

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. : 115 of 2020

Reserved on : 01.09.2026

Decided on : 14.09.2026

Uploaded on : 14.09.2026

Dharampal and Anr.

....Appellants.

Versus

State of Himachal Pradesh

...Respondent.

Coram

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

The Hon'ble Mr. Justice Bhupesh Sharma, Judge.

Whether approved for reporting?¹ Yes

For the appellants : Mr. M.A. Safee, Advocate,
(Legal Aid Counsel), for
appellant No.1.

: Mr. Ajay Kochhar, Senior
Advocate, with Ms. Preetika
Thakur, Advocate, for appellant
No.2.

For the respondent : Mr. J. S. Guleria, Deputy
Advocate General.

Bhupesh Sharma, Judge

Appellants/convicts, namely, Dharam Pal
(A-1), son of Shri Ram Sigh, resident of Village Padmi,
P.O. Balia, Tehsil Behaidi, P.S. Shashigarh, District

¹ Whether reporters of the local papers may be allowed to see the judgment?

Bareilly, U.P. and Chandrapal (A-2), son of Shri Bihari Lal, resident of Village Rahe Pura, P.O. Meerapur, Tehsil Morganj, District Bareilly, U.P., calls in question the legality of conviction recorded in terms of Sections 302, 364 and 201 read with Section 34 of the Indian Penal Code (for short 'IPC') by the learned Additional Sessions Judge, Nalagarh, District Solan, HP, in Criminal Trial No. 16-NL/7 of 2015 (CIS No. HPS002000388-2015) titled as 'State of HP vs. Dharam Pal and Another', whereby the appellants/accused persons (hereinafter referred to as the 'accused') have been sentenced under Sections 302, 364 and 201 read with Section 34 of the IPC, and to undergo rigorous imprisonment for life alongwith a fine of ₹5,000/- each for commission of offence punishable under Section 302 of the IPC, rigorous imprisonment for a term of 5 years alongwith a fine of ₹3,000/- each for commission of offence under Section 364 of the IPC and rigorous imprisonment for a term of 5 years alongwith a fine of ₹3,000/- each for commission of offence under Section 201 of the IPC with default clauses.

2. The accused persons were sent to face trial for commission of offences under Sections 302, 364 and 201 read with Section 34 of the IPC, in Case FIR No. 218/14, dated 27.09.2014, Police Station Nalagarh, District Solan, HP. The accused persons were prosecuted for the offences under Sections 302, 364 and 201 read with Section 34 of the IPC and were convicted by the learned Trial Court vide impugned judgment of conviction and order of sentence dated 23.10.2019 in Sessions trial No. 16-NL/7 of 2015, titled as 'State of HP vs. Dharam Pal and Another'.

3. Accusations which form basis of the prosecution, in essence, are as follows:-

3(a) Durgesh, son of Shri Ram Bahadur, resident of Village Kotha, Post Office Sudana, Tehsil Dataganj, Police Station Alapur, District Badayu, Bihar (hereinafter referred to as "the deceased"), was residing alongwith his family in a rented accommodation of Shri Sunil Sharma at Village Soban Majra and was running a street cart for selling burgers at Bus Stand Majra, Tehsil Nalagarh, District Solan, HP.

3(b) On the night intervening 20.09.2014 and 21.09.2014, at about 9:00 PM, the deceased left his house on receiving a telephone call from the accused Dharampal (A-1), on the pretext of attending a birthday party at Bharatgarh. Thereafter, the deceased went missing. On 21.09.2014, the accused persons were confronted regarding the whereabouts of the deceased, but they denied being with him on the night intervening 20.09.2014 and 21.09.2014. It is alleged that the accused Chanderpal (A-2), called the deceased Durgesh on his cell phone 97362-74044 from his cell number 97362-32106 to attend a birthday party at Bharatgarh.

3(c) On 23.09.2014, the complainant, Sadhna Devi (wife of the deceased Durgesh), approached the police at Police Post Joghon and filed a missing person's report. The complainant suspected the involvement of the accused persons in the incident since they were having animosity due to business rivalry.

3(d) On 27.09.2014, the complainant Sadhna Devi made a statement under Section 154 Cr.PC alleging the involvement of the accused in the incident, leading to the

registration of case FIR No. 218/14, dated 27.09.2014, under Sections 302, 364 and 201 read with Section 34 of the IPC, at Police Station Nalagarh, District Solan, HP.

3(e) Pursuant to the registration of case FIR No. 218/14, dated 27.09.2014, under Sections 302, 364 and 201 read with Section 34 of the IPC, at Police Station Nalagarh, District Solan, H.P., the investigation commenced and the accused persons were arrested on 27.09.2014. The Investigating Officer, ASI Rattan Singh of Police Station Nalagarh, visited the house of the complainant and prepared the spot map. The accused persons, during their custodial interrogation, disclosed that they accompanied the deceased, Durgesh, on the night of 20.09.2014 on the pretext of attending a birthday party on their Motorcycle to Bharatgarh, where they consumed alcohol and later committed the murder of the deceased by hitting him on his head with an iron rod. Thereafter they disposed of his body in the canal. The accused persons, during the course of investigation, made separate disclosure statements under Section 27 of the Indian Evidence Act, leading to the identification of

the spot and recovery of incriminating articles, which were taken into possession vide separate recovery and seizure memos. The police could not recover the weapon of offence i.e. iron rod. However, the decomposed body of the deceased was recovered from the canal on 28.09.2014.

3(f) The police, after completion of the investigation, found complicity of both the accused persons in committing murder of the deceased Durgesh, and were also found to have caused the destruction of evidence of the crime committed by them by throwing the weapon of offence i.e. iron rod and the body of the deceased into the canal with a view to screen themselves from legal punishment.

3(g) Accordingly, accused persons namely Dharampal (A-1) and Chanderpal (A-2) were challaned for the commission of offences punishable under Sections 302, 364 and 201 read with Section 34 of the IPC by SHO, Police Station Nalagarh, District Solan, H.P.

4. The accused persons were committed for trial by learned Additional Chief Judicial Magistrate,

Nalagarh, District Solan, H.P., vide committal order dated 22.04.2015.

5. On having put to trial for the commission of offences punishable under Sections 302, 364 and 201 read with Section 34 of the IPC, the accused persons pleaded not guilty and claimed trial.

6. In its endeavor to bring home the offences against the accused persons, the prosecution examined 25 witnesses and also heavily relied upon the documentary evidence collected during the course of investigation.

7. Learned Trial Court after considering the material on record and hearing the parties, found the accused persons guilty of committing the offences under Sections 302, 364 and 201 read with Section 34 of the IPC. Resultantly, they were convicted for the said offences vide impugned judgment of conviction and order of sentence dated 23.10.2019.

8. **GROUND OF APPEAL**

- (i) The impugned judgment and sentence are contrary to the material and evidence on record. The findings and conclusions of the

learned Trial Court are alleged to be perverse and unsupported by the evidence.

- (ii) The impugned judgment is contrary to the cardinal principles of criminal jurisprudence, as the Trial Court wrongly held that the offences were proved beyond reasonable doubt, relying on surmises and conjectures.
- (iii) The Trial Court failed to properly and comprehensively appreciate the material on record, adopting a cursory and slipshod approach, and failed to apply the high standard of proof required in a criminal case, particularly the requirement that the prosecution case must establish the accused's guilt beyond reasonable doubt and exclude other reasonable hypotheses.
- (iv) The Trial Court failed to appreciate that the prosecution case was based on circumstantial evidence, but the alleged circumstances were neither properly established nor sufficient to exclude every reasonable hypothesis except the guilt of the appellants.
- (v) The Trial Court failed to appreciate that the prosecution had not produced any clinching, cogent or confidence-inspiring evidence to substantiate the allegations against the appellants.
- (vi) The impugned judgment is based on misreading and misappreciation of the evidence. The Trial Court relied upon inadmissible, misleading, sketchy and procured evidence, resulting in findings that are perverse and contrary to the record.
- (vii) The Trial Court failed to appreciate the unexplained delay in lodging the FIR, which, according to the appellants, was lodged after due deliberation and consultation, thereby casting doubt on the prosecution case.
- (viii) The Trial Court failed to appreciate that the complainant's version regarding the deceased being called by the appellants was

contradicted by the call records.

- (ix) The Trial Court failed to appreciate that the prosecution failed to establish any motive on the part of the appellants to commit the offence.
- (x) The Trial Court failed to appreciate that the prosecution could neither prove the recovery of chappal (Ext. P-1) in the presence of PW-3 Jasbir Singh nor establish that it belonged to the deceased. The Court also ignored that PW-3 Jasbir Singh did not support the prosecution case regarding the recovery.
- (xi) The Trial Court erred in relying upon the alleged disclosure statements Ext. PW-2/A and Ext. PW-2/B, which were confessional in nature, as no fact was discovered and no recovery was effected pursuant to them. The findings based on such inadmissible evidence, without assigning proper reasons, are therefore challenged.
- xii. The Trial Court erred in holding that the alleged recoveries mentioned in Seizure Memos Ext. PW-1/C, PW-3/A, PW-3/B and PW-4/A were legally proved, despite there being no evidence on record establishing that such recoveries were actually effected. The findings based on these unproved recoveries are therefore challenged.
- xiii. The Trial Court failed to appreciate that the prosecution's version regarding the appellants and deceased travelling on the motorcycle was contradicted by PW-4 Chet Ram and PW-5 Shripal.
- xiv. The Trial Court failed to appreciate that the prosecution's story regarding appellant Dharampal pointing out the place where the alleged weapon of offence was thrown into the canal was falsified by PW-7 Malta, the diver.
- xv. The Trial Court failed to appreciate that the prosecution's version regarding the deceased being taken on a motorcycle to the canal, consuming liquor and thereafter being assaulted with an iron rod was

contradicted by the medical and forensic evidence.

- xvi That the learned trial court further failed to appreciate that the prosecution failed to recover the alleged weapon of offence.
- xvii The Trial Court failed to appreciate that, apart from the alleged confessional statements, there was no legal, admissible or cogent evidence on record connecting the appellants with the commission of the alleged offence.
- xviii. The Trial Court failed to appreciate that the prosecution could not establish that the blood allegedly found on the clothes of appellant Chanderpal belonged to the deceased, thereby weakening the prosecution case and the alleged link between the appellant and the offence.
- xix That the impugned judgment is otherwise wrong, illegal hence deserves to be set aside.

9. We have heard learned counsel for the parties and have also gone through the record of the case carefully.

10. The allegations against the accused persons are that during the night intervening 20.09.2014 and 21.09.2014 at Bharatgarh, they committed the murder of Durgesh, son of Sh. Ram Bhadur at Bharatgarh by hitting him with an iron rod on his head. The accused persons pursuant thereto, threw his body and weapon of offence into the canal in order to cause disappearance of the evidence.

11. As is evincible, there are no eye witnesses to the alleged incident and the entire prosecution case rests on circumstantial evidence.

12. Before adverting to the material on record in the form of oral as well as documentary evidence produced by the prosecution, it may be pertinent to enumerate the principles of law relating to the appreciation of circumstantial evidence.

13. Needless to emphasis that for a crime to be proved, it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or *factum probandum* may be proved indirectly by means of certain inference drawn from *factum probans*, that is, the evidentiary facts. To put it differently, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of

circumstances from which the existence of the principal fact can be legally inferred or presumed.

14. Circumstantial evidence is evidence of relevant facts from which, one can, by process of reasoning, infer about the existence of facts in issue or *factum probandum*.

15. It is equally well established by now that the motive as alleged could be used only as a circumstance. It cannot prove or disprove the case in the fact situation. In fact the “motive” is something which prompts a man to form an intention and “knowledge” is an awareness of the consequences of the act. “Motive” is that which makes a man to do a particular voluntary act. Previous threats, previous litigations, or previous altercations and bad relations between the parties are admitted to show motive.

16. When there is direct evidence about murder, “motive” loses its significance, but still then motive is relevant to know the intention of the culprit. In criminal trial, the question of motive is of very little importance when there is direct and reliable evidence to prove crime.

17. The prosecution case heavily hinges on the following circumstances:-

- i) The accused, Chanderpal (A-2), being the subscriber of cell number 97362-32106, made a telephone call to the deceased on 20.09.2014, at 9:00 PM on his cell number 97362-74044, whereby he was called to attend a birthday party at Bharatgarh.
- ii) The accused persons and the deceased traveled on Motorcycle bearing registration number PB12H-4985 (TVS Victor) to the spot to attend the birthday party. The police, during investigation, recovered the said vehicle being used for the commission of the offence vide recovery and seizure memo (Ext. PW4/A) from Chet Ram (PW4).
- iii) The identification of the murder spot vide identification memo (Ext.PW1/C) by the accused persons, pursuant to their disclosure statements under Section 27 of the Evidence Act (Ext. PW2/A and Ext. PW2/B) in the presence of witnesses Mohd. Rafiq (PW2) and ASI Sanjay Kumar (PW18).
- (iv) Recovery of the Chappal of deceased (Ext. P-1) and two plastic glasses (Ext. P-3 and

Ext.P-4) from the site of the commission of offence, which were taken into possession vide recovery and seizure memos Ext. PW1/C and Ext. PW3/A. Furthermore, the recovery of blood-stained stones and soil from the spot vide memo Ext. PW3/B in the presence of witnesses Jasbir Singh PW3) an ASI Sanjay Kumar (PW18).

- (v) Recovery of the blood-stained clothes of the accused persons, worn by them at the time of the incident, vide recovery and seizure memos Ext. PW6/A and Ext. PW8/A in the presence of witnesses Ram Bhadur (PW6), ASI Sanjay Kumar (PW18), Sat Pal (PW8) and Ram Kumar (PW9).
- (vi) The medical evidence i.e. the post-mortem report dated 29.09.2014 (Ext. PW16/B) and the forensic evidence vide report number 2042-A SFSL Chem.(990)/14 (Ext. PW21/A) and report number 2042-B SFSL Bio.(232)/14, dated 26.11.2014 (Ext. PW21/D).
- (vii) As per the prosecution, relations amongst the deceased and the accused persons were not cordial and they have every motive to eliminate him.

18. Before advertng to and analyzing the circumstances mentioned hereinabove, it may be fruitful to refer to case laws where the case rests squarely on circumstantial evidence.

19. It has been consistently laid down by the Hon'ble Supreme court 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. (See **Hukam Singh Vs. State of Rajasthan, (1977) 2 SCC 99**), **Eradu Vs. State of Hyderabad, (AIR 1956 SC 316)**, **Earabhadrapa Vs. State of Karnataka, 1983 (1) RCR (Criminal) 292: [(1983) 2 SCC 330]**, **State of U.P Vs. Sukhbasi [AIR 1985 Sc 1224]**, **Balwinder Singh Vs. State of Punjab, 1987 (1) RCR (Criminal) 517: [AIR 1987 SC 350]** and **Ashok Kumar Chatterjee Vs. State of M.P. [AIR 1989 SC 1890]**. 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. In **Bhagat Ram Vs. State of Punjab [AIR 1954 SC 621]** it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

20. In **Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR 1984 SC 1622,** a three-Judge Bench of Hon'ble Supreme Court 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 Vs. State of Maharashtra, Air 1973 SC 2622= (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 circumstance 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.

21. In **Padala Veera Reddy Vs. State of Andhra Pradesh and others, 1989 Supp (20 SCC 706 : 1991 SCC (CRI) 407,** the Hon'ble Supreme court held that when a case rests upon circumstantial evidence the following tests must be satisfied:

- (1) *“the circumstances from which an inference of guilt is sought to be draw, 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.

22. The similar view has been reiterated by the Hon'ble Supreme court in **Ramreddy Rajesh Khanna Reddy and another Vs. State of A.P, (2006) 10 SCC 172.**

23. **In Balwinder Singh Vs. State of Punjab, AIR 1996 SC 607,** it has been laid down by the Hon'ble Supreme Court 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, however strong they may be, to take the place of proof.

24. In **Harishchandra Ladaku Thange Vs. State of Maharashtra, AIR 2007 SC 2957,** while dealing with the validity of inferences to be drawn from circumstantial evidence, it has been emphasized 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.

25. In **State of U.P Vs. Ashok Kumar Srivastava, AIR 1992 SCW 640=AIR 1992 SC 840,** emphasis has

been laid by the Hon'ble Supreme court that it is the duty of the Court to take care while evaluating circumstantial evidence. If the evidence adduced by the prosecution is reasonably capable of two inferences, the one in favour of the accused must be accepted. That apart, the circumstances relied upon must be established and the cumulative effect of the established facts must lead to a singular hypothesis that the accused is guilty.

26. In **Ram Singh Vs. Sonia and Ors., AIR 2007 SC 1218**, while referring to the settled proof pertaining to circumstantial evidence, the Hon'ble Supreme Court reiterated the principles about the caution to be kept in mind by Court. It has been stated therein that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances

gets snapped and the other circumstances cannot in any manner, establish the guilt of the accused beyond all reasonable doubts.

27. In **Ujagar Singh Vs. State of Punjab, (2007) 13 SCC 90**, after referring to the aforesaid principles pertaining to the evaluation of circumstantial evidence, the Hon'ble Supreme Court stated that it must nonetheless be emphasized that whether a chain is complete or not would depend on the facts of each case emanating from the evidence and no universal yardstick should ever be attempted.

28. The above position was highlighted by the Hon'ble Supreme Court in **State of Rajasthan Vs. Raja Ram, 2003(4) RCR (Criminal) 238: 2004(1) Apex Criminal 471: [2003 (8) SCC 180]**.

29. Similar view has been reiterated by the Hon'ble Supreme court in **Jagroop Singh Vs. State of Punjab, AIR 2012 Supreme Court 2600**.

30. It would be appropriate to consider some of the recent decisions of the Hon'ble Supreme Court in cases where conviction was based on the circumstantial

evidence. In **G.Parshwanath v. State of Karnataka, (2010) 8 SCC 593; (2010) 3 SCC (Cri) 1027,** the Hon'ble Supreme Court elaborately dealt with the subject and held as under:

“23. In cases where 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. 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 on the one hand and inference of facts to be drawn from them on the other. 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 fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of

the particular case. The Court thereafter has to consider the effect of proved facts.

“24 In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accuse, howsoever, extravagant and fanciful it might be. 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, then the false plea or false defence may be called into aid only to led assurance to the court.”

31. In **Rajendra Pralhadrao Wasnik v. State of Maharashtra, (2012) SCC 37; (2012) 2 SCC (Cri) 30,** while dealing with the case based on circumstantial evidence, the Hon'ble Supreme Court observed as under:

“12. There is no doubt that it is not a case of direct evidence but the conviction of the accused is founded on circumstantial evidence. It is a settled principle of law that the prosecution has to satisfy certain conditions before a conviction based on circumstantial evidence can be sustained. The circumstances from which the conclusion of guilt is to be drawn should be fully established and should also be consistent with only one hypothesis i.e. the guilt of the accused. The circumstances should be conclusive and proved by the prosecution. There must be a chain of events so complete as not to leave any substantial doubt in the mind of the court. Irresistibly, the evidence should lead to the conclusion which is inconsistent with the innocence of the accused and the only possibility is that the accused has committed the crime.

13. To put it simply, the circumstances forming the chain of events should be proved and they should cumulatively point towards the guilt of the accused alone. In such circumstances, 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.”

32. Last but not the least, in **Brajendrasingh v. State of M.P., (2012) 4 SCC 289 ; (2012) 2 SCC (Cri) 409,** the Hon’ble Supreme Court while reiterating the above principles further added that:

“28.Furthermore, the rule which needs to be observed by the court while dealing with the cases of circumstantial evidence is that the best evidence must be adduced which the nature of the case admits. The circumstances have to be examined cumulatively. The court has to examine the complete chain of events and then see whether all the material facts sought to be established by the prosecution to bring home the guilt of the accused, have been proved beyond reasonable doubt. It has to be kept in mind that all these principles are based upon one basic cannon of our criminal jurisprudence that the accused is innocent till proven guilty and that the accused is entitled to a just and fair trial. (Ref.Dhananjay Chatterjee v. State of W.B,(1994) 2 SCC 220 Shivu v. High Court of Karnataka (2007) 4 SCC 713 and Shivaji v. State of Maharashtra.) (2008) 15 SCC 269.”

33. The Hon'ble Supreme Court in **Ramanand @ Nandlal Bharti v. State of Uttar Pradesh (2023) 16 SCC 510**, has elaborately set out the principles of law relating to the appreciation of circumstantial evidence.

34. As discussed hereinabove, there is no dispute with regard to the legal proposition that conviction can be based solely on circumstantial evidence, but it should be tested on the touchstone of law relating to circumstantial evidence as laid down by the Supreme Court in various judgments referred (supra). In such a case, all circumstances must lead to the conclusion that the accused is the only person who has committed the crime and none else.

35. Keeping in view the aforesaid principles, we shall proceed to scrutinize the circumstances, which have been highlighted by the prosecution and heavily relied upon by the learned Trial Court, whereby the accused persons stood convicted for the commission of offences punishable under Sections 302, 364 and 201 read with Section 34 of the IPC by the impugned judgment.

CIRCUMSTANCE NO. 1

36. As per the prosecution case, on 20.09.2014, at about 9:00 PM, the deceased Durgesh left from his home after receiving a telephone call on his cell number 97362-74044 from the cell number 97362-32106 of the accused Chanderpal (A-2). The deceased, before leaving his house told his wife Sadhna Devi (PW-1) that he was going alongwith the accused to attend a birthday party at Bharatgarh.

37. The police, during the course of the investigation, vide email (Ext. PW25/A) sought the billing address, call detail records (CDR) and tower location of cell number 97362-74044 (belonging to the deceased Durgesh) and 97362-32106 (belonging to the accused, Chandrapal [A-2]). The call detail records of cell No. 97362-32106 is Ext.PW-25/B and the call detail records of cell number 97362-74044 is Ext. PW25/C.

38. The relevant witness examined by the prosecution in order to prove the said document is Shashi Kant Verma, Nodal Officer, Vodafone Idea Limited (PW-25).

39. The aforesaid witness has failed to produce the billing address and Consumer Application Form (CAF) of the respective cell numbers 97362-74044 and 97362-32106. Apart from this, there is no certificate under Section 65-B of the Indian Evidence Act in support of the said digital/electronic evidence.

40. It is apparent that the call detail records (Ext. PW-25/B and Ext. PW-25/C) produced by the prosecution would be admissible under Sections 65-A and 65-B of the Indian Evidence Act, if it is supported by the necessary requirement of certification as contemplated under the Act.

41. The Hon'ble Supreme Court in **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal** **(2020) 7 SCC 1**, has held as under:

*"We may reiterate, therefore, that the certificate required under Section 65B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in Anvar P.V. (supra), and incorrectly "clarified" in Shafhi Mohammed (supra). **Oral evidence in the place of such certificate cannot possibly suffice as Section 65B(4) is a mandatory requirement of the law.** Indeed, the hallowed principle in *Taylor v. Taylor* (1876) 1 Ch.D 426, which has been followed in a*

number of the judgments of this Court, can also be applied. [Section 65B\(4\)](#) of the Evidence Act clearly states that secondary evidence is admissible only if lead in the manner stated and not otherwise. To hold otherwise would render [Section 65B\(4\)](#) otiose.

[Anvar P.V.](#) (supra), as clarified by us hereinabove, is the law declared by this Court on [Section 65B](#) of the Evidence Act. The judgment in *Tomaso Bruno* (supra), being per incuriam, does not lay down the law correctly. Also, the judgment in SLP (Crl.) No. 9431 of 2011 reported as [Shafhi Mohammad](#) (supra) and the judgment dated 03.04.2018 reported as (2018) 5 SCC 311, do not lay down the law correctly and are therefore overruled.

The clarification [referred to above](#) is that the required certificate under [Section 65B\(4\)](#) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. **In cases where the “computer” happens to be a part of a “computer system” or “computer network” and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with [Section 65B\(1\)](#), together with the requisite certificate under [Section 65B\(4\)](#).**”

42. The digital/electronic evidence adduced by the prosecution before the learned Trial Court is not in

accordance with the mandatory provisions under the statute and perhaps cannot be looked into. Therefore, the prosecution has failed to connect the accused Chanderpal (A-2) being the registered subscriber and user of cell number. 97362-32106 from which he made call to the deceased (Durgesh) on 20.09.2014 on his cell number 97362-74044. Even otherwise having regard to the oral evidence, it may be pertinent to refer to the statement of Sandhya Devi (wife of the deceased Durgesh), who was examined as PW-1, wherein she failed to disclose the cell no. of accused Chanderpal. Also, there is material variation in the statement of complainant under Section 154 Cr.PC (Ext.PW1/B) and her statement regarding the sequence of events of receiving of the telephone calls. After carefully considering the aforesaid oral as well as documentary evidence, Circumstance No.1, does not find favour of this Court.

CIRCUMSTANCE NO.2

43. It is alleged by the prosecution that the accused persons took the deceased to Bharatgarh on Motorcycle bearing registration No. PB12H-4985 (TVS

Victor) and thereafter committed his murder.

44. As per the registration certificate (Ext.PW4/B) and Insurance Certificate (Ext.PW4/C) of Motorcycle bearing No. PB12H-4985 (TVS Victor), the same is registered in the name of Ajmer Singh, resident of Mohalla Begampura Ghanauli, District Rupnagar. Apparently, the vehicle at the time of the incident was in possession of Chet Ram (PW-4). The evidence of the said witness alongwith evidence of Shripal (PW-5) fail to suggest that on the night of incident, the said Motorcycle was in possession of the accused persons, which apparently was used for travelling alongwith deceased to Bharatgarh, where the offence was allegedly committed. Although, the police took into possession the said vehicle vide seizure memo (Ext.PW4/A) alongwith its registration certificate (Ext.PW4/B) and Insurance Certificate (Ext.PW4/C) in the presence of witnesses Chet Ram (PW-4) and Shripal (PW-5).

45. Nevertheless, the evidence of these witnesses does not suggest in any manner that the said vehicle was used by the accused persons for travelling to Bharatgarh.

Therefore, the prosecution fails to prove the said circumstance that Motorcycle bearing No. PB12H-4985 (TVS Victor) of Chet Ram was used by the accused persons for the commission of the offence.

CIRCUMSTANCES NO. 3 & 4

46. Prosecution has heavily relied upon the separate disclosure statements of the accused persons recorded under Section 27 of the Indian Evidence Act (Ext. PW2/A and Ext. PW2/B) and in pursuance thereto, the identification of murder spot vide memo (Ext. PW1/C) and recovery of Chappal (Ext. P-1) vide recovery of seizure memo (Ext. PW1/C) and also recovery of two plastic glasses (Ext. P-3 & Ext. P-4) and recovery of blood stained stones and soil vide recovery and seizure memo (Ext. PW3/B) were carried out.

47. Section 27 of the Indian Evidence Act, 1872 reads as under:-

“27. How much of information received from accused may be proved.- Provided that, when any fact is proved 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.”

48. The conditions necessary for the applicability of [Section 27](#) of the Act are broadly as under:

*(1) Discovery of fact in consequence of an information received from accused;
 (2) Discovery of such fact to be deposed to;
 (3) The accused must be in police custody when he gave information; and
 (4) So much of information as relates distinctly to the fact thereby discovered is admissible –*
[*Mohmed Inayatullah v. The State of Maharashtra*](#): AIR (1976) SC 483
*Two conditions for application–
 (1) information must be such as has caused discovery of the fact; and
 (2) information must relate distinctly to the fact discovered* [*Earabhadrappe v. State of Karnataka*](#): AIR (1983) SC 446”

49. We may refer to and rely upon a Constitution Bench decision of this Court in the case of [State of Uttar Pradesh v. Deoman Upadhyaya](#) reported in AIR (1960) SC 1125, wherein, Paragraph-71 explains the position of law as regards the [Section 27](#) of the Evidence Act:

“71. The law has thus made a classification of accused persons into two: (1) those who have the danger brought home to them by detention on a charge; and (2) those who are yet free. In the former category are also those persons who surrender to the custody by words or action. The protection given to these two classes is different. In the case of persons belonging to the first category the law has ruled that their

statements are not admissible, and in the case of the second category, only that portion, of the statement is admissible as is guaranteed by the discovery of a relevant fact unknown before the statement to the investigating authority. That statement may even be confessional in nature, as when the person in custody says: "I pushed him down such and such mineshaft", and the body of the victim is found as a result, and it can be proved that his death was due to injuries received by a fall down the mineshaft."
[Emphasis supplied]

50. The scope and ambit of [Section 27](#) of the Evidence Act were illuminatingly stated in [Pulukuri Kottaya and Others v. Emperor](#), AIR 1947 PC 67, which have become locus classicus.

51. Adverting to the statements of the witnesses with respect to the disclosure statement of accused Chanderpal vide Ext. PW2/A and Dharmpal vide Ext. PW2/B as per the aforesaid documents, both the accused persons have disclosed to identify the spot where the offence was allegedly committed by them and the body was thrown in the cannal. However, both the aforesaid statements appear to be confessional in nature and are apparently hit by Section 25 of the Indian Evidence Act, thereby rendering inadmissible.

52. Apart from this, recovery of the Chappal (Ext.

P-1), empty glasses (Ext P-3 and Ext. P-4), vide recovery and seizure memo Ext. PW3/A and recovery of blood-stained stones and soil vide memo (Ext. PW3/B) are not in consonance with the disclosure statements Ext. PW2/A and Ext. PW2/B. Also, one of the witnesses of recovery and seizure memo, Jasbir Singh, examined as PW3 does not support the prosecution case with regard to the said recoveries.

53. Having considered the aforesaid evidence and the ratio of law laid down by the Hon'ble Supreme Court in the judgments referred supra, the recovery of the incriminating articles either from the alleged site of occurrence or otherwise is not proved in accordance with law. Therefore, such evidence cannot be relied upon and construed against the accused persons.

CIRCUMSTANCE NO. 5

54. As per prosecution evidence, accused persons during the course of investigation got recovered their blood-stained clothes, which they were wearing at the time of the incident, and were taken into possession vide recovery and seizure memo (Ext PW6/A and

Ext. PW8/A). The clothes of the accused Chandrapal (A-2) i.e. shirt (Ext. P-1) and Pant (Ext. P-2) were sealed in cloth parcel Ext P-A and the said parcel was taken into possession vide memo (Ext. PW6/A). Similarly, the shirt (Ext.P-5) and Pant Ext.P-6) of the accused Dharampal (A-1) were taken into possession vide recovery and seizure memo (Ext. PW8/A). The aforesaid blood stained clothes of the accused persons were sent for chemical and forensic examination to SFSL, Junga and forensic report in this context is Report No. 2042-B/SFSL/Bio/232, dated 26-11-14 (Ext. PW21/D).

55. The aforesaid report in its sum and substance is of least consequence as it fails to connect the presence of blood on the clothes of accused persons with the blood of the deceased Durgesh. Therefore, the recovery of blood on the clothes of the accused persons, as reflected in the documents (Ext. PW6/A and Ext. PW8/A), is inconsequential evidence to connect the accused persons with the commission of the offence.

CIRCUMSTANCE NO.6

56. The deceased, Durgesh, was subjected to

post-mortem examination at Civil Hospital, Nalagarh, and his post-mortem report is Ext. PW16/B and the final opinion of the Medical Officer, Dr. Sandhya Gaggia (PW16) is Ext. PW16/C. The aforesaid evidence suggests that the cause of death being head injury in the right temporo-parietal region, leading to instantaneous death. Furthermore, the Medical Officer has opined that the possibility of the injuries found on the person of the deceased could not be ruled out by an iron rod. However, the prosecution in the present case could not recover the alleged weapon of offence i.e. the iron rod and since the aforesaid weapon was not shown to the Medical Officer, therefore, no definite opinion regarding the injuries sustained by the deceased by an iron rod can be inferred.

57. The prosecution has also relied upon the report of the State Forensic Science Laboratory, Ext. PW-21/A, wherein no alcohol was detected in the contents of parcels P-1, P-2, P-3, P-4, P-5, and P-6. Therefore, the aforesaid evidence rules out that the deceased prior to his death, had consumed alcohol, which fact is apparently against the prosecution case and the recovery

of empty alcohol glasses (Ext. P-3 and Ext. P-4) from the site of the occurrence.

58. The aforesaid report is inconclusive to assess the relevant facts regarding consumption of alcohol by the accused persons and the deceased prior to the incident.

CIRCUMSTANCE NO.7

59. As per the prosecution case, the deceased Durgesh and the accused persons were not on good terms due to business rivalry, as the deceased was allegedly selling burgers at a lesser price compared to the burgers being sold by the accused persons. The accused persons apparently, eliminated the deceased due to the said enmity. The prosecution has heavily relied upon the aforesaid factors being the motive for committing the crime.

60. It is a settled principle of criminal jurisprudence that in a case based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. This Court in various decisions has laid down the principles holding

that motive for commission of offence no doubt assumes greater importance in cases resting on circumstantial evidence than those in which direct evidence regarding commission of offence is available. It is equally true that failure to prove motive in cases resting on circumstantial evidence is not fatal by itself. However, it is also well settled and it is trite in law that absence of motive could be a missing link of incriminating circumstances, but once the prosecution has established the other incriminating circumstances to its entirety, absence of motive will not give any benefit to the accused.

61. Having regard to the nature of the evidence on record, the prosecution has failed to prove that the accused persons had a strong motive to eliminate the deceased.

62. PW-1 Sandhya Devi (wife of the deceased Durgesh), has testified that the relation of her husband was like a friend with the accused persons. Similarly, PW10 Manohar Lal has no direct knowledge of the facts regarding any enmity *inter se* the deceased and the accused persons. Furthermore, the evidence of Urmila

Devi (PW11) is based upon the version disclosed by Sandhya Devi (PW1). Since she is conspicuously silent regarding any enmity *inter se* the parties, therefore, no strong motive is emerging on record which could justify the commission of the offence as alleged against the accused persons.

63. Even if it is believed that the accused persons had a motive to commit the crime, the same may be an important circumstance in a case based on circumstantial evidence, but cannot take the place of conclusive proof that the person concerned was the author of the crime. One could even say that the presence of motive in the facts and circumstances of the case creates a strong suspicion against the appellants, but suspicion, however strong, cannot be a substitute for proof of guilt of the accused beyond reasonable doubt. The fact that we have ruled out the circumstance as enumerated above, therefore, the chain of specific evidence snaps so badly that to consider any other circumstance even like motive would not be necessary.

64. We may emphasized that except the alleged

recoveries, there is no other circumstances worth the name which has proved the involvement of the accused persons. It is a case of blind murder. There are no eye witnesses and the prosecution case is based on circumstantial evidence. In such a case, complete chain of events has to be established pointing out the culpability of the accused persons. The chain should be such that no other conclusion, except the guilt of the accused persons, is discernible without any doubt.

65. Having considered all the aspects of the prosecution case and the evidence in its entirety, this Court finds that the chain of events are incomplete giving benefit to the accused.

66. In **Mani Versus State of T.N. (2009) 17 SCC 273**, Hon'ble Supreme Court made the following pertinent observation on this very aspect: (SCC p. 279, para 26)

“26. The discovery is a weak kind of evidence and cannot be wholly relied upon and conviction in such a serious matter cannot be based upon the discovery. Once the discovery fails, there

would be literally nothing which would support the prosecution case.”

67. There is a reiteration of the same sentiment in **Manthuri Laxmi Narsaiah Versus State of A.P. (2011)14 SCC 117** in the following manner: (SCC p. 119, para 6)

“6. It is by now well settled that in a case relating to circumstantial evidence the chain of circumstances has to be spelt out by the prosecution and if even one link in the chain is broken the accused must get the benefit thereof. We are of the opinion that the present is in fact a case of no evidence.”

68. Likewise in **Mustkeem Versus State of Rajasthan (2011) 11 SCC 724**, Hon'ble Supreme Court observed as under: (SCC p.731, paras 24-25)

“24. In a most celebrated case of this Court, Sharad Birdhichand Sarda V. State of Maharashtra in para 153, some cardinal principles regarding the appreciation of circumstantial evidence have been postulated. Whenever the case is based on circumstantial evidence the following features are required to be complied with. It would be beneficial to repeat the same salient features once again which are as under: (Scc p.185)

(i) The circumstances from which the conclusion of guilt is to be drawn must or

should be and not merely 'may be' fully established;

(ii) 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;

(iii) The circumstances should be of a conclusive nature and tendency;

(iv) They should exclude every possible hypothesis except the one to be proved; and

(v) 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.'

25. With regard to Section 27 of the Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material object and its use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution."

(emphasis supplied)

69. It is settled position of law that suspicion, however strong, cannot take the character of proof.

70. Keeping in mind the nature of prosecution evidence emerging on record and the peculiar facts and circumstances of this case, it cannot be said that the

prosecution has been able to establish the guilt of the accused persons beyond any shadow of doubt on the basis of circumstantial evidence. Therefore, the accused persons are entitled for the benefit of doubt.

71. Accordingly, the appeal is allowed. The judgment and sentence order dated 23.10.2019, passed by learned Additional Sessions Judge, Nalagarh, District Solan, H.P. in Sessions Trial No.16-NL/7 of 2015, is not sustainable and is set aside.

72. The appellants/accused are ordered to be released forthwith. The fine amount, if deposited by the appellants, be refunded to them but after the expiry of limitation to file an appeal/revision and in case of appeal/revision, the same be dealt with as per the orders of Hon'ble Supreme Court.

73. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023), the appellants are directed to furnish bail bonds in the sum of ₹25,000/- each with one surety each in the like amount to the satisfaction of learned Registrar (Judicial) within four

weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the appellants on receipt of notice(s) thereof, shall appear before the Hon'ble Supreme Court.

74. A copy of this judgment along with the record of the learned Trial Court be sent back forthwith.

75. The appeal is, accordingly, disposed of, so also the pending miscellaneous application, if any.

(Vivek Singh Thakur)
Judge

(Bhupesh Sharma)
Judge

14th September, 2026
(sushma)