

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 322 of 1993

1. Brahmdeo Chaudhary son of Narayan Choudhary
2. Ramavtar Yadav son of Daso Yadav
3. Babu Lal Choudhry son of Late Mahabir Choudhry
All resident of Village Bhadauri, P.S. Nawada district – Nawada.

.....Appellants.

Versus

The State of Bihar

... .. O.P./Respondent

Appearance :

For the Appellant/s	:	Mr. Birendra Kumar Singh, Advocate Mr. Pratik Mishra, Advocate Mr. Rahul Kumar, Advocate
For the Respondent/s	:	Mr. Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date : 07-09-2017

The present appeal was preferred against the judgment of conviction and sentence dated 28-06-1993 passed in Sessions Trial No. 130 of 1985/36 of 1987 (arising out of Nawada P.S. Case No. 128 of 1985) by the learned 3rd Additional Sessions Judge, Nawada. By the said judgment, all the appellants have been convicted under Sections 302/34 and 201 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for life for the offences under Section 302/34 of the Indian Penal Code and 7 years for the offence under Section 201 of the Indian Penal Code. As far as



appellant no. 1 and 2 are concerned, they have been further held guilty and convicted under Sections 364/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 10 years. All the sentences have been directed to run concurrently.

2. Short fact of the case is that on the basis of *fardbeyan* of informant Kasim Sah (P.W.-9 and brother of the deceased), an F.I.R., bearing Nawada P.S. Case No. 128 of 1985, was registered on 03-05-1985 for the offences under Sections 302/201 and 34 of the Indian Penal Code. It was alleged in the First Information Report that when he (Kasim Sah, P.W.9) had gone to attend the natural call at about 6:00 A.M. in the morning on 03-05-1985, he was told by the co-villagers namely Jamil , Md. Jamal, Md. Sagir Sah, Sakoor Sah and the chowkidar namely Ram Jatan Paswan that the dead body of his brother was lying in the Sobhia river on the northern side of the Sita Ram Sah College. The informant is said to have gone there with the aforesaid persons and found the dead-body of his brother Jainul @ Bengu Sah lying in the water. Thereafter, the dead body was taken out of the water. The informant has further stated in his *fardbeyan* that his brother Jainul @ Bengu Sah had told him on the previous day



at his house that Bhahmdeo Chaudhry (Appellant no. 1), Sukhdeo Mallah, , Chandrika Mallah, Kailash Mallah, Sarju Kewat, Ramji Kewat, Jamu Kewat, Suresh Mallah, Lalmuni Mallah, Kara Mahto, Rawavtar Yadav (appellant no. 2) and Babu Lal Choudhary (appellant no. 3) had threatened him about 2-4 days ago that they would beat him since some hot words were exchanged between them with regard to plucking of mangoes of Surajmali Mallah @ Daso Mallah. The informant had stated that he had suspicion that the aforesaid persons had conspired and murdered his brother as well as had thrown his dead-body in the river. It has further been stated in the *fardbeyan* that when the informant had gone to see the dead body of his brother at the river, he was told by Surajmali Mallah @ Daso Mallah and Baldev Mallah that 5-6 persons namely Ramavtar Yadav (appellant no. 2), Jamu Kewat, Lalmuni Kewat, Chandrika Kewat, Suresh Kewat, Brahmdo Choudhry (appellant no. 1), Kailash Kewat, Kara Kewat, Sarju Kewat, Nathun Kewat have conspired together and murdered his brother. It has further been stated by the informant that the aforesaid persons had drank the *todi*, kept in the sitting area of the house of his brother, hence he had suspicion that these people had murdered his brother. On the basis of the aforesaid



fardbeyan of the informant, an F.I.R. bearing Nawada P.S. Case No. 128 of 1985 was registered by the police against unknown persons.

3. After lodging of the F.I.R., the case was investigated and thereafter, chargesheet was submitted on 29-07-1985 against six persons i.e. three appellants herein as well as against Baldeo Mallah, Daso Mallah @ Surajmali Mallah and Jadu Mallah and thereafter, cognizance was taken on 30-07-1985. It may be pointed out that aforesaid Baldeo Mallah and Daso Mallah @ Surajmali Mallah had died during the course of the trial and Jado Mallah was discharged under Section 227 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.").

4. After supply of police papers, the case was committed to the court of sessions on 07-10-1985 and the charges were framed against the appellants herein and two other accused persons namely Baldeo Mallah and Daso Mallah @ Surajmali Mallah on 21-02-1986. Since the accused persons denied the charges during trial, the prosecution, to prove the case, examined altogether 11 witnesses. They are:

P.W.-1	-	Sakoor Sah
P.W.-2	-	Gulam Rasul Ansari
P.W.-3	-	Sagir Sah



P.W.-4	-	Tahira Khatoon
P.W.-5	-	Manzoor Alam
P.W.-6	-	Moijuddin
P.W.-7	-	Jumman Sah
P.W.-8	-	Ram Jatan Paswan
P.W.-9	-	Kasim Sah (informant)
P.W.-10	-	Anil Kumar (doctor)
P.W.-11	-	Ramashish Sah (I.O.)

5. P.W.-1 Sakoor Sah (uncle of the informant), was examined as a seizure witness, P.W.-2 Gulam Rasul Ansari (neighbour) was examined as a hearsay witness, P.W.-3 Sagir Sah was also examined as a hearsay witness. P.W.-4 Tahira Khatoon is the wife of the informant, P.W.-5 Manzoor Alam is a witness to the inquest report. P.W.-6 Moijuddin @ Munshi Mian and P.W.-8 Ram Jatan Paswan have been tendered by the prosecution. P.W.-7 Jumman Sah is the father of the deceased as well as that of the informant and P.W.-9 Kasim Sah is the informant, who have been examined in order to prove the case of the prosecution. P.W.-10 Dr. Anil Kumar has conducted the *post-mortem* examination on the dead-body of the deceased i.e. Jainul @ Bengu Sah. P.W.-11 Ramashish Sah is the investigating officer of the case.

6. The defence had also examined four witnesses, however they were on the point of *alibi*, and as such, their evidence is not relevant in the present case especially in view



of the fact that the Ld. Counsel for the Appellants has not pressed the plea of *alibi*.

7. Sri Pratik Mishra, learned counsel for the appellants has argued that neither there is any evidence to connect the appellants with the case nor there are any eye-witnesses to prove the occurrence, as alleged. It has been further submitted that as far as appellants' no. 1 & 2 are concerned, no incriminating articles have been recovered from their possession or from their house. As far as appellant no. 3 is concerned, only a blood-stained mat had been recovered from his house, however; there is no report of the Forensic Science Laboratory (for short "F.S.L.") regarding the said blood to be belonging to the deceased/human being or others, as such, no credence can be given to the said recovery. Learned counsel for appellants has further submitted that the theory of 'last seen' has not been substantiated with any other circumstantial evidence and in absence of even one chain in a case of circumstantial evidence, the same is enough to extend the benefit of doubt to the accused persons. For the said proposition, the learned counsel for the appellants has relied upon two judgments of the Hon'ble Supreme Court, reported in **(1982) 2 Supreme Court Cases 351 (Gambhir vs. State of**



**Maharashtra) and (2014) 1 Supreme Court Cases (Cri) 677
(Sujit Biswas vs. State of Assam).**

8. Shri Ajay Mishra, the learned Additional Public Prosecutor, appearing for the State, has submitted that there is ample evidence on record to sustain the conviction of the appellants herein. According to him the present case is a case of last seen and there is enough evidence to convict the appellants herein. He has further submitted that all the chains herein are complete so as to pointedly hold the appellants guilty of the offences alleged.

9. Besides hearing learned counsel for the parties, we have gone through the materials available on record as well as perused the entire evidence. It would be relevant to firstly refer to the evidence of the informant namely Kasim Sah i.e. P.W.-9. P.W.-9, in his deposition, has stated that the occurrence was related to one year two months back and the day was Thursday, on which day, the appellant no. 1 (Brahmdeo Chaudhary) and appellant no. 2 (Ramavtar Yadav) had come to his house for calling the deceased Jainul @ Bengu for the purposes of carrying the load (*bojha dhona*). On earlier occasion also, said persons had engaged Jainul (deceased) as labour for carrying the load. On the said date i.e. Thursday, his



brother (deceased) had gone for carrying the load, but did not return till the night. Therefore, P.W.-9 had gone to the *Kailurbari Madarsa*, where also he did not find his brother. In the morning, he came to know that the dead body of his brother was lying in the river, whereafter, he went there alongwith Sakoor Sah (P.W.1), Sagir Sah (P.W.3), Miraj, Ram Jatan Paswan (P.W.-8) and found that the dead body of his brother was lying in the water whereafter, the dead body was taken out of the water. This witness has further stated that 1-2 days prior to the date of occurrence, Surajmali Mallah @ Daso, Brahmdeo Chaudhary (appellant no. 1), Ramavtar Yadav (appellant no. 2), Lalmuni Kewat, Karu Yadav, Kailash Mallah, Sukhdeo Mallah, Jadu Mallah, Ramdi Mallah, Surju Kewat, Suresh Mallah had threatened his brother with dire consequences, since he used to pluck the mangoes of Daso Mallah and the said fact was told to informant by his father (P.W.7). P.W.-9 has further stated in his cross-examination that when the appellants no. 1 and 2 had come to call the deceased, he was not at his home. This witness has denied the suggestion that he has not stated in his *fardbeyan* that on Thursday, appellants' no. 1 & 2 had come to call his brother Bengu (deceased) for the purposes of carrying the load.



10. P.W.-7 Jumman Sah, who is the father of the deceased as well as father of the informant, has stated in his deposition that the appellant no. 1 namely Brahmdeo Chaudhary had called and taken away his son namely Jainul at about 12:00 noon and at that time, appellant no. 2 was also present with Brahmdeo. It has been further stated that the appellant no. 1 and 2 had taken his son for the purposes of carrying the load whereafter his son did not come back, however; he had not searched for him thinking that he must have gone to “*Tarbiz*”. This witness has stated that the date, on which appellant no. 1 and 2 had taken his son, was “*Jumme-raat*” (Thursday). It has been further stated that two days prior to the said occurrence, Jadu Mallah and Surmali Mallah had come to his house and warned him to make his son understand, otherwise they would kill and throw away his son, since his son used to pluck their mangoes. P.W.7, in his cross-examination in paragraph No. – 10, has stated that when the appellant no. 1 and 2, at about 12 in the noon, had come to take Jainul (deceased) for the purposes of taking work from him, his wife, wife of Kasim (informant) and Jainul (deceased) were also at home. It has been further stated that his son Jainul (deceased) had gone with the said accused persons and on the next date



morning, he came to know about the dead body of his son lying in the water. In paragraph – 11 of the cross-examination, this witness has stated that the appellant no. 1 and 2 had earlier taken Jainul on two occasions for the purposes of taking work from him and had also paid him wages. On the date of occurrence, the appellant no. 1 and 2 had called his son from outside the house.

11. P.W.-4 Tahira Khatoon is wife of the informant and she has stated in her evidence that about eleven months ago on Thursday in the noon while she was in her house, Surmali Mallah had come to her house and was saying that her brother-in-law (*Debar*) used to pluck the mangoes and hence, she should tell him not to do so otherwise they would kill him. This witness has further stated that about 2-3 days prior to the date of occurrence, appellant no. 1 and 2 had called her brother-in-law Bengu Sah and taken him away for the purposes of carrying the load, whereafter, they had paid wages @ Rs. 5/- per day for two days to Bengu. Then, on Thursday, the appellant no. 1 and 2 had again called Bengu in the noon time for the purposes of carrying the load and thereafter, Bengu (deceased) did not return to the home. On the said date, there was *jalsa* in the *Madarsa*, hence she thought he might have



gone there. On the next date morning, the dead body of his brother-in-law Bengu was found in the river. This witness has stated in paragraph – 8 of her cross-examination that when appellant no. 1 & 2 had come to call Bengu, no other person was there with them and at her house, her father-in-law and mother-in-law were only present. It has been further stated in paragraph 15 of her cross-examination that Daso @ Surmali had come once to complain about Bengu.

12. P.W.-1 Sakoor Sah, uncle of the informant, has only signed as a seizure witness on the seizure list prepared regarding the seizure of blood-stained mat from the house of Babu Lal Chaudhary i.e. appellant no. 3 and the same has been marked as **Ext. 1**. He has further signed as a seizure list witness on the seizure list pertaining to blood stains recovered from the wall of the house of the appellant no. 3 as well as the blood seized from the floor of the house of the said appellant no. 3, blood-stained knife and blood stained *lathi*, which have been marked as **Ext. 1/1**. This witness has further signed seizure list pertaining to the seizure of blood-stained mud from the bank of the river, from where, the dead body was recovered and the same was marked as **Ext. 1/2**. This witness has also identified



his signature on the F.I.R. as a witness and the same has been exhibited as **Ext. 1/3**.

13. P.W.-2 Gulam Rasul Ansari (neighbour) is a hearsay witness and he has stated that in the morning of Saturday, he came to know from Kasim Sah (informant) and Sagir Sah that Bengu Sah has been murdered and his dead body was thrown in the river. Nothing has been solicited in his cross-examination.

14. Similarly, P.W.-3 Sagir Sah is also a hearsay witness and has stated that while he was going for attending the natural call on 03-05-1985 at about 7:00 in the morning, he heard “*hullah*” and heard that the son of Fakir Mallah has been killed and thrown in the river, whereafter, he went there and saw the dead body of Bengu Sah, who is the brother of Kasim Sah (informant). Thereafter, the people had gone to the police station and while he was also going with them and when they reached near the mango tree, he saw that the co-villagers were asking Surmali and Baldeo Mallah as to whether they have murdered Bengu, however, the said persons denied to have done so. This witness has stated in paragraph – 10 of his cross-examination that he was with Daroga Ji at about 11:00 AM in the day time and Daroga Ji had gone to the house of appellant



no. 3, whereafter, Daroga Ji had gone to the house/sitting area of Baldev Mallah.

15. P.W.-5 Manzoor Alam has stated that “*Surat-haal*” (inquest report) of the dead body was prepared in his presence and he had made signature on the same as a witness, which he has identified and the said inquest report has been marked as **Ext.-2**.

16. P.W.-6 Moijuddin has only been tendered for cross-examination, however; he stated that the police had not taken his statement.

17. P.W.-8 Ram Jatan Paswan has also been tendered for cross-examination by the prosecution, however; he has stated in his cross-examination that on the previous date of recovery of the dead body, at about 4:00 in the evening, the deceased namely Jainul @ Bengu was seen for the last time near his house with two-four females of the same village.

18. P.W.10 Dr. Anil Kumar has stated in his evidence that on 03-05-1985 while he was posted at Nawada, he had conducted the *post-mortem* examination on the dead-body of Jainul @ Bengu Sah at about 1:30 P.M. and following ante-mortem injuries were found on the person of the deceased:-



- “(i) Incised wound 4” x 2” x bone deep on scalp in the middle.
- (ii) Lacerated wound 4” x 2” x bone deep on scalp in occipital region.
- (iii) Abrasion 1” x ½” on chest left side.
- (iv) Abrasion 1” x ¼” on right thigh.
- (v) Lacerated wound ¼”x ¼” x ¼” on right ear (Pinna)”

The *post-mortem* report has been exhibited as **Ext.**

3. P.W.10 has further stated in his evidence that injury no. 1 has been caused by sharp cutting weapon and injury no. 2 by hard blunt weapon and other injuries have also been caused by hard blunt substance. Time elapsed since death was within 6 to 36 hours. It has been opined by Dr. Anil Kumar (P.W.-10) that the death has been caused due to shock and haemorrhage produced by injury no. 1 & 2.

19. P.W.-11 Ramashish Sah is the investigating officer of this case and he stated in his evidence that on 03-05-1985, he was posted at Nawada Police Station and on the same date, he had recorded the *fardbeyan* of Kasim Sah and registered a formal F.I.R., which has been marked as **Ext. 4**. P.W.-11 had inspected the place of occurrence and noted the description of the same. He has further stated that the house of Baldev Mallah was at a distance of 200 yards from the place of occurrence. P.W.-11 has stated that he had seized blood-stained knife from the sitting area of the accused Babulal (appellant no.



3) and has also stated that in the said sitting area, Daso Mallah @ Surmali Mallah and Baldev Mallah were sitting and he had seized blood-stained *lathi* from the possession of Daso, whereafter he had arrested both persons namely Surmali and Baldev Mallah. The seizure list was also prepared and same was marked as **Ext.-5**. The P.W.-11 has also seized blood-stained mud and prepared the seizure list pertaining to blood stained mud, knife and blood-stained *lathi*, which have been marked as **Ext. 5/1**. This witness has named three places of occurrence i.e.

- (i) **Bank of river towards northern side from the Sitaram Sah College at a distance of about 150 yards from where the dead body of the deceased was recovered,**
- (ii) **Sitting area of the house of Baldev Mallah at a distance of about 200 yards towards the east of the place of occurrence, and**
- (iii) **House of Babulal Choudhary (appellant no. 3) 150 yards south of the sitting area of Baldev Mallah.**

20. P.W.-11 has stated that he had seized blood-stained mat from the house of Babulal Choudhary (appellant no. 3) and seizure list was prepared, which has been marked as **Ext. 5/2**. P.W.-11 has also stated that he submitted the charge-sheet and all the exhibits i.e. seizures made by him were sent to the Forensic Science Laboratory, Patna for their examination.



P.W.-11, in his cross-examination in paragraph – 21, has admitted that report of the F.S.L. has not been received. He has stated in the same paragraph that he had sent the blood-stained articles for their examination to ascertain as to whether the said blood was same as that of the deceased. In paragraph 22 of his cross-examination, this witness has stated that the blade of the knife was about a finger's size. He has further stated in paragraph 23 that Daso Mallah had not fled away after seeing him. In paragraph 24, this witness has stated that he had not recovered any incriminating articles from the house of Daso, Baldev and Ramavtar (appellant no. 2) upon search being made by him. In paragraph 28 of the cross-examination, he stated that the witness Sagir Sah (P.W.3) had not stated before him that Kasim (informant) came to know from Bengu regarding carrying of load by him. In paragraph 29, P.W.-11 has stated that Jumman Sah (P.W.-7) had not stated that in the night of Thursday, Ramavtar (appellant no. 2), Brahmdeo Choudhary (appellant no. 1) had called Jainul (deceased) and taken him away. In paragraph 30, he stated that Kasim Sah (informant and P.W.-9) had not stated regarding Ramavtar (appellant no. 2) and Brahmdeo (appellant no. 1) calling Bengu (deceased) on Thursday. In paragraph 33, P.W.-11 has admitted that copy of



seizure list was not given to Babu Lal (appellant no. 3) and after seizure of the *chatai* (mat) was made, the same was not seized. In paragraph 38 of the cross-examination, it has been admitted by P.W.11 that the F.S.L. report of the blood stained mud etc. has not been received and without receipt of the said report, he had submitted charge-sheet.

21. The defence has also examined four witness i.e. D.W.-1 (Md. Jahangir Khan), D.W.-2 (Saryug Chauhan), D.W.-3 (Indradeo Pandit) and D.W.-4 (Brijnandan Singh), however; learned counsel for appellants has not pressed the deposition of the defence witnesses.

22. We have examined the materials on record and it is apparent from the evidence led by the prosecution that none of the witnesses are eye-witness to the alleged occurrence. It is also evident from the evidence of the various witnesses that at best, the present case can be said to be a case of “last seen”, hence this is a case, which is based on the circumstantial evidence. In case pertaining to circumstantial evidence, all the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that in all probability, the crime was committed by the accused persons and none else. The circumstantial evidence in order to sustain



conviction must be completed and incapable of explanation of any other hypothesis than that of the guilt of the accused and further the same should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. In the instant case, if the circumstantial evidences are taken into consideration, it would be found that the entire chain is not complete and the evidences of the witnesses do not point towards proving the guilt of the accused persons/appellants herein. As far as P.W.-1 is concerned, he is a seizure list witness, P.W.-5 is an inquest witness and P.W.-6 is also an inquest witness. While P.W.-2 and P.W.-3 are hearsay witness and they have only stated that they had come to know about the murder of the deceased. P.W.-4 i.e. wife of the informant has also not stated anything in her examination-in-chief so as to connect the appellants with the alleged crime, whereas on the contrary, she had admitted that the appellant no. 1 & 2 had called Bengu (deceased) for carrying the load and had also paid their wages. As far as P.W.-7 is concerned, who is the father of the deceased and informant, has simply stated regarding his son namely Bengu (deceased) having seen lastly with the appellant no. 1 & 2, however; he has not stated about any threatening or scuffle or assault in between his son and the appellants herein,



though this witness has stated about the other accused persons namely Surmali and Jadu threatening his son with dire consequences.

23. Now we are left with the informant P.W.-9 Kasim Sah who has though stated in his *fardbeyan* that his brother namely Jainul @ Bengu (deceased) had told him at his home that on the previous day of the date of occurrence Bhahmdeo Chaudhry (appellant no. 1), Sukhdeo Mallah, Chandrika Mallah, Kailash Mallah, Sarju Kewat, Ramji Kewat, Jamu Kewat, Suresh Mallah, Lalmuni Mallah, Kara Mahto, Rawavtar Mahto/Yadav (appellant no. 2) and Babu Lal Choudhry (appellant no. 3) had threatened him about 2-4 days back that he would be beaten in case he plucks mangoes of Surmali @ Daso Mallah, whereas, in his deposition, this witness i.e. P.W.-9 has stated that the said fact had been told to him by his father. P.W.-9 has admitted that Choukidar Ram Jatan Paswan (P.W.8) was with him at the time when he had gone near the river where his brother's dead body was lying. It may be pointed out that the investigating officer (P.W.11) has deposed that P.W.-9 had not stated before him that on Thursday Ramavtar (appellant no. 2) and Brahmdev (appellant no. 1) had called Bengu (deceased). In fact P.W.11 has also stated in his



deposition that the witness i.e. P.W.7 had not stated in statement before him that Ramavtar and Brahmadev had called Jainul @ Bengu (deceased) and taken him away. Thus, it is seen that the chain in the circumstance is not complete. At this juncture, it may also be relevant to point out that P.W.8 in his cross-examination has belied the last seen theory as well inasmuch as though P.W.-4, P.W.-7 and P.W.-9 have stated that the appellant no. 1 & 2 had called the deceased Bengu and taken him away for the purposes of carrying the load at about 12 noon on Thursday, whereafter he did not return, P.W.-8 in his cross-examination has stated that the deceased Bengu was last seen on Thursday at about 4:00 PM in the evening with some females of the locality/village, hence, the theory of last seen is also not fully substantiated beyond all reasonable doubts and the said proposition of last seen is too feeble to connect the accused persons with the alleged crime.

24. Therefore, it is clear that besides there being no eye-witness, no cogent material has been brought forward to prove the guilt of the accused persons. The theory of last seen is also demolished by the evidence of P.W.-8 i.e. Ram Jatan Paswan (chowkidar). The witnesses i.e. P.W.4, P.W.7 and P.W.9 have also admitted that the appellant no. 1 & 2 have paid



wages to the deceased Bengu and there was no grudge on the said count. As far as appellant no. 1 & 2 are concerned, no incriminating articles have been recovered from their house. The prosecution had earlier propounded two circumstances i.e. one regarding the appellant no. 1 & 2 taking away the deceased Bengu for the purposes of carrying the load and the second i.e. other accused persons having threatened the deceased with dire consequences, if he continued to pluck mangoes, however; later, the said two circumstances appear to have been merged, however; no cogent evidence has come forward to support the said circumstances, alleged by the prosecution.

25. It is further apparent from the evidence adduced by the investigating officer i.e. P.W.-11 that the articles seized i.e. blood stained mud, blood from the wall of the house of appellant no. 3, blood from the floor of the house of appellant no. 3, blood-stained knife recovered from the house of appellant no. 3, blood-stained knife recovered from the possession of accused-Surmali, blood stained mat recovered from the house of appellant no. 3 and blood stained mud recovered from the place where the dead-body was recovered, though were sent for F.S.L. for examination, the report has not been received till date, hence it cannot be said whether the said



blood stains/blood belongs to a human being/the deceased or not. Hence, it cannot be said beyond shadow of all reasonable doubts that the said articles seized were connected to the killing of the deceased. Moreover, there is no puncture injury on the body of the deceased, which is apparent from the *post-mortem* report, hence use of knife is also doubtful.

26. Now coming to the judgments of the Apex Court referred to above by the learned counsel for the appellants for the proposition of law regarding circumstantial evidence, it is stated that the same is well-settled and does not need to be retreated.

27. After going through the materials on record and the evidence, we are of the opinion that the prosecution has not been able to prove the case beyond all reasonable doubts and as such, the appellants deserve to be given the benefit of doubt.

28. Accordingly, the judgment of conviction and sentence dated 28-06-1993 passed in Sessions Trial No. 130 of 1985/36 of 1987 (arising out of Nawada P.S. Case No. 128 of 1985) by the learned 3rd Additional Sessions Judge, Nawada is hereby set-aside. The appellants were granted bail by an order dated 20-09-1993, while the appeal was admitted on



19-07-1993. Considering the fact that the appellants have been acquitted, they are, hereby, discharged from the liability of their bail-bonds.

29. The appeal is allowed.

(Mohit Kumar Shah, J.)

Rakesh Kumar,J.: I agree.

(Rakesh Kumar, J.)

Anay

AFR/NAFR	NAFR
CAV DATE	01.09.2017
Uploading Date	07.09.2017
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