



Golekh Taria along with co-accused, namely, Jayanti Bagh and Rusava Dehury. By judgment dated 22.12.2001, the trial Court acquitted the co-accused Jayanti Bagh of all charges and convicted the appellant under Section 302 IPC and sentenced him to undergo imprisonment for life. Since the co-accused Rusava Dehury had absconded during the investigation and could not be apprehended, the case against him was split up and remained pending.

2. Prosecution case, briefly stated, is as follows.

On 21.07.2000, the appellant and accused Rusava Dehury hired a jeep driven by Satrugan Sahu (PW-6) and along with the deceased Golekh Taria proceeded towards Hariharjore Dam. On the way, at Kotsamlai they picked up the co-accused Jayanti Bagh and her child, whereafter all of them proceeded to the dam. After spending some time in and around the dam area, they started their return journey. When the jeep reached near Mahukhandi jungle, the appellant, Jayanti Bagh, Rusava Dehury and the deceased got down from the vehicle and went towards the jungle, leaving the driver waiting near the jeep. After some time, the



appellant, Jayanti Bagh and Rusava Dehury returned to the jeep without the deceased. On being asked by the driver about the whereabouts of the deceased, the appellant stated that a quarrel had taken place between him and the deceased, during which he had assaulted the deceased on his head, whereafter the deceased had gone into the jungle. Thereafter, all the accused persons returned to their village in the same jeep.

A few days later, Budhulal Dehury, the Gramrakhi, noticed a headless and decomposed human body lying in Ramakata Mahukhandi Jungle and informed Basudev Khatua (PW-7), the A.S.I of Hariharjore Outpost. PW-7 immediately proceeded to the spot, held inquest over the dead body and registered an U.D Case. The body was thereafter sent for post-mortem examination. As the post-mortem examination revealed that the death was homicidal, PW-7 lodged a written report, on the basis of which Birmaharajpur P.S Case No. 74 of 2000 dated 02.08.2000 was registered under Sections 302/201/34 IPC against the appellant, Jayanti Bagh and Rusava Dehury. Upon



completion of investigation, charge-sheet was submitted against all the three accused persons, showing Rusava Dehury as an absconder.

3. The plea of both the accused persons was of complete denial and false implication.

4. To prove its case, prosecution examined eighteen witnesses and exhibited seventeen documents. That apart, prosecution also proved one material object. Defence, on the other hand, did not adduce any evidence.

5. After analysing the evidence on record, the trial Court was of the view that the prosecution succeeded in establishing that the deceased had met with a homicidal death and that the appellant was the author of the crime. Though there was no direct evidence of the occurrence, the trial Court found that the chain of circumstantial evidence stood proved against the appellant. The Court relied upon the circumstance of the deceased having last seen in the company of the appellant and the absconding accused, the disclosure statement made by the appellant while in police custody leading to the recovery of the knife and other



incriminating articles under Section 27 of the Indian Evidence Act, the confession made by the appellant before the I.O in the presence of PWs-1 and 5, the recovery of blood-stained wearing apparel of the appellant and the medical evidence indicating homicidal death. Holding that these circumstances formed a complete chain pointing towards the guilt of the appellant, the trial Court convicted him under Section 302 IPC. However, finding the evidence against the co-accused Jayanti Bagh insufficient, the trial Court acquitted her of all the charges.

6. Heard Mr. Biswa Ranjan Sahu, learned counsel for the appellant and Mr. Debaraj Mohanty, learned Addl. Government Advocate for the State.

7. Mr. Sahu assails the impugned judgment of conviction on the following grounds.

- i) The prosecution has failed to establish a complete and unbroken chain of circumstances pointing towards the guilt of the appellant.



ii) The confession made by the appellant before the Investigating Officer is inadmissible in evidence.

iii) The disclosure statement and the recovery made thereunder under Section 27 of the Indian Evidence Act have not been proved in accordance with law.

iv) Evidence relating to the recovery of the weapon of offence and other incriminating articles is unreliable due to material contradictions and inconsistencies in the testimony of the prosecution witnesses.

v) Prosecution failed to prove the last seen theory, particularly in view of the hostile testimony of PW-6.

vi) Trial Court erred in placing reliance upon selective portions of the testimony of hostile witnesses without proper corroboration.

8. Per contra, Mr. Mohanty would argue that the prosecution has established every link in the chain of circumstances pointing to the guilt of the appellant. According to him, the homicidal death of the deceased stands proved by the medical evidence. The deceased was last seen



in the company of the appellant and the absconding accused, who returned without him. He further submits that while in police custody, the appellant made a disclosure statement leading to recovery of the weapon, blood-stained earth, sample earth and human hair, which is admissible under Section 27 of the Indian Evidence Act. The evidence of PWs-1 and 17 also proves such recovery, while the testimony of PW-5, though partly hostile, corroborates the prosecution case to the extent of his admitted signatures on the seizure lists and disclosure statement. He also submits that the evidence of a hostile witness is not liable to be discarded in toto and the Court can rely upon such part of his testimony as inspires confidence and finds corroboration from other evidence on record. Mr. Mohanty also submits that the recovery of the blood-stained wearing apparels of the appellant, the conduct of the appellant in leading the police to the place of occurrence and the place of concealment of the weapon and the medical evidence cumulatively form a complete chain of circumstances excluding any other theory.



9. We have heard learned counsel for the parties and have taken note of the rival contentions. We have also perused the case record and the impugned judgment. It is seen that in the absence of ocular evidence of the occurrence, the prosecution case rests entirely on circumstantial evidence. Several circumstances have been put forth by the prosecution and accepted by the trial Court, which are said to be incriminating enough to point the finger of guilt unerringly at the accused. Law relating to circumstantial evidence can be succinctly summarized as follows:-

A conviction can be recorded in such a case only if all the links in the chain are complete, pointing to the guilt of the accused and that the hypothesis of innocence is negated. Courts are called upon to adopt a cautious approach while appreciating circumstantial evidence. Reference in this regard may be had to the case of **Sharad Birdhichand Sarda v. State of Maharashtra**¹. Keeping the above principle in mind, we shall now proceed to analyze the evidence on record in light of the rival contentions raised before us.

¹ (1984) 4 SCC 116



10. The first point that demands our attention is whether the prosecution has been able to establish that the dead body recovered from Ramakata Mahukhandi Jungle was that of the deceased, Golekh Taria, and had been properly identified and, if so, whether the prosecution was able to show that the death was homicidal. These two facts constitute the very foundation of the prosecution case. Unless the identity of the deceased and the homicidal nature of his death are proved beyond reasonable doubt, the remaining circumstances relied upon by the prosecution lose significance.

11. On perusal of the evidence on record, we find that PW-7 deposed that on receiving information from the Gramrakhi, he visited the spot, held inquest over a headless decomposed body and thereafter sent the same for post-mortem examination. Significantly, he has stated, *'till then I did not identify the dead body'*. This admission assumes importance because it shows that at the earliest stage of investigation he had no knowledge regarding the identity of the deceased. The cross-examination of PW-7 further supports this position. He



admitted that when he reached the spot, the body was in a highly decomposed condition; the head was absent and even the limbs of the body were missing. He also admitted that in Column 9 of the inquest report (Ext-5), he recorded that the witnesses did not know the reason for the death and in Column 10 he mentioned that the cause of death was not known. These records belie the subsequent assumption that the deceased had been identified or that the death was known to be homicidal at that stage. It is only during the subsequent enquiry that PW-7 examined certain witnesses and thereafter recorded the statement of PW-6, the jeep driver. Even according to PW-7, PW-6 stated that seven to eight days later he came to know that a headless body was lying in Mahukhandi Jungle and 'could guess' that Golekh had been murdered by the accused persons. Thus, the identification of the deceased does not rest upon any direct evidence but only upon the guess or imagination of PW-6. Such evidence, in our considered opinion, falls far short of the standard required in criminal jurisprudence. A conviction cannot rest upon a witness merely guessing the identity of a headless decomposed body. We also find that the prosecution



has failed to produce any independent evidence establishing the identity of the body. No relative or family member identified the body. No distinctive marks were proved. However, PW-9, who stated to be the deceased's uncle, stated in his examination that, *'Deceased Golekh was my nephew. He was staying in my house. About one year and 3 months back occurrence took place. On the day of his death Golekh came out of my house along with accused Rusuva Dehury to the road. Thereafter I cannot say where they went. Subsequently on that day I heard that Golekh was murdered. The deceased had worn a black full pant and white shirt on the day he came out of my house along with accused Rusava.'* In his statement under Section 161 Cr.P.C., however, he had stated that on 21.07.2000, at about 8.00 a.m., Rusava Dehury of his village came to his house and, after a while, his nephew Golekh Taria went with him. From the next day, Golekh did not return. At that time, Golekh was wearing a black full pant and a white check full shirt. He further stated that he did not know the whereabouts of his nephew, Golekh Taria. As per the prosecution story, the death of Golekh came to be known only after the Gramrakhi informed about an



unidentified body and on the basis of the speculation statement of PW-6 before PW-7, it came to be known that the body was that of Golekh. However, in his deposition before the Court, PW-9 stated that he heard that Golekh was murdered on the same day on which he saw him leaving his house along with accused Rusuva. This is a material improvement over his statement under Section 161 Cr.P.C. and is inconsistent with his own version. Therefore, even if the statement of PW-9 that the deceased had worn a black full pant and a white shirt on the day of the occurrence is taken into consideration, the same creates an inconsistency and cannot be relied upon for the purpose of identifying the dead body. Moreover, PW-9 himself never identified the dead body. Therefore, the mere seizure of a black full pant and a white shirt from near the dead body cannot, by itself, establish that the body was that of Golekh. Further, no scientific method of identification was adopted. Though certain articles such as a shirt, pant, belt, chappals and other belongings were seized from near the body under Ext.6, the prosecution has failed to prove through reliable evidence that those articles belonged to Golekh Taria. Thus, the



identity of the deceased has not been established beyond reasonable doubt.

12. We also observe that the finding of the trial Court that the death was homicidal is erroneous. We have carefully gone through the evidence of PW-4, the autopsy doctor, along with the post-mortem report (Ext.4). We find that neither the deposition of PW-4 nor Ext.4 contains any opinion that the deceased's death was homicidal in nature. On the contrary, PW-4 has stated that because the body was in an advanced stage of decomposition, the head was absent and internal organs were missing, the cause of death could not be ascertained. Thus, there is absolutely no medical opinion that the death was homicidal. The observation made by the trial Court that an inference can be drawn from the post-mortem report that the deceased '*might have died due to a brutal killing*' is not borne out by either the deposition of PW-4 or the post-mortem report. We find no such opinion recorded by the doctor. The trial Court has thus attributed to the medical witness an opinion which he never expressed.



Such a finding is entirely contrary to the evidence on record and being thus perverse, cannot be sustained.

13. In the absence of proof regarding the identity of the dead body and in the absence of any medical opinion regarding the cause and nature of death, two of the most fundamental circumstances forming the base of the prosecution case remain unestablished. These deficiencies strike at the root of the prosecution case. Nevertheless, since the trial Court has founded the conviction upon the confession made by the appellant before the I.O, the disclosure statement under Section 27 of the Indian Evidence Act and the consequential recoveries, it becomes necessary to examine the admissibility and evidentiary value of those circumstances independently.

14. The trial Court has relied upon the confession made by the appellant before the I.O in the presence of PWs-1 and 5. According to the prosecution, while in police custody, the appellant confessed that he had murdered Golekh Taria along with the co-accused persons and thereafter led them to the place of occurrence and to the



place where the knife was concealed. The trial Court treated such confession as corroborated by the evidence of PW-1 and partly by PW-5 and on that basis, accepted that the subsequent recoveries supports the prosecution case. We are unable to agree with such an approach.

15. On going through the evidence of PW-1, it shows that confession was made while the appellant was in police custody and in the course of interrogation by the I.O inside the police station. Such a confession is clearly hit by Sections 25 and 26 of the Indian Evidence Act, which prohibit proof of a confession made to a police officer or while in police custody unless made in the immediate presence of a Magistrate. The confession was admittedly not made before any Magistrate. Consequently, the evidence of PW-1 regarding the appellant's admission of guilt was wholly inadmissible and could not have been relied upon by the trial Court.

16. In ***Aghnoo Nagesia v. State of Bihar***², the Supreme Court held that Sections 25 and 26 of the Indian

² AIR 1966 SC 119



Evidence Act exclude not only the admission of guilt but every incriminating admission contained in the confessional statement. Thus, the prosecution could not rely upon the appellant's statement before the police that he had murdered the deceased. The trial Court, therefore, committed error in treating such inadmissible confession as substantive evidence merely because it was corroborated by PW-1.

17. The evidence of PW-5 also does not improve the prosecution case. Though cited as an attesting witness to the disclosure statement and seizure lists, he did not support the prosecution in material particulars and only admitted his signatures on certain documents. It is well settled that admission of signature on a seizure list is not proof of the truth of its contents. His evidence, therefore, does not establish either the alleged confession or the disclosure statement.

18. The prosecution next relies upon the discoveries made pursuant to the appellant's disclosure statement under Section 27 of the Evidence Act. Section 27, however, is only a limited exception to the prohibition contained in Sections 25



and 26. As held by the Privy Council in the case of ***Pulukuri Kotayya v. King-Emperor***³ and reiterated by the Supreme Court in the case of ***Anter Singh vs State of Rajasthan***⁴ only that portion of the information which distinctly relates to the fact discovered is admissible; the accompanying confession that the accused committed the offence remains inadmissible.

19. Even the discoveries have not been proved in a reliable manner. PW-1 admitted in cross-examination that the seized articles were not sealed in his presence, the knife did not bear his signature and nothing was reduced into writing at the place where the knife was recovered. The prosecution has also failed to establish that the place from which the knife was recovered was in the exclusive knowledge of the appellant. These infirmities render the recovery doubtful. Further, the chemical examination does not connect the recovered knife, blood-stained earth or human hair with the deceased. In the absence of any

³ AIR 1947 PC 67

⁴ AIR 2004 SC 2865



evidence establishing such nexus, the recoveries are incapable of incriminating the appellant.

20. Thus, once the inadmissible confession is excluded from consideration and the discoveries are found to have not been proved in accordance with law, the circumstances relied upon by the trial Court disappear from the chain of circumstantial evidence. We shall, therefore, proceed to examine the next circumstance relied upon by the prosecution, namely, the theory of the deceased having been last seen in the company of the appellant based on the evidence of PW-6.

21. The last circumstance relied upon by the prosecution is that of the deceased having been last seen in the company of the appellant based on the evidence of PW-6. We have carefully examined his testimony. PW-6 did not support the prosecution in material particulars and was declared hostile. Though he admitted that he had driven the appellant, the deceased and others to Hariharjore Dam, he did not depose that the appellant confessed before him of assaulting the deceased. His statement under Section 161



Cr.P.C. before the police cannot be relied upon to prove the prosecution case. Even otherwise, the circumstance of last seen is only an additional link in a case based on circumstantial evidence and cannot, by itself, sustain a conviction. In the present case, the prosecution has failed to establish the identity of the deceased, the homicidal nature of death, the admissibility of the alleged confession and the recoveries under Section 27 of the Indian Evidence Act. In the absence of above circumstances, the last seen theory loses significance and is insufficient to complete the chain of circumstances. The appellant is, therefore, entitled to the benefit of doubt.

22. Thus, upon an independent analysis of the evidence on record, we find that none of the incriminating circumstances relied upon by the trial Court against the accused has been proved beyond reasonable doubt. The prosecution has therefore failed to establish a complete chain of circumstances proving the guilt of the accused under the charge framed against him.



23. In the result, the appeal is allowed. The impugned judgment of conviction dated 22.12.2001 passed by the learned Additional Sessions Judge, Sonapur in Session Case No. 2/13 of 2001 is hereby set aside. The appellant being on bail be discharged from his bail bonds.

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(Sashikanta Mishra, J)

Manash Ranjan Pathak, J. I agree.

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(Manash Ranjan Pathak, J)

Orissa High Court, Cuttack
The 29th July, 2026/A.K. Rana, P.A.

Signature Not Verified

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Signed by: AJAYA KUMAR RANA
Designation: P.A.
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