

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.605 of 2014

Arising Out of PS. Case No.-175 Year-2008 Thana- GAYA MUFFSIL District- Gaya

(Against the judgment of conviction dated 9th May, 2014 and
order of sentence dated 12th May, 2014 passed in Sessions Case
No. 330/09/46/13 by learned Adhoc A.D.J.-III, Gaya)

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Varun Kumar @ Banti @ Barun Singh @ Banti Singh @ Gora Son of Anil
Singh Resident of Village/Mohalla - Rana Nagar, P.S. - Mufassil, Distt. -
Gaya. Appellant

Versus

The State of Bihar Respondent

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with

Criminal Appeal (DB) No. 420 of 2014

Arising Out of PS. Case No.-175 Year-2008 Thana- GAYA MUFFSIL District- Gaya

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Sakaldeo Singh, son of late Shivcharan Singh, resident of village Shivpuri
Colony, P.O.- Mufassil, District- Gaya. Appellant

Versus

The State Of Bihar Respondent

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with

Criminal Appeal (DB) No. 446 of 2014

Arising Out of PS. Case No.-175 Year-2008 Thana- GAYA MUFFSIL District- Gaya

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Pawan Singh @ Jai Prakash Singh @ Jai Prakash S/o Sakaldeo Singh
Resident of Mohalla Sheopuri Colony, Police Station Muffasil, District Gaya.

... .. Appellant

Versus

The State of Bihar Respondent

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with

Criminal Appeal (DB) No. 462 of 2014

Arising Out of PS. Case No.-175 Year-2008 Thana- GAYA MUFFSIL District- Gaya

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Anil Singh son of Jagdish Singh R/o Mohalla - Rana Nagar, Manpur, P.S.
Mufasil, Distt. - Gaya Appellant

Versus

The State of Bihar Respondent

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with

Criminal Appeal (DB) No. 560 of 2014

Arising Out of PS. Case No.-175 Year-2008 Thana- GAYA MUFFSIL District- Gaya

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Guddu Singh, son of Tunu Singh, R/o- village- Janakpur, P.S.- Mufassil Gaya,
District- Gaya. Appellant

Versus

The State Of Bihar Respondent

Appearance :

(In Criminal Appeal (DB) No. 605 of 2014)

For the Appellant/s : Mr. Kanhaiya Prasad Singh, Sr. Advocate
Mr. Tej Narayan Singh

For the Respondent/s : Mr. S.N. Prasad, APP

For the Informant : Mr. Pushkar Narain Shahi, Sr. Advocate
(in all cases) Mr. Manish Kumar No. 2.

(In Criminal Appeal (DB) No. 420 of 2014)

For the Appellant/s : Mr. Ajay Kumar Thakur
Mr. Nilesh Kumar

For the Respondent/s : Mr. BIPIN KUMAR (APP)

(In Criminal Appeal (DB) No. 446 of 2014)

For the Appellant/s : Mr. Ajay Kumar Thakur
Mr. Anil Kumar Singh

For the Respondent/s : Mr. A.SHARMA (APP)

(In Criminal Appeal (DB) No. 462 of 2014)

For the Appellant/s : Mr. Surendra Singh, Sr. Advocate
Mr. Rajani Kant Singh

For the Respondent/s : Mr. BIPIN KUMAR (APP)

(In Criminal Appeal (DB) No. 560 of 2014)

For the Appellant/s : Mr. Surendra Singh, Sr. Advocate
Mr. Rajani Kant Singh, Mr. Lal Babu Singh

For the Respondent/s : Mr. D.K. SINHA (APP)

**CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL**

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

C .A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date : 13 -12-2017

The learned Trial Court convicted Pawan Singh (A/1), Varun Kumar @ Banti @ Gora (A/2), Guddu Singh (A/3), under Sections 302/34, 201, 120B and 364 of the Indian Penal Code whereas Sakaldeo Singh (A/4) and Anil Singh (A/5) were held guilty only under Section 201 of the Indian Penal Code. The conviction was recorded in Sessions Case No. 330/09/46/13.

2. A dead body was found deserted near Gere pahari in the



morning of 15.09.2008. The Station House Officer of Mufassil Police Station (P.W.11), on getting information records a *sanha* (Ext.14) and proceeds to the place where the informant (P.W.6), P.W.2 and several others were present. The dead body of the nephew of the informant was seized lying near a ditch. P.W.11 recorded the fardbeyan of P.W.6 at 8 a.m. in which it was alleged that his nephew (deceased) was having a flourishing business of stone crushing. In the afternoon of 14.09.2008, he had gone to Bodh Gaya along with his close friends and returned at about 6.15 p.m. when A/1, A/2 and A/3 were present at his house waiting for him. The deceased talked to them for some time and thereafter left the house with them. P.W.2 is the staff (*Munsi*) of the deceased. He was present there. When the victim did not return till late in the night, P.W.2 grew suspicious and intimated the informant. Thereafter both of them made hectic search. Calls were made to the deceased and A-2. The following morning they learnt about a dead body thrown in Gere pahari area where they rushed and upon arrival of the I.O. recorded the fardbeyan (Ext.8). The I.O. conducted the death inquest proceeding (Ext.10) in presence of the witnesses, took the photographs of the dead body, made seizure of the incriminating articles found at the place of occurrence such as blood stained soil, the blood soaked gunny bag, broken piece of *tabiz* having blood



stains etc. in presence of witnesses. P.W.2 Sukhendra Singh, P.W.3 Randhir Kumar Singh @ Shibu Singh, P.W.4 Mani Bhushan Singh, P.W.9 Sen Babu Manjhi and Viranchi Rajiv Yadav (not examined) were present at the place and recorded their statements. While the I.O. was recording the statements, an information reached him that the dead body was carried and deserted at the place of occurrence on a white colour Maruti Alto Car. On such clue, the I.O. straightway went to the house of Sakaldeo Singh (A/4) situated at Mohalla Shiv Puri and found the white colour Maruti Alto Car parked there having been freshly washed. A/4 and his son A/1 were present at the house. Both of them were apprehended. A/1 made the confessional statement (Ext.13) giving out the story of the conspiracy and the murder of the deceased. On the basis of disclosure made by A/1, the name of A/2 and A/3 transpired and 02 blood soaked T- shirt(s), a cotton half pant (Barmora), two pieces of raxin of grey colour containing blood stain marks were recovered from the bathroom of their house and four pieces of mat and one rubber mat were recovered from the rooftop of the house. All discovered articles were seized under different memos. On the same day, at about 4.55 p.m., the I.O. went to the house of A/2 with A/1. In presence of Amit Kumar (P.W.7) and Randhir Kumar Singh @ Shibu Singh (P.W.3), a search of the house was carried out. A/5



being father of A/2 was only present in the house. In course of search, the I.O. found freshly washed floor of the room at the third floor of the house. On further disclosure made by A/1, the I.O. found blood stain marks on one of the legs of the table kept in the said room. Some blood marks were also found on interior part of the door. The blood found on these articles were scratched and seized. Photographs were taken. The I.O. thereafter went to the bathroom at the upper storey wherefrom one pair of shoes with profuse blood stain marks was also seized. Later, A-1 surrendered and his confessional statement (Ext.14) was recorded on 16.10.2008. Photographs (Exts. 11/8 to 11/27) were taken. P.W.10, who had conducted the post-mortem on 15.09.2008 at 11.45 a.m., furnished the autopsy report. After obtaining order from the learned Chief Judicial Magistrate, the I.O. produced some witnesses before P.Ws. 12 and 13 who recorded their statements under Section 164 Cr.P.C. The blood stains articles collected from the place near the dead body and from the house of A/1 and A/2 were sent for forensic test after obtaining the order of the Court. The F.S.L. report is Ext. 18. The samples matched with the blood collected near the dead body. On the second day, the I.O. attempted to search the weapon used in the crime which could not be recovered. The statement of witnesses were recorded. On conclusion of investigation, the



charge-sheet was laid on 12.12.2008 whereon cognizance was taken and later the case was committed to the Court of Sessions. The case came on the file of the learned Trial Judge where charges were framed on 14.07.2010 and read over and explained to the appellant to which they pleaded not guilty and claimed to be tried. A plea in defence was taken that the own family members had killed the deceased to take over the business and property.

3. During trial, out of 15 charge-sheet witnesses, the prosecution examined 14 P.Ws namely P.W.1 Sunil Kumar Singh, P.W. 2 Sukhendra Singh, P.W.3 Randhir Kumar Singh @ Shibu Singh, P.W.4 Mani Bhushan Singh, P.W. 5 Abhay Pratap Singh, P.W.6 Chandra Bhushan Singh, P.W.7 Ram Amit Kumar @ Sonu, P.W.8 Ram Krishna Singh, P.W.9 Sen Babu Manjhi, P.W.10 Dr. Arvind Kumar, P.W.11 Ashok Kumar, P.W.12 Sri Ashok Kumar Gupta, Judicial Magistrate, 1st Class, P.W.13 Sri J.S. Srivastava, Judicial Magistrate, 1st Class, and P.W. 14 Smt. Sudha Bhardwaj (wife of the deceased). Defence case is total denial of the prosecution version. One witness was examined on behalf of the defence to prove handicap certificate marked as Ext.B.

4. P.W. 1 has stated that on 14.09.2008, he was returning from the house of his son in the night and reached the house of A-2 and saw A-1, A-2 and A-3 alighting from Alto car along with the



deceased. A-4 (Sakaldeo Singh) was present at the gate. The next morning, he could hear about the dead body of the deceased lying at Gere pahar. He visited the spot where the informant disclosed about the murder by the appellants on account of monetary dispute. His C.D. statement was recorded the following day and several weeks thereafter his statement under Section 164 Cr.P.C. was also recorded. P.W.2 is the staff of the deceased. On the relevant day, he had travelled with the deceased to Bodh Gaya and returned in the evening. The parents, wife and children of the victim, during the relevant time, had gone to Mumbai. A-1, A-2 and A-3 were present there when they returned from Bodh Gaya. They talked to the victim and thereafter all of them went together from the house. In the night when the victim did not return, a call was made to the victim as well as A-2. Immediately, intimation was given to the informant (P.W.6), who also started making calls till late in the night. On the following morning, he heard about the dead body of his master lying at Gere pahar. His statement was promptly recorded at the place of occurrence by the I.O. after completing the inquest proceeding and the seizure of the incriminating articles found near the dead body. He had also gone to the house of A-1, A-2 and A-4 where the police had visited for effecting search and arrest. Confessional statement of Pawan Singh (A-1) was recorded



and based on the disclosure, the incriminating articles including the blood stain raxin part of the vehicle and fire arm etc. were recovered. The Police had taken photograph of those recovered articles at the place. He became witness to the seizure. The Police again recorded his C.D. statement. Subsequently, he was produced before the Magistrate for recording a statement under Section 164 Cr.P.C. (Ext.3). He further stated that A-2 had threatened him not to depose in the case. On the motive, he too stated that huge amount of loan was advanced to A-1, A-2, A-3 and A-4. When the demand was made for return of the money, the incident had occurred. P.W.3 Randhir Kumar Singh @ Shibu Singh is stated to have got information of the death of the victim on 15.9.2008. P.W.2 was present there who disclosed about the incident having occurred on the previous night. In his cross-examination, he has stated that only 3 days before, the deceased had disclosed him about his going to the house of A-2 and A-4 for demanding money from A-1, A-2 and A-3 which was denied by all of them. P.W.4 is the uncle of the deceased. On 14.09.2008, he was present at the house when victim had returned from a visit to Bodh Gaya. A-1, A-2 and A-3 were present from before at his house. They took the victim along. P.W.2 was then present. When late in the evening, the victim did not return, the matter was reported to him by P.W.2 and thereafter to the informant



(P.W.6) whereafter calls were made on telephone till late in the night. On the following morning, the dead body was found. He has stated that the victim was engaged in the mining/crushing business and A-1, A-2 and A-3 were his close friends who used to help him. All of them had taken loan from the victim and had not returned the same. A-4 had also taken loan for solemnising marriage of his daughter and also for running a P.D.S. shop. Only 2-3 days before, there was a hot tiff between the victim and A-1, A-2, A-3 and A-4 at the house of A-4 on account of demand for repayment and refusal. P.W.5 is the brother of the deceased. He was then employed in Bombay. At the relevant time, his parents and the family members of the victim were in Bombay. His brother was involved in stone crushing business. In the morning of 15.09.2008, his uncle (P.W.6) (informant) called him to inform about the incident. Co-accused Pawan Singh (A-1) and his father Sakaldeo Singh (A-4) were the cousin maternal brother and cousin maternal grandfather respectively of the victim. A-1 to A-4 had taken loan on different pleas from the victim which they were not repaying. His brother had informed him on phone only few days prior to incident about such non-payment of the loan amount advanced to A-1 to A-4. P.W.6 is the informant of the case on whose statement the F.I.R. was lodged. He has supported the prosecution case as stated in the



fardbeyan. P.W.7 has deposed on the motive of the occurrence. According to him, on the evening of 15.09.2008, while passing through the house of A-2, he could notice a slew of persons assembled there. He too went there and found the police interrogating A-1 who was disclosing about the entire manner of occurrence. On his confessional statement, recovery of incriminating articles were made from the house of A-2 in presence of P.W.3. Seizures were effected in his presence. He became a witness to the seizure-memo(Ext.2/1). A copy of the seizure memo was given to A-4. His statement was recorded before the Magistrate (Ext.5) P.W.8 Ram Krishna Singh was declared hostile. Before he made stray statements, the witness has accepted of having made statements before the Police and also before the Judicial Magistrate, 1st Class, under section 164 Cr.P.C. Before being declared hostile, he has stated that on getting information that the deceased was murdered, he went to the place where the dead body was lying and saw the cut injuries on the neck of the body. He has accepted and identified his signature on the statement recorded under Section 164 Cr.P.C. (Ext.4/2). He has also identified his signature on the notice served on him by the I.O. for being examined under section 164 Cr.P.C. His statement recorded under section 164 Cr.P.C. is produced as Ext.-15/3. P.W. 12 Ashok Kumar Gupta, J.M. Ist Class



has deposed about recording such statement of the witness. It is not difficult to find from his statement made under section 164 Cr.P.C. that he had met in the evening of the date of occurrence with Sukhendra Singh (P.W.2) who had disclosed about the victim going with A-1, A-2 and A-3 and the calls made to some of the appellants as well as the informant when the victim did not return late night. He was declared hostile. However, in cross-examination, he has testified about his statement recorded by the police as well as before the Magistrate. He identified his signature on the statement made before the Magistrate (Ext.4/1). Later, the prosecution got him declared hostile. P.W.9 is a witness to the seizure. The prosecution also got him declared hostile. P.W.10 is the doctor who conducted the post-mortem on the deceased and submitted the report (Ext.8). The doctor found the following ante-mortem injuries on the dead body:

“(i) Incised wound 1” X 1/4” X bone deep, two in number at right side of forehead at the distance of 1”

(ii) Incised wound 1” X 1/4” X bone deep oblique at right side of back of head 3 inch below at two inch away from occipital protuberance with linear fracture of 3” size oblique.

(iii) Incised wound 2” X 1/2” X bone deep left side of forehead 1/2 “ above lateral end of eyebrow.”

P.W.11 is the I.O. of the case. P.W.12 and 13 are the Judicial Magistrates who have recorded the statement of the witnesses and proved those statements made before them. P.W.14 is the widow of



the deceased. She has spoken on the motive of the case in line with the evidence of other P.Ws.

5. Heard Mr. Surendra Singh, learned senior counsel in support of Cr. Appeal (D.B.) No. 560 of 2014, Mr. Kanhaiya Prasad Singh in support of Cr. Appeal (D.B.) No. 605 of 2014 and Cr. Appeal (D.B.) No. 462 of 2014 and Mr. A.K.Thakur in support of Cr. Appeal (D.B.) No. 446 of 2014 and Cr. Appeal (D.B.) No. 420 of 2014. We also heard Mr. Pushkar Narain Shahi, learned senior counsel for the informant and the APPs for the State.

6. The incident had occurred on the night intervening 14/15th September, 2008. In the fardbeyan, it was alleged that the deceased had advanced loan to appellants and that he was last seen alive at 6 o'clock at his own house with A-1 to A-3. Mr. Surendra Singh firstly challenged the finding of guilt recorded against A-3 and others under Section 364 IPC. Sukhendra Singh (P.W.2) claimed as one who travelled earlier in the day with the appellant to Bodh Gaya and had returned with the deceased. Placing his entire evidence, it was argued that the deceased had voluntarily accompanied the appellant and two other co-accuseds/co-appellants (A-1 and A-2). There is nothing in the evidence of P.W.2 that any force was applied to compel him to go along with the accuseds/appellants. There is also no material/evidence to show that any deceitful means was applied to induce the victim to go along with him.



A-1, A-2 and A-3, according to the prosecution, were close friends. These two components are the souls of the offence of abduction. He relied in this regard on *AIR 1984 SC 911 (Vinod Chaturvedi Vs. State of M.P.)* (paragraph 7) wherein the Apex Court observed as under:-

“There are several other unsatisfactory features in the prosecution case which the trial Court had taken note of but strangely enough those did not commend themselves to the High Court even for satisfaction. Vinod had not been named as the leader of the party which came to village Budha to pick up Brindaban in the statements given during investigation by several witnesses. These witnesses had been confronted as required by law and apart from pleadings either innocence or helplessness. No other answer was given. Some witnesses had deposed that Vinod the main architect of the incident came armed with a gun while others claimed that he was armed with a lathi. There is considerable divergence in the evidence as to whether Brindaban came into the jeep of his own accord or had been forcibly put into it. Most of the witnesses have stated that on being persuaded by the accused persons and Vinod, in particular, he went inside his house and came properly dressed to accompany the group to village Rampura. In that event, it cannot be said that Brindaban was abducted by the accused persons. This is so in view of the definition of ‘abduction’ in S 362 of the Code where it has been said:

“Whoever by force compels or by any deceitful means induces any person to go from any place, is said to abduct that person”.

7. Arguing further, learned counsel submitted that two circumstances have been relied upon to convict A-3. The motive of having taken huge loan from the deceased which he was not repaying. Three days prior to the incident, victim had gone to the house of A-2 and



A-4 (son and father respectively) for such demand and a hot talk had taken place. The prosecution has not brought any documentary evidence to prove that such advance was made to the appellants although witnesses have admitted that the deceased used to maintain books of account. Oral evidence only on this point has been led which is not convincing. In a case of circumstantial evidence, the motive has a role to play. Supporting the said limb of argument, he would argue that the motive at best raises suspicion. It shall not take the place of proof. Reliance has been placed on *AIR 2001 SC 175 (Saju Vs. State of Kerala)*.

8. The next circumstance is that P.W.1 had deposed that he had seen A-1 to A-3 at the house of A-2. P.W. 2 has stated about the presence of A-1, A-2 and A-3 in the evening of the date of occurrence when the deceased had accompanied them. The confessional statement of A-1, his father (A-4) and A-2 are relied upon by the prosecution together with the seizure of incriminating articles found at the house of A-1 and A-2 which have been exhibited. Ext.18 is the F.S.L. report indicating that the samples of blood collected near the dead body matched with the blood stains found on the aforesaid recovered articles from the house of A-1 and A-2. Nothing was recovered from the house of A-3. There is no confessional statement of A-3. The recovery of incriminating articles/materials from the house of A-1 and A-2 is discovery based on



the disclosure made by A-1, A-2 and A-4. Such recovery based on confessional statement of other accused cannot be used against the appellant(s). The Trial Court has also relied on the statement of the witnesses recorded under Section 164 Cr.P.C. He would submit that such statement(s) do not constitute substantive evidence. They can only be used to corroborate or contradict the witness making such statement and it would only be considered as a previous statement. To substantiate the same, he relied on **(2010) 10 SCC 736**.

9. Mr. Kanhaiya Prasad Singh appearing in support of Cr. Appeal (D.B.) No. 605 of 2014 and Cr. Appeal (D.B.) No. 462 of 2014 (A-2 and his father A-5) also criticised their conviction by the Trial Court. He submits that the case is based on circumstantial evidence. The prosecution has to prove every link of the chain of circumstance to conclusively prove the guilt. Relying on the case of ***A.I.R. 1966 Cr. L.J. 100(Aghnoo Nagesia vs. Bihar State)***, he submits that the evidence on record is not sufficient to convict the appellants. Ext. 18 (F.S.L. report) showing presence of human blood at the scene of occurrence and on the materials recovered from the house of A-1 and A-2 cannot be relied as the same was sent for forensic analysis 13 days after the seizure. The expert has also not been examined. To doubt the seizure of the incriminating articles, he referred to the evidence of P.Ws.3 and 7 (both cousins) wherein they have stated that after seizure, seal was not affixed



in their presence. P.W.11 (I.O.) has also admitted that from the case diary, he was unable to say whether it was sealed. The principle underlying the cases based on circumstantial evidence was again emphasised by him relying on *(1982) 2 SCC 351 (Gambhir Vs. State of Maharashtra) (paragraph 9)*.

10. Mr. A.K. Thakur appearing in support of Cr. Appeal (D.B.) No. 446 of 2014 and Cr. Appeal (D.B.) No. 420 of 2014 (son and father respectively) again emphasized the well crystallised principles of law enunciated in case of circumstantial evidence. He submits that both the appellants were arrested on 15.9.2013 but were forwarded on 17.9.2013. There is breach of the statutory provision. Surprisingly, the informant is a witness to all the events taking place after the recording of the F.I.R. Confession of A-1 (Ext.13) and of A-2 (Ext.14) was recorded but the recoveries made pursuant thereto have limitations in law. Challenging the conviction of A-4, he argued that his presence at the house, found washing the car would not be sufficient to hold him guilty under Section 201 IPC. It is submitted that several witnesses examined in the case are related to each other having criminal background. P.W.1 is not a witness named in F.I.R.. He is also not a witness to any of the document. His C.D. statement was recorded one day after on 16.9.2008. Pointing from the evidence on record, he would submit that there had been murders in the Kovil house to which few of the witnesses have affiliation. There



were murders for property. He also criticised the evidence of P.W.2. who is the permanent employee of the victim and has projected himself as a Munsii. His presence at the place of occurrence has been shown to be doubtful. He is also a resident of Kovil Niwas. Although a Munsii but he does not know about the business and account of the deceased. His claim of having travelled early in the day with the deceased to Bodh Gaya was also questionable referring to the evidence of P.W.6 (informant). Evidence of P.W.3 who is cousin of P.W.7 has also been seriously attacked referring to some inner contradictions in their evidence . P.W. 3 is also a convict in a murder case. He has admitted that four witnesses in the case have connections to Kovil Niwas. In his statement under Section 164 Cr.P.C. (Ext.15/2), he has not said about presence of A-1 and disclosing the manner they killed the deceased. From the evidence of P.W.4, it shall appear that Sakaldeo Singh (A-4) is related to the deceased as Nana whereas his son A-1 (Pawan Singh) is the maternal brother. He would further submit that the victim was killed for property dispute. The auction of the hills for crushing into stone chips was to take place few days after the occurrence. P.W. 4, in his evidence, stated that after the murder of the victim, P.W. 3 was running the Crusher Machine earlier held by the deceased. P.W. 7 who is a witness to seizure from the house of A-2 (Varun Kumar) has been criticised as a chance witness. He saw assembly of a crowd and went to the house of A-2. Referring to his



statement under Section 164 (Ext.16), it is pointed out that this witness too had connections with Kovil Niwas. His father is P.W.1 and cousin is P.W.3. With regard to the house in which the deceased was then living, there is materially contradicting evidence.

11. Mr. Pushkar Narain Shahi appearing for the informant conversely submits that the oral evidence read along with the documentary evidence complete the chain of circumstances proving the guilt of the appellants. The statement recorded under Section 164 Cr.P.C. of several witnesses corroborate the prosecution case. Ext.18 is the F.S.L. report which eliminates doubt and proves the guilt of the appellants. The appellant Varun Kumar (A-2), Pawan Singh (A-1) and Sakaldeo Singh (A-4) were found involved in criminal cases. In the evidence of the I.O., it has been exposited. On 15.9.2008, the confessional statement of A-1 (Ext.12) was recorded which is self-inculpatory statement. The photographs produced at the trial are the pictures of the human blood found on the stairs and walls of one of the appellants (A-2). He would further submit that non-examination of the expert shall not shake the F.S.L. report (Ext.18). The said report was accepted in evidence without objection.

12. In the light of the rival contentions, the relevant evidence shall be considered to find out whether the prosecution has been able to prove the case eliminating any reasonable doubt. The first contention of



the defence is that in the light of the oral evidence adduced by the prosecution, the charge under section 364 IPC is not proved. There is nothing in the evidence to show that any force was applied in taking away the deceased from the house on the relevant evening. There is also scanty material to show that any deceitful practice was adopted by A-1, A-2 and A-3 who were good friends of the deceased. According to the P.W.2, in the evening of the date of occurrence when the victim returned from Bodh Gaya, A-1, A-2 and A-3 were present from before at the house. All four talked to each other for some time whereafter the deceased in the company of those appellants left the house. Subsequently, he did not return. True it is that there is no evidence that any force was applied on the deceased by A-1 to A-3 to make him go along with them. Whether deceitful means were applied or not, however, depends on the particular facts of the case. The deceased was taken in the evening and was done to death in night. It is also on record that A-1 to A-3 were good friends of the deceased. The proximity of the time in going along with the deceased and the time of his death is a strong circumstance to indicate that the faith reposed on A-1 to A-3 by the deceased was deceitfully utilised by the accuseds. It is difficult to find a direct evidence on the point. The case on which reliance has been placed was rendered in different factual background. Closely analysing the evidence on record, the Court does not find substance in the submission



of Mr. Surendra Singh.

13. In a case based on circumstantial evidence, what shall be the nature and extent of judicial scrutiny has been emphasized referring to the judgements of the Apex Court. The Court would, however, not notice them as they lay the similar legal principle which was considered in all its ramifications by the Supreme Court in the case of ***Sharad Birdhichand Sarda vs. State of Maharashtra, (1984) 4 SCC 117***, wherein the following was laid down:-

- (i) The circumstance from which the conclusion of guilt is to be drawn should be fully established.
- (ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused.
- (iii) The circumstances should be of a conclusive nature and tendency.
- (iv) They should exclude every possible hypothesis except the one to be proved.
- (v) There must be a chain of evidence so complete as not 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.

14. Counsel for the A-3 has argued that in his case, the chain of



circumstances proved at the trial do not conclusively prove his guilt. Although the evidence of P.W.1 who had seen in the night of the occurrence presence of A-3 along with A-1 and A-2 at the house of A-2 alighting from the vehicle but this by itself would not be conclusive. The evidence of P.W.1 has been criticised contending that his C.D. statement was recorded one day after the incident. A-3 is not stated to have made any confessional statement inculcating himself in the crime. On the confessional statement of A-1 and A-2, his complicity in the crime is not clearly established. The confessional statement of A-1 and A-2 leading to recovery can be used to presume their complicity and as legal material to corroborate their complicity in the crime but not that of A-3. Even on the theory of last seen together, there must be something more to establish the connectivity between the accused and the crime. He would argue like the counsels of the other appellants that the motive has not been proved.

15. The prosecution case can be bisected into two parts. The first set of evidence is on the theory of last seen. P.W.2 Sukhendra Singh, P.W. Mani Bhushan Singh have deposed on this point. The evidence of P.W.8, to some extent also throws light on the point. These witnesses have stated that on 14.09.2008, at about 6 p.m. or so, the victim after his arrival from Bodh Gaya had left the home in the company of A-1, A-2 and A-3. P.W.1 Sunil Kumar Singh is the witness who has narrated that on the same night at about 9 p.m., the deceased was seen at the door of



the house of the Varun Kumar (A-2) along with A-1 to A-3. They were seen coming out of the vehicle (white colour Alto car). Father of A-2, Anil Singh (A-5) was also seen present there. All of them entered in the house A-2. He has further stated about knowing of the death of the victim in the following morning and the body lying near Gera Pahar. The defence has tried to discredit him that he had no occasion to take the route while returning from the house of his son. In the opinion of the Court, such criticism is not serious enough to discredit his statement about what he saw on the relevant night. He is not connected either with the appellants or the prosecution side. On careful scanning of his entire evidence, the Court finds him reliable on narrating the facts he had seen on the fateful night.

16. It would also be relevant to consider the criticism of P.W.2 made by the defence. It is stated that the witness was not able to state about the places he visited along with the deceased while travelling with him to and fro Bodh Gaya. He was just an employee of the deceased. At places, he had been referred as Munsif. His statement was recorded promptly by the I.O. He has categorically stated that while his statement was recorded under Section 164 Cr.P.C., the I.O. was not present there. It has been argued that if his evidence is believed then the victim had a cook. He was not required to bring chicken and cook for the deceased. These criticisms, in our view, do not shake his statements made as a



faithful employee of the deceased. He had nothing to gain from making incorrect statements. The prosecution has not elicited from him to show that he had an eye on the property of the deceased or that he was inimically disposed to the appellants.

17. Be it noted that from the evidence on record including Sudha Bhardwaj (P.W.14), wife of the deceased, it has been established that A-1 to A-3 were close friends. The deceased was not much literate but was managing a flourishing business. A-1 to A-3 used to help him in carrying out the business. The evidence on record further established that huge amount of cash loan were taken by A-1, A-2, A-3 and A-4. The wife (P.W.14) has stated that in her presence, the victim had drawn more than three lakhs rupees from bank to give to A-1 and A-2 for starting similar stone crushing business. A perusal of the evidence on record clearly establish the deceased was seen going with A-1 to A-3 on the fateful evening whereafter he did not return and his dead body was found in the following morning.

18. Before proceeding further to consider the evidence on the circumstances indicating the participation of the appellants in the crime, it is appropriate to examine the motive for the occurrence. In a case based on circumstantial evidence, motive has a role to play. The judgment cited on the point by the parties do establish this as a legal principle. The Counsel for the appellant, relying on *AIR 2012 SC 1249*



(Sampath Kumar vs. Inspector of Police, Krishnagiri) has submitted that in a case based on last seen theory, if the motive is proved then it creates a strong circumstance against the accused although not taking the place of proof. In the fardbeyan, the informant has alleged two motives for the incident. The deceased had advanced huge loans to the appellants particularly, A-1 to A-4 on different pleas but they were adamant on not returning the loan. Only a few days before, there was a quarrel between them when the deceased demanded back the monetary help given to them inasmuch as threats were also given out to him by the appellants. P.Ws. 3, 4, 5, 6 and 14 have spoken about such advancement of loan and the quarrel between the appellants, particularly A-1 to A-3, with the deceased only a few days prior to the occurrence. It has been argued that the deceased was maintaining a books of account. The witnesses have admitted that the register or the books of account did not reflect the loan given to A-1, A-2, A-3 and A-4. From the evidence on record, it is established that the deceased was not much literate. A-1 to A-3 were his good friends. P.W.5 (own brother of the deceased) and P.W.14 (the wife of the deceased) have stated about such monetary advance to the appellants for which a quarrel had taken place recently. P.W.14 has further stated that in her presence, the deceased had withdrawn more than three lakhs of rupees to be given to A-1 and A-2 to start business. The non-entry in the register of the expenses or the books of account on



which the defence has heavily relied, in our view, do not make their statements in Court unacceptable. The expense incurred by the deceased in giving loan(s) to friends/acquaintance was not in connection with the business. It was a monetary help/loan to friends on which the deceased had full reliance. It is difficult to accept the contention of the defence that non-revelation of the monetary help/loan given by the deceased to the appellants from the books of account or register of expenses would make the statements of the witnesses on this point unreliable or untrustworthy.

19. In a case based on circumstantial evidence, where no eye-witness account is available, there is another principle of law available which must be kept in mind that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers explanation which is found to be untrue then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in catena of decisions rendered by the Apex Court. Reference be made to the case of *State of U.P. versus Dr. Ravindra Prakash Mittal*, AIR 1992 SC 2045 and *State of Maharastra versus Suresh (2000) 1 SCC 471*.

20. It has also been submitted with reference to the evidence of P.W.4 (paragraph 10) that the crusher machine held by the deceased was being operated by P.W.3 after the death of the deceased. The prosecution



had alleged that the incident had occurred also with a view to take over the business of the deceased. It has been argued that P.W.3 is also resident of Kovil Niwas which has a close nexus with the case as several material witnesses of the present case are the residents of Kovil Niwas where there was perennial property dispute leading to deaths. The submissions may be attractive but merely on the basis that some of the relevant witnesses are the residents of Kovil Niwas, it is difficult to undermine their statements made on this point. Counsel for the appellants has argued that the mines/hills were going to be auctioned very soon. The deceased was eliminated so that he could not participate in the auction of the hills. The motive was to take over the business run by the deceased. It has, however, not been shown to the Court that the deceased had the only crushing business in the area. There were many. The running of the stone crushing business held by the deceased by one of the witnesses is not so material to completely ignore the statement of the witnesses made in Court on the motive. Those witnesses are consistent on the point. P.W.3 has clearly stated that after the death of the deceased, he had purchased the crushing machine and was running. The deceased was survived by his wife (P.W.14) who was employed. The Court has no hesitation in accepting that the motive for the occurrence has been established by the prosecution. In *Sanaullah versus State of Bihar 2012 (2) PLJR 55 (S.C.)*, the Apex Court has held where the



circumstances proved at the trial lead to the only hypothesis that the accused had committed the offence, it shall be inappropriate for the Court to acquit the accused of the offence only because motive of the offence has not been fully established.

21. Coming to the seizure of the incriminating articles, which is important link in the chain of circumstances, the prosecution case is that the deceased was done to death in the night intervening 14.09.2008 and 15.09.2008. On recovery or discovery of the dead body in the morning of 15.09.2008, the police arrived at the place of occurrence and recorded the statement of P.W.6 (the own uncle of the deceased). The father and the full brother of the deceased were not present in the town. The entire family members of the deceased had gone to Bombay where his brother was working. P.W.11 is the Investigating Officer of the case. He reached the place of occurrence immediately and recorded the fardbeyan. In his deposition, he has stated that during investigation at the site of incident while he was effecting seizure of the incriminating articles found near the dead body containing stains of human blood, he received a secret information that the dead body was discarded at the Gere Pahar in an Alto Car. Accompanying with senior police officer and the witnesses, he went to the house of A-1 and A-4 and found the white colour Maruti Alto Car parked there. The doors of the car were open. It was found freshly washed. Presence of water was found on the floor of the car. A-1 and A-



4 were present there. A-1 was interrogated whereafter he made the confessional statement narrating the entire occurrence disclosing the names of other appellants viz. A-2 and A-3. By the time, on getting information about the interrogation, P.W.2 who was the employee of the deceased also reached there. On the basis of disclosure statements of A-1, the I.O. seized two shirts, one half pant, one piece of raxin from the bathroom of A-1. One double barrel gun was also seized from the room of A-4. P.W.2 has identified his signature on the seizure list (Ext.2) P.W.7 Amit Kumar @ Sonu is also a witness to the seizure. According to the I.O., after effecting search and seizure at the house of A-1, he went to the house of A-2 along with A-1. P.W.7 Amit Kumar has stated that on 15.09.2008 at about 5 p.m., while he was going to meet his brother, he saw several people assembled at the house of A-2. Out of inquisitiveness he also went there and found A-1 sitting with the police and disclosing about the complete structure of the house of A-2 and the presence of incriminating articles relating to occurrence on the third floor of the house of A-2. The police then went to that room of the house along with A-1. He along with Sibbu Singh (P.W.3) who was present there from before also accompanied the I.O. to the third floor of the house. In his presence, the police recovered pair of shoes containing blood stain marks as also blood stains scratched from the door of the bathroom and from different places of the wall of the room and seized them. A blood



spot on the table of the room was also found which was scratched and seized. The police prior to effecting seizure had photographed the presence of blood on those articles. He has proved his signature on the seizure list (Ext.2/1). The photographs, clothes and pieces of raxin recovered from the room of A-1 have been marked as Exts. 11/8 to 11/13. The spare parts like mat in 5 pieces kept on the roof of the house for being dried were also photographed by the I.O. Ext.11/14 to 11/23 are the photographs of the blood spot found at different places in the house of Banti (A-2). Amarjit Kumar @ Rahul is also a witness to the seizure but not examined in this case. On the basis of the evidence of P.W.11 (I.O.) and the statement of Amarjit Kumar @ Rahul recorded by the Magistrate under Section 164 Cr.P.C. (Ext.14), it is difficult to reject the case of the seizure made from those places only because one of the witnesses to the seizure has not been examined. He was, however, produced for statement under Section 164 Cr.P.C. which was recorded by the Judicial Magistrate, 1st Class (P.W.12). P.W. 12 has stated that the witness had voluntarily made his statement and after going through the statement, he had put his signature in his presence. Randhir Singh @ Sibu is another witness to the seizure. He has stated that on 15.09.2008, when he learnt that the police had gone to house of A-2, he too went there and found P.W.7 present from before. In his presence, the police was interrogating A-1 when he made disclosure of the entire manner in



which the appellants had committed the murder of the deceased under a conspiracy with the help of A-2 and A-3. In his presence, the seizure of the incriminating articles were effected by the I.O. (P.W.11). P.W. 7 was later produced for his statement under section 164 Cr.P.C. In his evidence, he identified his signature made on such statement marked Ext.5. The evidence of this witness also discloses that an extra judicial confession was made by A-1 detailing the entire manner of occurrence followed by seizure of incriminating articles from the house of A-2. The statement (Ext.13) of A-1 appears to be not only a confessional statement leading to recovery of the incriminating articles but also an extra judicial confession with regard to the entire manner of commission of the murder, the motive and the participation of A-1 to A-3 in the crime. A-2 was later apprehended and his confessional statement (Ext.14) was recorded and marked on the basis of the evidence of I.O. On comparing Ext.13 with Ext.14, there is marked similarity on the motive and manner in which the deceased was done to death at the house of A-2 on the night intervening 14/15.09.2008.

22. Having noticed the relevant evidence on record including Exts. 13 and 14, the two confessional statements, we turn to the evidence of the doctor (P.W.10) who found in the post-mortem report (Ext.8) the injuries consistent with the manner of assault disclosed by the A-1 and A-2 in their respective confessional statements (Exts. 13 and 14). The



post mortem was conducted on 15.9.2008 at 11.45 a.m.. In the opinion of the doctor, the time elapsed since death was estimated within 18 hours. Such estimation completely fits in the case of the prosecution that after the deceased was taken away in the evening and last seen at about 9 a.m. at the house of A-2 was killed thereafter in the upper storey of the said house. There is no iota of doubt that the medical evidence fully supports the confessional statement of A-1 which the Court has no hesitation to treat as extra judicial confession also. The confessional statement of A-2 (Ext.14), as noticed, is similar to the confessional statement of A-1 (Ext.13). At this juncture, we advert to the statement(s) of A-1 to A-3 made under Section 313 of the Code. There is no explanation given by them about finding of blood spots at different places in the room and in the bathroom. There is also no explanation worth accepting with regard to the recovery of incriminating articles some of which contain human blood from the houses of A-1 and A-2. The F.S.L. report (Ext.18) opines the blood found near the dead body of the deceased including the gunny bag in which the body was packed and carried to the place of desertion tallied with the human blood found in the incriminating articles at the house of A-1 and several blood spots in the upper storey room, bathroom and the ladder of the house of A-2.

23. In *State of West Bengal versus Mr. Mohd. Umar (2000) 8 SCC 382*, the Apex Court held that if facts is specially in the knowledge



of any person then burden of proving that is upon him. It is because of the reason that it would be impossible for the prosecution to prove certain facts particularly within the knowledge of the accused(s). Although Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt beyond reasonable doubt but the provision of law would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts failed to offer any explanation which might drive the Court to draw a different inference. ***Sucha Singh Versus State of Punjab (2001) 4 SCC 375*** also lays the same legal principle. In such case, the burden on the prosecution is comparatively lighter.

24. Adverting to the confessional statement made by A-1 while at the house of A-2 in presence of the I.O. as well as P.W.7, wherein he disclosed in detail the manner in which the deceased was done to death in the upper floor of the house of A-2, there is nothing on record that while such statement was being made, A-1 was formally arrested. Several people had assembled there. We also do not find any material that such statement was made under duress.

25. In ***State of Rajasthan versus Raja Ram (2003) 8 SCC 180***, it has been held as a legal principle that an extra judicial confession if



voluntary and made in a fit state of mind can be relied upon by the Court. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. Nothing has been shown to us that P.W.7 was inimically disposed towards A-1. There is nothing in law requiring the Court to start with a presumption that extra judicial confession is a weak type of evidence. It would depend upon the nature of the circumstance, the time when the confession was made and the credibility of the witness who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of a witness who appeared to be unbiased, not even remotely inimical to the accused. We do not find any motive on the part of P.W.7 for attributing untruthful statement of the accused.

26. At this stage, the Court would consider the submissions made by Mr. Kanhaiya Prasad Singh appearing in few appeals. It was submitted that P.W.3 has admitted that all articles so seized were not sealed in his presence. P.W. 3 is cousin of P.W.7 whereas P.W.7 is son of P.W.1. Referring to the evidence of I.O., he would submit that he has stated that whether the articles seized at the places where they were found were sealed or not is not stated in the case diary. We find not much force in the submission. The articles recovered at the scene were seized has been duly proved by the evidence of I.O. as well as P.W.7. They



were dispatched for forensic examination. On the identification of the I.O. who has stated that on his identification, the signatures of Anil Singh (A-5) and Pawan Singh(A-1) on the seizure memo have been proved (Ext. 12/2). The F.S.L. report (Ext.18) clearly established that the seized articles including gunny bag and tabiz containing human blood found near the dead body of the deceased matched with the specimen of blood found and seized from the houses of A-1 and A-2. It was stains of human blood. It has been argued on behalf of the appellants that on the strength of the evidence on record, it cannot be conclusively held that the blood found on the articles seized from the houses of A-1 and A-2 matched with the blood group of the deceased. A further defence is taken that the expert on the subject or the author of the F.S.L. report has not been examined. The submissions are hollow. F.S.L. report (Ext.18) was exhibited in evidence without objection. Even otherwise, such report of the expert can be admitted in evidence without formal proof under Section 293 of the Cr.P.C. The proposition of law is well explained in several cases. Reference in this regard be made to case reported in *(2001) 4 SCC 9 (Dhanajaya Reddy vs. State of Karnataka)*. The gunny bag found near the dead body, according to the prosecution, was used to pack and carry the dead body for disposal at the site and thus containing the blood of the deceased.

27. The Counsel for one set of the appellants has raised a



question mark on the reliability of the evidence of witnesses as several of them had connection with Kovil Niwas wherein there were murders on property disputes. P.W.1, 3 and 7 have disclosed their address at Kovil Niwas. P.W.7 is the son of P.W.1. They were well known to the deceased from before. P.W.3 has stated that he was acquainted with the deceased since last 5-6 years. He knows very well the hill from where deceased used to take rocks for crushing. His C.D. statement was promptly recorded. He has clearly deposed that after the death of the deceased, he purchased the crusher machine and was operating the same since then. It is common experience that witnesses who are well known to the deceased only take the trouble of undergoing the cumbersome process of appearing as a witness in the case. In what context, the death in the Kovil Niwas had occurred and there resemblance or connection to the case in hand has not been shown to us. It is not decipherable from the evidence on record either. Apart from these witnesses, the evidence of P.Ws. 2, 5, 6 and 14 have thrown much light on the prosecution case on material aspects providing strong links in the chain of circumstances. It is difficult for the Court to reject their evidence accepting the said contention of the defence. Turning to the evidence of P.W.2, we have already found that he was an employee of the deceased. It was natural for him to be interested in ensuring the real culprit brought to book. His presence with the Police at the house of A-1 and thereafter at the house



of A-2 was not unnatural.

28. It is pertinent to consider another submission of the defence that there was undue delay in presenting the appellants before the Magistrate if they were already apprehended on 15.09.2008. The explanation on this point has been given by the I.O. in paragraph 25. The appellants who were apprehended on 14.09.2008 or 15.09.2008 were forwarded to Court on 16.09.2008. The Escort party returned as it was late in the day. The following day, they were forwarded and presented before the Court. The delay in production before the Court is, thus, not a much disturbing factor in the case.

29. As noticed, the motive for the occurrence is well established. A-1 to A-4 had taken huge amount on different pleas from the deceased. A-1 to A-3 were the friends of the deceased on whom he fully relied. They were also assisting him in the business. It has also been proved that only few days before, the deceased was at the house of A-2 when he had a quarrel with them as they had flatly refused to pay the money given to them. They had threatened the deceased. On 14.09.2008, A-1 to A-3 had deceitfully taken the deceased from his house. The following morning, his dead body was found near Gere Pahar. On 15.09.2008 itself, the I.O., on getting secret information, goes to the house of A-1 and A-4. Confessional statement of A-1 (Ext.12) was recorded at 3.15 p.m. which led to recovery of the incriminating articles



containing human blood etc. from his house. On his disclosure statement narrating the entire manner of occurrence, the I.O. takes A-1 along and goes to the house of A-2. He was found absent. On the basis of the confessional statement of A-1 recorded in presence of P.W.7, search was carried out in the upper floor of the house of A-2 wherefrom blood stain marks and other articles containing human blood stains were recovered. The blood mixed soil and other articles seized from the place where the dead body was found and the blood found on the article(s) seized from the house of A-1 and A-2 were scientifically analysed by the Expert at F.S.L., Patna. Both blood were found of the same blood group 'B' (human blood). A-1 and A-2, in their respective statements under Section 313 Cr.P.C., did not give any satisfactory reply to the presence of blood stain articles/marks in their houses. The statement of A-1 made before the I.O. as well as one of the witnesses would also be considered as an extra judicial confession. Although, as argued, A-3 had not made any such confessional statements but the evidence proved at the trial definitely proved the complicity of A-3 in the crime. He too had accompanied amongst the others accuseds with the deceased on the evening of 14.09.2008. The deceased was last seen alive in their company. The following day, his dead body was found. A-3, in his statement under section 313 Cr.P.C. has also not given satisfactory explanation of the circumstances in which the deceased received fatal



incised injuries. Although confessional statements are not substantive evidence but they can be relied on to corroborate the prosecution case which otherwise proved at the trial. The motive proved at the trial is equally applicable to him.

30. The defence has submitted that as against A-4 (being father of A-1) and A-5 (being father of A-2), there is no convincing evidence that they had attempted to screen the offender(s) and cause disappearance of evidence of offence. In this connection, our attention was also drawn to the confessional statement of A-1 and A-2 (Exts. 13 and 14) wherein they have stated that A-5 was on the ground floor of the house whereas the occurrence had taken place in the upper storey of the house. A-1 has, however, stated in his confessional statement that his father A-4 had also helped in washing the car and removing the blood spots from the car. It is only the I.O. who has stated about the presence of A-4 in the house and that he had the knowledge of commission of murder and that he too helped in cleaning the blood spot from the ladder and other parts of the house. So far as A-4 is concerned, the only evidence is that he was seen by the I.O. and some other witness present at the house along with A-1 where a freshly washed Maruti Alto Car was present. The accused Pawan Singh (A-1) in his confessional statement had stated about his father helping in washing the car and removing the blood spots. It may be noted here that the motive of the offence was



quarrel that had ensued a few days prior to the occurrence between A-1 to A-3 and the deceased on account of non-payment of the money advanced by the deceased to them. There is no evidence on record that Anil Singh (A-5) had taken any loan or that he had also the information about the loan given to his son and other friends. Presence of A-4 at the house along with his son A-1 read along with the confessional statement of A-1 about his father helping him in washing the car, in our view, would not be sufficient to prove the charge under Section 201 IPC. Similarly, the evidence on record are not sufficient enough to hold A-5 guilty of the charge under Section 201 IPC. Seemingly, he was present at the ground floor of the house when A-1 to A-3 arrived at late night accompanied by the deceased. The house has several storeys. A-5, even according to the evidence on record remained on the ground floor whereas the four friends including the deceased went to the upper floor where, on the dead of night, secretly, the deceased was done to death and the body was carried and discarded at a lonely place near Gere Pahar. On the basis of evidence available on record, it is difficult to hold conclusively the A-5 also guilty of the offence under Section 201 IPC. At this juncture, it may again be highlighted that confessional statements by itself is not a substantive piece of evidence. Narration by A-1 with regard to the washing of the car by him and also by his father (A-4) would not be conclusive proof of the fact. The I.O. has only stated



presence of A-4 at the house where he noticed the freshly washed car. Considering these facts appearing from the record, the Court is inclined to grant them benefit of doubt. They are acquitted of the charge under Section 201 IPC.

31. In the light of discussions made above, the conviction recorded against Pawan Singh (A-1 in Cr. Appeal (DB) No. 446 of 2014), Varun Kumar @ Banti @ Barun Singh (A-2 in Cr. Appeal (DB) No. 605 of 2014) and Guddu Singh (A-3 in Cr. Appeal (DB) No. 560 of 2014) under Sections 302/34 and 364 IPC is upheld. The aforesaid appeals filed by the appellants are dismissed.

32. The conviction of Sakaldeo Singh (A-4 in Cr. Appeal (DB) No. 420 of 2014) and Anil Singh (A-5 in Cr. Appeal (DB) No. 462 of 2014) under Section 201 IPC is set aside. Both appeals are allowed. Both the appellants i.e. Sakaldeo Singh and Anil Singh are on bail. They are discharged from the liability of bail bonds.

(Kishore Kumar Mandal, J)

Madhuresh Prasad, J: I agree.

(Madhuresh Prasad, J)

Pankaj/-

AFR/NAFR	AFR
CAV DATE	21.08.2017
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