.05.2015. Thereafter, she stated that she does not know the incident was occurred in which month. The incident is of five years. In her cross-examination, P.W.2 further states that on 15.05.2015 she remained in her village, she had not seen either the accused persons or Harishchandra, Rajni, Himanshu or Khushi. She had given statement under Section 161 Cr.P.C. that these accused persons have trapped her daughter. P.W.1 has supported her statement recorded under Section 161 Cr.P.C. by stating that she has full confidence that her daughter-Rajni had got disappeared her son-in-law namely Harishchanda with the collusion of accused persons and whereabouts of her son-in-law is still not known.

25. Dansahay (P.W.-2), in his testimony adduced before the trial court has stated that two and half years prior, his daughter Rajni made a phone call and told her mother (informant-P.W.1) that the accused Lakhan Singh and his sons-Nagendra, Lokendra, Rupendra and Narendra Singh are taking her along with her husband to provide employment in a reputed company at Noida. When his wife informed her then he reached at his daughter's house to took her grand daughter, where he found that these persons were sitting inside the house and when he asked, then his daughter and her husband did not tell anything, but

these persons told him that they are taking them to Noida today where they will arrange to provide employment to them. Thereafter, after 3-4 days, Harishchandra called him through phone and told that they have come to Noida but he did say nothing about the employment. Thereafter, phone calls did not come and when he tried to make calls that could not be connected. P.W.2 further says that he took her grand daughter-Muskan. His son-in-law and two children, i.e., one boy and one girl were accompanied with Rajni. On suspicion he tried to search. He also made search at the relatives of Harishchandra, and he found house of Harishchandra locked. Then he got the impression that the accused had got the children killed and made them disappear somewhere.

26. Dansahay (P.W.2) in his cross-examination has stated that after meeting with his daughter and the accused persons at her house, he took her grand daughter-Muskan and reached to his village and told everything to his wife (P.W.1). After that, they kept getting calls from his daughter and son-in-law that they have come to Noida and are working, thereafter, he says that these calls kept coming for two to four days only.

27. Constable Brajmohan (P.W.-3), in his testimony, stated that on 05.01.2016 he was posted as Constable Clerk and was present in the Police Station. On that date at about 10:05 hours on the basis of written report given by informant Smt. Rambeti the case was registered. Chik F.I.R. was scribed by him on the basis of written report which was typed by the Constable Sharad Kumar on computer. This witness has proved G.D. entry and Chik F.I.R. In his cross-examination P.W.3 has stated that he had made G.D. entry on 05.01.2016.

28. Hemraj Meena (P.W.4) in his testimony before the trial court has stated that on 07.01.2016 he was posted as A.S.P./ C.O. He conducted the investigation of present crime. He had proved that he

had recorded copy of application under Section 156(3) Cr.P.C., copy of the order of the court and the statement of Constable Brajmohan. This witness has further stated that he had made site plan and recorded evidence available at that time and thereafter investigation was handed over to other Circle Officer of Gandhi Park.

29. P.W.4 in his cross-examination has stated that in the site plan he has not shown about comings and goings of the accused. He made only site plan, after that investigation was conducted by another officer. He further states that he has recorded statements of informant-Rambeti and witness-Dansahay. He had neither mentioned presence of Rambeti and Dansahay in the site plan nor he mentioned it in the index of site plan, but he had mentioned the same in the case diary. On the basis of case diary, this witness has stated that he made site plan on the basis of information given by Dansahay. He had stated that he had recorded statement of Dansahay at his home.

30. From the testimony given by P.W.1 and P.W.2 it is crystal clear that the F.I.R. of the incident was lodged as per the application under Section 156 (3) Cr.P.C. moved by the informant-P.W.1. It is also true that when P.W.2 reached at the house of his daughter-Rajni on the alleged date, i.e, 15.05.2015, all the accused persons were present there and when he asked about the matter his daughter and son-in-law say nothing but all the accused stated that they are taking Rajni and her husband to Noida for providing employment to them in a company, and as per cross-examination of P.W.2 that thereafter on the same day he took her grand daughter-Muskan and reached his village and told everything to his wife (P.W.1), thereafter he kept getting calls for some days from his daughter and son-in-law that they have come to Noida and are working, but no one had seen either daughter or her children or her husband going along with the accused-appellants on or after the alleged date, hence the very basis of lodging of F.I.R. against the

accused-appellants appears to be doubtful and creates suspicion on the prosecution story.

31. Perusal of the record goes to show that accused had been charged under Section 364 I.P.C., which reads as under:-

"364. Kidnapping or abducting in order to murder.-- Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with 1[imprisonment for life] or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

32. In the facts and circumstances of the case, this Court finds that as per the testimony deposed by the two prosecution witnesses, i.e., P.W1. and P.W.2. They come forward having suspicion that their daughter, her two grand children and son-in-law had got disappeared by the accused-appellants, but none of the witnesses had seen that these accused-appellants took them on or after the alleged date. Perusal of Section 364 I.P.C. would clearly go to show that the very section is in two parts. First part relates to kidnapping of a person and second part is that such kidnapping should be such that may put abductee's life under threat of being murdered. In absence of any evidence in that regard, the charge under Section 364 I.P.C. would clearly not be made out, even the charge under Section 365 I.P.C. would also not be made out. Thus, in absence of any evidence of last seen the case rests upon circumstantial evidence as there is no direct evidence against the accused-appellants of last seen. So far as the offence under the provisions of S.C./S.T. Act is concerned, since the base offence itself is not established, therefore, the presumption under the provisions of S.C./S.T. Act would not be available to implicate the accused-appellants. The proposition of law, as cited by the learned counsel for the informant, does not help him in any way.

33. It is a well settled law that where there is no direct evidence against the accused and the prosecution rests its case on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of accused. In other words, there must be a complete chain of evidence so as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability, the act must have been done by the accused. All the links in the chain of circumstances must be complete and should be proved by cogent evidence.

34. In the case of **Padala Veera Reddy v. State of A.P. : AIR 1990 SC 79**, wherein the Hon'ble Supreme Court laid down the guiding principle with regard to **appreciation of circumstantial evidence:-**

“(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) 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 none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

35. In the case of **State of U.P. v. Ashok Kumar Srivastava : [1992] 1 SCR 37**, the Apex Court pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the

circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

36. In the case of **Sanatan Naskar and Anr. v. State of West Bengal** reported in **(2010) 8 SCC 249**, the Hon'ble Supreme Court propounded as under:-

"13. There cannot be any dispute to the fact that it is a case of circumstantial evidence as there was no eye witness to the occurrence. It is a settled principle of law that an accused can be punished if he is found guilty even in cases of circumstantial evidence provided, the prosecution is able to prove beyond reasonable doubt complete chain of events and circumstances which definitely points towards the involvement and guilt of the suspect or accused, as the case may be. The accused will not be entitled to acquittal merely because there is no eye witness in the case. It is also equally true that an accused can be convicted on the basis of circumstantial evidence subject to satisfaction of accepted principles in that regard. "

37. In regard to **appreciation of circumstantial evidence**, the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra : 1984 Cri. L.J. 178** was pleased to observe in paras-150 to 158, which are quoted below:-

"150. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a chain are in themselves complete than a false plea or a false defence may be called into aid only to lend assurance to the Court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court.

151. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The fundamental and basic decision of the Apex Court is **Hanumant v. The State of Madhya Pradesh**.⁽¹⁾ This case has been uniformly followed and applied by this Court in a large number of later decisions upto date, for instance, the cases of **Tufail (Alias) Simmi v. State of Uttar Pradesh**⁽²⁾ and **Ramgopal v. State of Maharashtra**⁽³⁾. It may be useful to extract what Mahajan, J. has laid down in **Hanumant's** case (*supra*):

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

152. 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 & Anr. v. State of Maharashtra** where the following observations were made:

"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.

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

154. 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 **The King v. Horry**,⁽¹⁾ 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 up on no rational hypothesis other than murder can the facts be accounted for."

155. Lord Goddard slightly modified the expression, morally certain by 'such circumstances as render the commission of the crime certain'.

156. This indicates the cardinal principle' of criminal

jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. Horry's case (supra) was approved by this Court in *Anant Chintaman Lagu v. The State of Bombay*(2) Lagu's case as also the principles enunciated by this Court in *Hanumant's case* (supra) have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases *Tufail's case* (supra), *Ramgopals case* (supra), *Chandrakant Nyalchand Seth v. The State of Bombay* (Criminal Appeal No. 120 of 1957 decided on 19.2.58), *Dharmbir Singh v. The State of Punjab* (Criminal Appeal No. 98 of 1958 decided on 4.11.1958). There are a number of other cases where although *Hanumant's case* has not been expressly noticed but the same principles have been expounded and reiterated, as in *Naseem Ahmed v. Delhi Administration*(1). *Mohan Lal Pangasa v. State of U.P.*,(2) *Shankarlal Gyarasilal Dixit v. State of Maharashtra*(3) and *M.C. Agarwal v. State of Maharashtra*(4)-a five-Judge Bench decision.

157. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor-General relying on a decision of this Court in **Deonandan Mishra v. The State of Bihar**(5), to supplement this argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor General we are unable to agree with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus:

"But in a case like this where the various links as started above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation- such absence of explanation of false explanation would itself be an additional link which completes the chain."

158. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an

additional link to complete the chain but these observations must be read in the light of what this Court said earlier, viz., before a false explanation can be used as additional link, the following essential conditions must be satisfied:

- (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved.
- (2) the said circumstance point to the guilt of the accused with reasonable definiteness, and
- (3) the circumstance is in proximity to the time and situation.”

38. In regard to **motive**, in the case of **Sampath Kumar v. Inspector of Police Krishnagiri : 2010 Cri. L.J. 3889 (SC)**, the Apex Court was pleased to observe in para 15 which is quoted below :-

"15. One could even say that the presence of motive in the facts and circumstances of the case creates a strong suspicion against the appellant but suspicion, howsoever strong, also cannot be a substitute for proof of the guilt of the accused beyond a reasonable doubt."

39. In the case of **Bhagwan Jagannath Markad v. State Of Maharashtra : (2016) 10 SCC 537** the Hon'ble Apex Court summarized the principles for the appreciation of the credibility of witness where there are discrepancies or infirmaries in the statement:

"19. While appreciating the evidence of a witness, the Court has to assess whether read as a whole it is truthful. in doing so the court has to keep in mind the deficiencies, drawback and infirmaries to find out whether such discrepancies shake the truthfulness. ...Only when discrepancies are so incompatible as to effect the credibility of the version of witness , the Court may reject the evidence. ...The Court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected accepted."

40. The instant case purely rests on circumstantial evidence. In order to sustain conviction, a complete chain of circumstantial evidence must be formed which is incapable of explanation of any other hypothesis than that of the guilt of the accused. Such evidence should not only be consistent with the guilt of the accused but inconsistent with his innocence. No hard-and-fast rule can be laid to say that particular circumstances are conclusive to establish guilt. It is basically a question of appreciation of evidence which exercise is to be done by the Court in the facts and circumstances of each case.

41. The evidence tendered in a court of law is either direct or circumstantial. Evidence is said to be direct if it consists an eyewitness account of the facts in issue in a criminal case. On the other hand, circumstantial evidence is evidence of relevant facts from which, one can, by process of intuitive reasoning, infer about the existence of facts in issue or *factum probandum*. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, at the first instance, be fully established. Each fact, sought to be relied upon, must be proved individually. However, in applying this principle, a distinction must be made between facts called primary or basic one on one hand and inference of facts to be drawn from them on the other hand. In regard to proof of primary facts, the Court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that facts lead to an inference of guilt of the accused person should be considered.

42. It would be significant to add that while dealing with circumstantial evidence there is always a danger that conjecture or suspicion lingering in the mind may take place of proof. Suspicion, however, strong cannot be allowed to take the place of proof and, therefore, the Court has to be watchful and ensure that conjectures and

suspensions do not take place of legal proof.

43. 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, where various links in chain are in themselves complete.

44. The present case in absence of last seen evidence, which undoubtedly, is a case of circumstantial evidence, is to be looked into in the backdrop of the aforesaid legal principles. The prosecution has completely failed to prove beyond reasonable doubt complete chain of event and circumstances, which unerringly points towards the involvement and guilt of the accused-appellants. The prosecution also failed to establish any motive to the accused-appellants for committing abduction of informant's daughter, son-in-law and their two grand children.

45. In the aforesaid facts and circumstances of the case, we are of the considered view that there are various lacunae in the case of the prosecution in establishing the chain of circumstantial evidence against the accused appellants. Further, there is no cogent or clinching evidence on record which proves the guilt of the accused-appellants beyond reasonable doubt. Henceforth, we hold that the prosecution has failed to produce evidence to complete chain of circumstances and the guilt of appellants beyond all reasonable doubt, and the benefit undoubtedly has to go to the accused-appellants herein. Moreover, the learned trial judge has convicted the accused-appellants without there being any clinching evidence against them, only in view of the fact that these appellants have a large number of criminal history of heinous offences in their credit. Thus, we are not impressed by the findings given by the learned trial judge. The impugned judgment and order passed by the trial court appears to be unsound and unreasoned.

46. In view of above, the impugned judgment and order of conviction, thus found unsustainable and is liable to be set aside. The appellants are entitled to be acquitted by giving them benefit of doubt.

47. Accordingly, both the appeals are **allowed**. The impugned judgment and order dated 22.01.2020 passed by learned Special Judge, SC/ST (Prevention of Atrocities) Act, Aligarh in C.C. No. 44 of 2016 (State Vs. Lakhan Singh and another) and C.C. No. 300006 of 2016 (State Vs. Nagendra Singh and others), arising out of Case Crime No. 06 of 2016, under Sections 364, 506 I.P.C. read with Section 3(2)(V) of SC/ST Act, Police Station Akrabad, District Aligarh, is hereby set aside.

48. The accused-appellants, namely, Narendra Singh, Nagendra Singh, Rupendra Singh, Lakhan Singh and Lokendra Singh, who are in jail, would be released, forthwith, unless they are wanted in any other case, subject to compliance of Section 437-A Cr.P.C.

49. The trial Court record along with the copy of this judgement and order be transmitted to the court concerned forthwith.

50. Let a copy of this judgment be sent to the Jail Authorities concerned and the court concerned for compliance.

51. In view of the aforesaid, all the pending applications of these two appeals also stand disposed.

Order Date :- 16.1.2025

Mustaqeem.

(Dr. Gautam Chowdhary, J.)

(S. D. Singh, J.)