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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1820 of 2024

1 - Ram Kumar Sahu S/o Late Jaita Lal Aged About 52 Years R/o Village Pasal, Police Station Chandani, District Surajpur, Chhattisgarh.

2 - Rohit Shah @ Rohit Sahu S/o Ram Kumar Sahu Aged About 28 Years R/o Village Baithan, Ward No. 40, District Singarouli, Chhattisgarh.

3 - Smt. Brihaspatiya Bai W/o Ram Kumar Sahu Aged About 48 Years R/o Village Pasal, Police Station Chandani, District Surajpur, Chhattisgarh.

... Appellants

versus

State Of Chhattisgarh Through Police Station Chandani, District Surajpur, Chhattisgarh.

... Respondent

For Appellants : Mr.Abhyuday Singh, Advocate

For Respondent : Mr.S.S.Baghel, Government Advocate

**Hon'ble Shri Ramesh Sinha, Chief Justice and
Hon'ble Shri Ravindra Kumar Agrawal, Judge**

Judgment on Board

Per Ramesh Sinha, C.J.

5/8/2026

1. Though the present criminal appeal is listed for hearing on the application for suspension of sentence and grant of bail to the

appellants, but considering the fact that the appellants are in jail since 16.06.2020, with the consent of the parties, the matter is heard finally.

2. The appellants have preferred this criminal appeal under Section 415(2) of the BNSS questioning the impugned judgment dated 27.08.2024 passed by the First Additional Sessions Judge, Surajpur, in Sessions Case No.32/2021, whereby the trial Court has convicted the appellants for offence under Sections 302 read with Section 120B and 201 read with Section 120B of the IPC and sentenced to undergo imprisonment for life and fine of Rs.100/-, in default of payment of fine to further undergo additional imprisonment for one month and RI for 3 years and fine of Rs.100/-, in default of payment of fine to further undergo additional imprisonment for one month. The trial Court has also convicted appellant No.2-Rohit Shah @ Rohit Sahu for offence under Section 25/27 of the Arms Act and sentenced him to undergo RI for 3 years and fine of Rs.100/-, in default of payment of fine to further undergo additional imprisonment for one month.
3. Case of the prosecution, in brief, is that on 14.06.2020, the complainant, Suresh, lodged a written complaint at Police Station Chandani regarding the disappearance of his father, Shivcharan Kashi. It was alleged that on 13.06.2020, at about 4:00 p.m., the deceased had left his residence at village Pasalpara, Babhankon, for Jabar Chowk. At about 7:14 p.m., Ramcharan spoke to him over the telephone, informed him about a marriage ceremony at

home, and requested him to return, whereupon the deceased stated that he would return the following morning. At about 8:54 p.m., the complainant heard a loud sound resembling a gunshot or firecracker from the direction of Chamarkudi Nala situated to the west of his house. However, he did not suspect anything at that time and retired for the night. On the following morning, when the complainant went towards the river, Vinod Vaishya, Rupnarayan Pando, Santlal Pando and Hridaylal Pando called him and showed him a towel (*gamcha*) lying near the nala. The complainant identified the said *gamcha* as belonging to his father. He also noticed a large quantity of blood stains near the nala. Thereafter, he informed his uncle Kalicharan over the telephone that someone had murdered his father. The complainant further expressed suspicion against accused Ramkumar Sahu on account of a land dispute existing between the deceased and the said accused. The written complaint is Ex.P-1, on the basis of which Missing Person Report No. 01/2020 was registered at Police Station Chandni, marked as Ex.P-1A.

4. During the course of investigation into the missing person report, the aforesaid *gamcha* was recovered from the spot and identified by the complainant as belonging to the deceased. On 16.06.2020, the complainant lodged a Dehati Marg Intimation at Camp Vishalpur, Police Station Chandni, which is Ex.P-2. On the basis thereof, a Dehati Nalishi was registered (Ex.P-3). A spot map was prepared (Ex.P-5), and in the presence of witnesses, *gamcha*,

blood-stained soil, plain soil, leaves and other articles were seized under seizure memo Ex.P-20. During investigation, the statement of accused Ramkumar Sahu was recorded and memorandum proceedings were drawn (Ex.P-30). A memorandum regarding the recovery of the missing person was also prepared (Ex.P-31). The memorandum statements of accused Rohit Sahu, Ramkumar Sahu and Brihaspatiya were recorded as Ex.P-18, Ex.P-19 and Ex.P-28 respectively.

5. Pursuant to the memorandum of accused Rohit Sahu, blood-stained clothes of the deceased and a rope were recovered and seized under Ex.P-21. A jute sack, a wooden stick bearing blood-like stains and a pair of plastic shoes were also seized from the spot under Ex.P-22. On the memorandum of accused Ramkumar Sahu, a pocket diary, a dot pen, a mobile phone and a blood-stained axe (*gada*) belonging to the deceased were recovered and seized under Ex.P-23. The clothes and *gamcha* worn by accused Rohit Sahu at the time of the incident, bearing blood-like stains, were seized under Ex.P-24. The scooter allegedly used in the commission of the offence, bearing Registration No. MP-66-MA-5136, together with blood-stained and plain soil, was seized under Ex.P-25 and Ex.P-26. Further, one country-made pistol, eight live cartridges, one empty cartridge and a mobile phone were recovered from accused Rohit Sahu vide Ex.P-27. The clothes of accused Ramkumar Sahu, produced by accused Brihaspatiya, were seized under Ex.P-29.

6. During investigation, the severed human head and torso of the deceased were recovered at the instance of the accused persons, and recovery-cum-identification panchnamas were prepared as Ex.P-8 and Ex.P-9 respectively. The inquest proceedings were conducted in accordance with law. Dead body of the deceased was sent for postmortem to the Community Health Center, Odgi, where Dr.K.D.Painkra (PW-14) conducted postmortem over the body of the deceased and found following symptoms:-

“The body was identified by Vijendra Prasad, Suresh Kewat, and Mahendra Kashi. The body was of average height and built. The head was separated from the torso. The severed head bore no identifying marks. A sharp-edged weapon injury was present on the cervical spine. The body had decomposed. A 1.5 cm puncture wound was located in the center of the right side of the back, and a 2 cm wound was located on the chest on the front of the body, above the abdomen. A portion of the left leg's brachial fin had been eaten by wild animals. The body was infested with maggots, covering the entire chest, abdomen, abdominal cavity, perineum, and upper toes. The body had internal corrosion and decay. Part of the head had also been eaten by animals.”

The doctor has opined that cause of death was cardiopulmonary arrest and death was homicidal in nature. After postmortem examination, the dead body was handed over to the legal heirs under Supurdnama Ex.P-7. Proceedings under Section 174 of the Code of Criminal Procedure were initiated in respect of the unnatural death of the deceased. On the basis of the Dehati

Nalishi, FIR No. 25/2020 was registered against the accused/appellants for offences punishable under Sections 302, 201, 120-B and 34 of the Indian Penal Code and Sections 25 and 27 of the Arms Act (Ex.P-41). The accused / appellants were arrested in accordance with law, and arrest memos Ex.P-13, Ex.P-14 and Ex.P-15 were prepared. During investigation, the Investigating Officer conducted spot inspection, prepared the site plan, obtained medical and forensic examination reports, and forwarded the seized articles for DNA and FSL examination. The relevant reports are Ex.P-55, Ex.P-57, Ex.P-59, Ex.P-60 and Ex.P-63.

7. Upon completion of investigation, finding sufficient material against the accused/appellants, a charge-sheet was filed before the Court of the Judicial Magistrate First Class, Surajpur, who in turn, committed the case to the Court of Session, Surajpur, from where the First Additional Sessions Judge, Surajpur received the case on transfer for trial.
8. The accused / appellants, namely Ramkumar Sahu, Rohit Sahu alias Rohit Shah and Smt. Brihaspatiya, denied the charges under Sections 302, 201, 120-B and 34 of the Indian Penal Code and Sections 25 and 27 of the Arms Act. They pleaded innocence and claimed to have been falsely implicated. Accused Ramkumar Sahu contended that there was no dispute between him and the deceased and alleged that the deceased's sons, with a view to usurp the property and implicate him falsely, had orchestrated the

case. Accused Rohit Sahu pleaded that at the relevant time he was at Baidhan, Madhya Pradesh, attending his sister's marriage ceremony. Accused Brihaspatiya also claimed false implication. Although the accused expressed their intention to adduce defence evidence, no evidence was ultimately led in defence.

9. In support of its case, the prosecution examined sixteen witnesses, namely Suresh (PW-1), Vijendra Prasad (PW-2), Surendra Prasad (PW-3), Ravishankar (PW-4), Shivnaresh (PW-5), Pawan Kumar (PW-6), Patwari Om Narayan Singh (PW-7), Naib Tahsildar Amit Kumar Kerketta (PW-8), Head Constable Ramprasad Sandilya (PW-9), Constable Sant Kumar Sahu (PW-10), Hridaylal (PW-11), Constable Mahesh Kumar Sahu (PW-12), Sub-Inspector Shivkumar Khunte (PW-13), Dr. K.D. Paikra (PW-14), Dr. Pramod Rathore (PW-15) and Inspector Kishore Kenwat (PW-16).

10. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment dated 27.08.2024, convicted and sentenced the appellants as mentioned in second paragraph of this judgment. Hence, this appeal.

11. Learned counsel for the appellants submits that the impugned judgment of conviction and order of sentence dated 27.08.2024 are contrary to the facts, evidence available on record and the settled principles of law, and are therefore liable to be set aside. It is further submitted that the learned Trial Court has committed a

grave error in convicting the appellants without there being any direct evidence connecting them with the commission of the alleged offence. According to the learned counsel, the prosecution case rests entirely on circumstantial evidence, and there is no eyewitness to the alleged incident of murder. It is contended that the chain of circumstances relied upon by the prosecution is incomplete and does not unerringly point towards the guilt of the appellants.

12. Learned counsel further submits that the prosecution has placed substantial reliance on the memorandum statements of the accused / appellants and the recoveries allegedly effected pursuant thereto. However, the human torso and severed head of the deceased had already been recovered prior to the recording of the memorandum statements. Consequently, the essential requirements for admissibility of such statements under Section 27 of the Indian Evidence Act have not been satisfied. It is, therefore, argued that the memorandum statements as well as the alleged recoveries made pursuant thereto cannot be treated as reliable incriminating evidence against the appellants. It is also submitted that no bullet, empty cartridge or other ballistic material was recovered from the place of occurrence, thereby creating serious doubt regarding the prosecution version. Learned counsel further contends that though a country-made pistol is alleged to have been seized from one of the accused, who was residing at Baidhan (Madhya Pradesh), the prosecution has failed to

establish that the Investigating Officer himself proceeded to Baidhan and conducted the seizure in accordance with law. Therefore, the alleged seizure of the firearm is doubtful and cannot safely be relied upon.

13. Learned counsel further submits that the complainant stated that he had received information regarding the incident from one Rupsai; however, the prosecution failed to examine the said witness, who was a material witness. The non-examination of such an important witness adversely affects the credibility of the prosecution case. It is further contended that the statements of the prosecution witnesses suffer from several material contradictions, omissions and inconsistencies, which have not been properly appreciated by the learned Trial Court. According to the learned counsel, in view of such infirmities, the evidence adduced by the prosecution could not have been made the basis for recording the conviction of the appellants. Lastly, it is submitted that there is no cogent, reliable and legally admissible evidence connecting the appellants with the alleged offences. The learned Trial Court has failed to properly appreciate the oral and documentary evidence available on record and has recorded the conviction on surmises and conjectures. It is, therefore, prayed that the impugned judgment of conviction and order of sentence being illegal, erroneous and unsustainable in law deserve to be set aside, and the appellants be acquitted of all the charges.

14. Per contra, learned Government Advocate appearing for the respondent/State supports the impugned judgment and submits that the learned Trial Court has rightly appreciated the oral, documentary and scientific evidence available on record. It is contended that the prosecution has successfully established a complete chain of circumstantial evidence, which unerringly points towards the guilt of the appellants and excludes every hypothesis consistent with their innocence. He further submits that the memorandum statements and the recoveries made pursuant thereto have been duly proved in accordance with law and constitute admissible evidence under Section 27 of the Indian Evidence Act. It is argued that the absence of recovery of the bullet or the non-examination of one witness is not fatal to the prosecution case in view of the cogent and reliable evidence otherwise available on record. It is further submitted that the alleged contradictions and omissions are minor in nature and do not affect the substratum of the prosecution case. The findings recorded by the learned Trial Court are based on proper appreciation of the evidence and do not suffer from any illegality or perversity warranting interference by this Court. It is, therefore, prayed that the appeal, being devoid of merit, deserves to be dismissed.

15. We have heard learned appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

16. The first question for consideration would be, whether death of deceased Shivcharan Kashi was homicidal in nature ?

17. The trial Court has answered this issue in affirmative. After going through the medical evidence of Dr.K.D.Painkra (PW-14) and postmortem report (Ex.P-58A) and considering the nature of injuries, the trial Court has rightly held that death of the deceased was homicidal in nature, which has not been seriously disputed by learned counsel for the appellants. As such, the finding recorded by the trial Court that death of the deceased was homicidal in nature is the finding of fact based on evidence available on record, which is neither perverse nor contrary to record. We hereby affirm that finding.

18. The present case rests on circumstantial evidence. In a case dependent on circumstantial evidence, the law is well settled that the chain of circumstances must be complete, conclusive, and exclude every hypothesis consistent with innocence (**Sharad Birdhichand Sarda v. State of Maharashtra**¹). Here, the chain is broken at multiple points: hostile testimony from key relatives, unreliable extra-judicial confession, doubtful recovery, and no conclusive forensic link.

19. The Supreme Court in the matter of **Jagroop Singh v. State of Punjab**² has held thus in paragraphs 12, 13, 14 & 15 which is

1 AIR 1984 SC 1622

2 (2012) 11 SCC 768

reproduced hereunder:-

“12. In **Sharad Birdhichand Sarda v. State of Maharashtra [(1984) 4 SCC 116]** a three-Judge Bench has laid down five golden principles which constitute the “panchsheel” in respect of a case based on circumstantial evidence. Referring to the decision in **Shivaji Sahebrao Bobade v. State of Maharashtra [1973 2 SCC 793]**, it was opined that 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. Thereafter, the Bench proceeded to lay down that 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; that the circumstances should be of a conclusive nature and tendency; that they should exclude every possible hypothesis except the one to be proved; and that 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.

13. In **Padala Veera Reddy v. State of Andhra Pradesh and others [1989 Supp (2) SCC 706]**, this Court held that when a case rests upon circumstantial evidence, the following tests must be satisfied:

“10.....(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 the 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.”

A similar view has been reiterated in **Ramreddy Rajesh Khanna Reddy and another v. State of A.P.](2006) 10 SCC 172]**.

14. In **Balwinder Singh v. State of Punjab [1995 Supp(4) SCC 259]**, it has been laid down:

“4. that the circumstances from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conclusive in nature to connect the accused with the crime. All the links in the chain of events must be established beyond reasonable doubt and the established circumstances should be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In a case based on circumstantial evidence, the Court has to be on its guard to avoid the danger of allowing suspicion to take the place of legal proof and has to be watchful

to avoid the danger of being swayed by emotional considerations, howsoever strong they may be, to take the place of proof.”

15. In **Harishchandra Ladaku Thange v. State of Maharashtra [(2007) 11 SCC 436]**, while dealing with the validity of inferences to be drawn from circumstantial evidence, it has been emphasised that where a case rests squarely 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 the accused or the guilt of any other person and further the circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.”

20. Further, the Supreme Court in the matter of **Pradeep Kumar v. State of Chhattisgarh**³ has observed thus in para 27:-

“27. It is important to note that the cardinal principles in the administration of criminal justice in cases where heavy reliance is placed on circumstantial evidence, is that where two views are possible, one pointing to the guilt of the accused and the other towards his innocence, the one which is favourable to accused must be adopted.”

21. When the case is entirely based upon the circumstantial evidence, the chain of such circumstantial evidence in all probabilities 'must' indicate towards guilt of accused and circumstances 'must be' and

3 (2023) 5 SCC 350

not 'may be' lead towards guilt of accused.

22. In the present case, memorandum statements (Exs.P-18, P-19 and P-28) of the appellants have been proved by investigating officer Shivkumar Khunte (PW-13) and on that basis, the appellants have been convicted.

23. A careful perusal of the memorandum statements of the appellants (Exs. P-18, P-19, and P-28) shows that they were recorded by the Investigating Officer, Shivkumar Khunte (PW-13), at Police Station Chandani in the presence of two panch witnesses. In these statements, the appellants are said to have assaulted Shivcharan Kashi with an axe (Gadasa) and caused his death.

24. At this stage, it would be appropriate to notice Section 27 of the Indian Evidence Act, 1872, which states as under: -

“27. How much of information received from accused may be proved.—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

25. Section 27 of the Indian Evidence Act is applicable only if the confessional statement relates distinctly to the fact thereby discovered.

26. The Supreme Court in the matter of **Asar Mohammad and others v. State of U.P.**⁴ with reference to the word “fact” employed in Section 27 of the Evidence Act has held that the facts need not be self-probatory and the word “fact” as contemplated in Section 27 of the Evidence Act is not limited to “actual physical material object”. It has been further held that the discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place and it includes a discovery of an object, the place from which it is produced and the knowledge of the accused as to its existence. Their Lordships relying upon the decision of the Privy Council in the matter of **Pulukuri Kotayya v. King Emperor**⁵ observed as under: -

“13. It is a settled legal position that the facts need not be self-probatory and the word “fact” as contemplated in Section 27 of the Evidence Act is not limited to “actual physical material object”. The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place. It includes a discovery of an object, the place from which it is produced and the knowledge of the accused as to its existence. It will be useful to advert to the exposition in the case of *Vasanta Sampat Dupare v. State of Maharashtra*⁶, in particular, paragraphs 23 to 29 thereof. The same read thus:

4 AIR 2018 SC 5264

5 AIR 1947 PC 67

6 (2015) 1 SCC 253

“23. While accepting or rejecting the factors of discovery, certain principles are to be kept in mind. The Privy Council in *Pulukuri Kotayya v. King Emperor* (supra) has held thus: (IA p. 77)

“... it is fallacious to treat the ‘fact discovered’ within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that ‘I will produce a knife concealed in the roof of my house’ does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added ‘with which I stabbed A’, these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.

xxx xxx xxx

xxx xxx xxx

xxx xxx xxx”

27. Reverting to the facts of the case in light of the principles of law laid down by their Lordships of the Supreme Court in **Asar Mohammad** (supra), only discovery of an object, the place from which it is produced and knowledge of the accused as to this extent would be admissible and incriminating part of the accused statement that they have inflicted injuries to deceased Shivcharan Kashi would not be admissible under Section 27 of the Evidence Act. In the present case, no incriminating article has been seized pursuant to the memorandum statements of the appellants (Exs.P-18, P-19 and P-28). As such, that part of evidence would not be admissible.

28. The Supreme Court in the matter of **Aghnoo Nagesia v. State of Bihar**⁷ has clearly held that confession to police whether in course of investigation or otherwise and confession made while in police custody would be hit by Section 25 of the Evidence Act and observed as under:-

“9. Section 25 of the Evidence Act is one of the provisions of law dealing with confessions made by an accused. The law relating to confessions is to be found generally in Ss. 24 to 30 of the Evidence Act and Ss. 162 and 164 of the Code of Criminal Procedure, 1898. Sections 17 to 31 of the Evidence Act are to be found under the heading "Admissions". Confession is a species of admission, and is dealt with in Ss. 24 to 30. A confession or an admission is evidence against the maker of it, unless its admissibility is excluded by some provision of law. Section 24 excludes confessions caused by certain inducements, threats and

7 AIR 1966 SC 119

promises. Section 25 provides : "No confession made to a police officer, shall be proved as against a person accused of an offence." The terms of S. 25 are imperative. A confession made to a police officer under any circumstances is not admissible in evidence against the accused. It covers a confession made when he was free and not in police custody, as also a confession made before any investigation has begun. The expression "accused of any offence" covers a person accused of an offence at the trial whether or not he was accused of the offence when he made the confession. Section 26 prohibits proof against any person of a confession made by him in the custody of a police officer, unless it is made in the immediate presence of a Magistrate. The partial ban imposed by S. 26 relates to a confession made to a person other than a police officer. Section 26 does not qualify the absolute ban imposed by S. 25 on a confession made to a police officer. Section 27 is in the form of a proviso, and partially lifts the ban imposed by Ss. 24, 25 and 26. It provides that when any fact is proved to be discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Section 162 of the Code of Criminal Procedure forbids the use of any statement made by any person to a police officer in the course of an investigation for any purpose at any enquiry or trial in respect of the offence under investigation, save as mentioned in the proviso and in cases falling under sub-s (2), and it specifically provides that nothing in it shall be deemed to affect the provisions of S. 27 of the Evidence Act. The words of S. 162 are wide

enough to include a confession made to a police officer in the course of an investigation. A statement or confession made in the course of an investigation may be recorded by a Magistrate under S. 164 of the Code of Criminal Procedure subject to the safeguards imposed by the section. Thus, except as provided by S. 27 of the Evidence Act, a confession by an accused to a police officer is absolutely protected under S. 25 of the Evidence Act, and if it is made in the course of an investigation, it is also protected by S. 162 of the Code of Criminal Procedure, and a confession to any other person made by him while in the custody of a police officer is protected by S. 26, unless it is made in the immediate presence of a Magistrate. These provisions seem to proceed upon the view that confessions made by an accused to a police officer or made by him while he is in the custody of a police officer are not to be trusted, and should not be used in evidence against him. They are based upon grounds of public policy, and the fullest effect should be given to them.”

Their Lordships further held as under:-

“18. If the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by S. 25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of S. 25 is lifted by S.27”

29. In the case in hand, confessional statements (Exs.P-18, P-19 and P-28) made by the appellants before the police officer is hit by Section 25 of the Evidence Act and no part of it is admissible under Section 27 of the Evidence Act. As such, we are of the considered opinion that alleged memorandum statements of the appellants ((Exs.P-18, P-19 and P-28) are hit by Section 25 of the Evidence Act and no part of it is admissible under Section 27 of the Evidence Act in view of decisions rendered by Privy Council in **Pulukuri Kotayya** (supra) followed by the the Supreme Court in **Asar Mohammad** (supra). Even otherwise, no other incriminating piece of evidence is available on record to convict the appellants for offence under Sections 302 of the IPC.

30. In the present case, as per the FSL report (Ex.P-57), human blood was found on Article A-1 (pant), Article A-2 (gamcha), and Article A-3 (shirt) belonging to deceased Shivcharan Kashi, which were seized from appellant Rohit Shah. Human blood was also found on Article F-3 (jute bag) seized from appellant Rohit Shah, Article G-1 (jeans), Article G-5 (gamcha) seized from appellant Rohit Shah, Article J (axe/gadasa) produced by appellant Ramkumar and seized from the spot, and Article K-1 (scooty) seized from the house of appellant Ramkumar.

31. At this stage, pertinent decision of the Supreme Court on this point in the matter of **Balwan Singh v. State of Chhattisgarh**

and another⁸ may be noticed herein, in which the Supreme Court has summarized the law on this point after taking into the decision of the Supreme Court (Constitution Bench) in the matter of **Raghav Prapanna Tripathi v. State of U.P.**⁹. In **Raghav Prapanna Tripathi** (supra), the Constitution Bench of the Supreme Court has held that in case the prosecution needed to prove that the bloodstains found on the earth or the weapons were of a human origin and were of the same blood group as that of the accused.

32. The aforesaid decision of the Supreme Court i.e. **Raghav Prapanna Tripathi** (supra) was followed in **Balwan Singh** (supra) in which it was observed as under:-

“23. From the aforementioned discussion, we can summarise that if the recovery of bloodstained articles is proved beyond reasonable doubt by the prosecution, and if the investigation was not found to be tainted, then it may be sufficient if the prosecution shows that the blood found on the articles is of human origin though, even though the blood group is not proved because of disintegration of blood. The court will have to come to the conclusion based on the facts and circumstances of each case, and there cannot be any fixed formula that the prosecution has to prove, or need not prove, that the blood groups match.”

33. Thereafter, the Supreme Court in **Balwan Singh** (supra) relying upon the fact that the prosecution has failed to prove that the

8 (2019) 7 SCC 781

9 AIR 1963 SC 74

blood was of human origin declined to rely upon the aspect of recovery of the weapons from the accused therein. It was observed as under:-

“24. In the instant case, then, we could have placed some reliance on the recovery, had the prosecution at least proved that the blood was of human origin. As observed supra, while discussing the evidence of PWs 9 and 16, the prosecution has tried to concoct the case from stage to stage. Hence, in the absence of positive material indicating that the stained blood was of human origin and of the same blood group as that of the accused, it would be difficult for the Court to rely upon the aspect of recovery of the weapons and tabbal, and such recovery does not help the case of the prosecution.”

34. The trial Court in para 63 of its judgment has observed that if the facts and circumstances of the present case are considered, it is found that the accused persons assaulted the deceased on his vital parts with a sharp-edged weapon and a country-made pistol, and after his death, they took him to the forest and threw him under bushes without anyone's knowledge. If the accused persons did not have the intention to cause the death of the deceased, they would not have inflicted fatal blows on the vital parts of the deceased, nor would they have taken the dead body to the forest and concealed it without the knowledge of others after his death. The fact that the accused persons inflicted blows on the vital parts of the deceased, i.e., the neck and back, reflects their knowledge and intention that the injuries caused by the

weapon/object used and the blows inflicted on such vital parts were highly likely to result in the death of the deceased.

35. The trial Court in paras 60 and 61 of its judgment also observed that immediately after committing the murder of Shivcharan, the accused persons, with the intention of concealing the dead body, carried the body in a sack from the place of occurrence to a distant place. They took it to the forest, separated the head and torso of the deceased, and concealed the same under bushes with the intention that his identity could not be established. Thus, the existence of the crime, the knowledge of the commission of the crime, and the attempt to conceal the evidence despite having knowledge of the offence are important facts for constituting the offence under Section 201 of the Indian Penal Code. The aforesaid facts have been corroborated by the evidence of the prosecution witnesses. All the aforesaid circumstances reveal that the death of Shivcharan was an inevitable consequence of the injuries inflicted by the accused persons. Therefore, it is proved from the evidence that the accused persons, with the intention of committing the murder of Shivcharan and in furtherance of the criminal conspiracy, inflicted blows upon him. On consideration of the circumstances of the incident, no circumstance has emerged which would bring the case of the accused persons within any of the exceptions mentioned under Section 300 of the Indian Penal Code. Therefore, the commission of murder of Shivcharan by the accused persons is proved beyond reasonable doubt. Thus, the

prosecution has proved the necessary ingredients for constituting the offences alleged against the accused persons under Sections 302, 201 and 120-B of the Indian Penal Code. Accordingly, the findings on Issue Nos. 1 to 3 are recorded as **"Proved."**

36. We have bestowed our anxious consideration to the rival submissions advanced by the learned counsel appearing for the parties and have carefully examined the entire evidence available on record. The present case is admittedly based upon circumstantial evidence, as there is no eyewitness to the alleged incident of assault and murder of deceased Shivcharan Kashi. It is a settled principle of criminal jurisprudence that in a case based upon circumstantial evidence, the prosecution is required to establish each circumstance relied upon by it by cogent, reliable and convincing evidence, and all such circumstances must form a complete chain pointing only towards the guilt of the accused and must exclude every possible hypothesis consistent with their innocence.

37. In the present case, the prosecution has mainly relied upon the circumstances relating to the alleged motive, memorandum statements of the appellants, recoveries allegedly made pursuant thereto, recovery of the dead body, seizure of weapons and other articles, and the forensic evidence. However, upon a careful scrutiny of the evidence available on record, we find that the prosecution has failed to establish a complete and unbroken chain

of circumstances so as to conclusively prove the involvement of the appellants in the commission of the alleged offences.

38. The prosecution has placed heavy reliance upon the memorandum statements of the appellants recorded under Section 27 of the Indian Evidence Act. It is true that the portion of a statement which distinctly leads to the discovery of a fact is admissible in evidence. However, the protection contained under Sections 25 and 26 of the Indian Evidence Act prohibits the use of a confession made before a police officer, except to the limited extent permitted under Section 27 of the Act.

39. In the present case, the memorandum statements of the appellants (Exs.P-18, P-19 and P-28) contain allegations that the appellants had assaulted the deceased and caused his death. Such portions of the statements are purely confessional in nature and are inadmissible in evidence. Further, as noticed earlier, the severed head and torso of the deceased had already been recovered prior to the recording of the memorandum statements of the appellants. Therefore, the prosecution cannot derive any benefit from the said statements to establish the guilt of the appellants.

40. So far as the alleged recoveries made pursuant to the memorandum statements are concerned, the same also do not provide a conclusive link connecting the appellants with the crime. Though certain articles were seized during investigation, the

prosecution has failed to establish through reliable and convincing evidence that such articles were exclusively connected with the commission of the offence and that the said recoveries were sufficient to establish the guilt of the appellants beyond reasonable doubt.

41. The prosecution has relied upon the FSL report (Ex.P-57) and submitted that human blood was found on certain articles, including clothes, gamcha, jute bag, axe and scooty. However, mere presence of blood stains on such articles, in the absence of a complete and conclusive forensic connection with the deceased and the crime in question, cannot by itself be treated as a circumstance sufficient to sustain conviction. The prosecution has failed to establish the source of the blood stains and their direct nexus with the alleged offence in a manner which excludes all reasonable doubt.

42. The Hon'ble Supreme Court has consistently held that recovery of blood-stained articles by itself is not sufficient to establish the guilt of an accused unless the prosecution proves the complete evidentiary chain and establishes that the recovered articles are connected with the commission of the crime. In the present case, the prosecution has failed to provide such a connecting link.

43. The Trial Court has placed considerable reliance upon the fact that the deceased was assaulted on vital parts of the body and that after his death the dead body was concealed in the forest

after separating the head and torso. There can be no dispute that the manner in which the deceased was found indicates that a serious offence had been committed. However, the issue before this Court is not merely whether a crime was committed, but whether the prosecution has proved beyond reasonable doubt that the present appellants were the persons responsible for such crime.

44. The circumstances relating to the nature of injuries, concealment of the dead body and the manner of commission of the offence may establish the homicidal nature of death and the gravity of the crime, but such circumstances, by themselves, cannot establish the guilt of the appellants unless they are connected with the appellants through legally admissible and reliable evidence.

45. The prosecution has also failed to examine certain material witnesses, including Rupsai, from whom the complainant allegedly received information regarding the incident. Though non-examination of a witness by itself may not always be fatal to the prosecution case, in the facts and circumstances of the present case, where the entire prosecution case is based upon circumstantial evidence, such omission assumes significance and creates doubt regarding the prosecution version.

46. The defence taken by the appellants cannot be considered in isolation; however, the prosecution is required to stand on its own legs and prove the guilt of the accused / appellants beyond

reasonable doubt. The appellants are not required to establish their innocence with absolute certainty.

47. In the present case, the circumstances relied upon by the prosecution do not constitute a complete chain of evidence. There remain missing links and reasonable doubts regarding the involvement of the appellants in the alleged offences. The evidence available on record does not satisfy the requirement that the circumstances must be consistent only with the guilt of the appellants and inconsistent with any other reasonable hypothesis.

48. The learned Trial Court, while convicting the appellants, has failed to properly appreciate the evidentiary value of the memorandum statements and the alleged recoveries in accordance with the settled principles of law governing cases based upon circumstantial evidence. The conviction has been recorded mainly on the basis of suspicion and circumstances which do not meet the standard of proof required in a criminal trial.

49. It is a settled proposition of law that suspicion, however grave, cannot take the place of proof. The prosecution is required to establish the guilt of the accused beyond all reasonable doubt and any benefit arising from such doubt must go to the accused.

50. Considering the entire evidence available on record, we are of the considered opinion that the prosecution has failed to prove the charges against the appellants beyond reasonable doubt. The appellants are, therefore, entitled to the benefit of doubt.

51. Consequently, the criminal appeal is **allowed**. The impugned judgment dated 27.08.2024 passed by the learned First Additional Sessions Judge, Surajpur, in Sessions Case No.32/2021, convicting the appellants for offences punishable under Sections 302 read with Section 120-B and 201 read with Section 120-B of the Indian Penal Code and convicting appellant-Rohit Shah @ Rohit Sahu for offence punishable under Section 25/27 of the Arms Act, is hereby **set aside**. The appellants, namely **Ramkumar Sahu, Rohit Shah @ Rohit Sahu and Smt. Brihaspatiya**, are acquitted of the charges levelled against them. It is stated at the Bar that the appellants are in jail, they be released forthwith, if not required in any other case.

52. Appellants-Ramkumar Sahu, Rohit Shah @ Rohit Sahu and Smt. Brihaspatiya are directed to file personal bond and two sureties each in the like amount to the satisfaction of the Court concerned in compliance with Section 437-A of the Code of Criminal Procedure, 1973 (Now Section 481 of the Bhartiya Nagrik Suraksha Sanhita, 2023).

53. Let a copy of this judgment and the original record be transmitted to the trial court concerned forthwith for necessary information and compliance.

Sd/-

(Ravindra Kumar Agrawal)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice