

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 673 of 2010

- Pawan Kumar Pandey S/o Late Brijnandan Pandey R/o Bhodaur Gajipur, Ps Karimmuddinpur, Pre. R/o Kharsiya Chowk, Behind Mayura Hotel, Ambikapur, Surguja

---- Appellant

Versus

- State Of Chhattisgarh, through Station House Office, Police Station Ambikapur, District Surguja, Chhattisgarh.

---- Respondent

CRA No. 710 of 2010

- Santosh Kumar Nagvanshi, S/o Awdhesh Nagvanshi, aged about 26 years, R/o Darripara (near house of Sudama Kurre), Ambikapur, District Surguja.

---- Appellant

Versus

- State Of Chhattisgarh, through Police Station Ambikapur, District Surguja (CG).

---- Respondent

CRA No. 712 of 2010

- Vikram Singh @ Gudda, S/o Shri Nilamber Singh, aged about 22 years, R/o Kharsiya Naka, Ambikapur, District Surguja (CG)

---- Appellant

Versus

- State Of Chhattisgarh, through District Magistrate, Surguja, Ambikapur, District Surguja (CG).

---- Respondent

CRA No. 717 of 2010

1. Ramsay @ Ram, S/o Shri Nansay, aged about 26 years, R/o Village Manikprakashpur (Leempara), Ambikapur, District Surguja (CG)
2. Sanjay Kashyap, S/o Dashrath Mistri, aged about 32, R/o Village Manikprakashpur, Ambikapur, District Surguja (CG)

---- Appellants

Versus

- State Of Chhattisgarh, through District Magistrate, Surguja, Ambikapur, District Surguja (CG).

---- Respondent

CRA No. 768 of 2010

- Amar Singh @ Guddu, son of Kishan Singh, aged 21 years, resident of village Girdharpur, Sikandrabad, Dist. Aligarh, UP, at present R/o near Asthbal, Kharsiya Chowk, Ambikapur, District Surguja.

---- Appellant

Versus

- State Of Chhattisgarh, through Police Station Ambikapur, District Surguja (CG).

---- Respondent

CRA No. 776 of 2010

- Rakesh Kurre @ Tillu, son of Ramprasad Kurre, aged about 20 years, residence of Bhattapara, Behind Manipur School, Ambikapur, Police Station Ambikapur, District Sarguja, Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh, through Police Station Ambikapur, District Surguja (CG).

---- Respondent

AND

CRA No. 789 of 2010

- Pramod Vishwakarma @ Moda, S/o Shri Ajay Vishwakarma, aged about 29 years, R/o village Sadar Road Kharsiya Square Ambikapur, District Sarguja (CG)

---- Appellant

Versus

- State Of Chhattisgarh, through District Magistrate, Surguja, Ambikapur, District Surguja (CG)

---- Respondent

For Appellants : Shri Surendra Singh, Senior Advocate assisted by
Shri N.K. Mehta Advocate in Cr.A. No.768/10.
Shri R.S. Marhas, Advocate in Cr.A. No.673/10;
Smt. Indira Tripathi, Advocate in Cr.A. No.712/10,
717/10 & 789/10.
Shri Saurabh Dangi, Advocate in Cr.A. No.712/2010
Shri CJK Rao, Advocate in Cr.A. No.776/2010

For Respondent : Shri Vivek Sharma, Government Advocate.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Arvind Singh Chandel

Judgement

P. Diwaker, J

12/12/2017

1. The above appeals since arising out of a common judgment, are heard together and being disposed of by this common judgment.
2. Challenge in the present set of appeals is to the judgment of conviction and order of sentence dated 1.9.2010 passed by the learned 3rd Additional Sessions Judge, Fast Track Court, Ambikapur, District Sarguja in Sessions Trial No.122/99 whereby the learned Additional Sessions Judge has convicted the accused/appellants for the offences punishable under Sections 302 & 201 of the Indian Penal Code (henceforth 'the IPC') and sentenced each of them to undergo rigorous life imprisonment with a fine of Rs.1,000/- and three years rigorous imprisonment with fine of Rs.500/-, plus default stipulations, respectively.

3. Brief facts of the case are that on 18.10.1998 the accused/appellants along with Anil Kumar Rai (since deceased) had gone for pre-Diwali celebration to village Manikprakashpur. It is alleged that after swimming in the pond, said Anil Kumar Rai had left the company of accused persons by saying that he is going to answer nature's call and when said Anil did not return for quite some time, he was searched but his whereabouts could not be traced and therefore a missing report was lodged by accused/appellant Pawan Pandey. This report was entered into roznamcha sanha at 6.40 in the evening. Apprehending that said Anil Kumar Rai might have drowned in the pond, a big net was thrown in the pond and next morning naked body of said Anil Rai was recovered from the pond. Un-numbered merg (Ex.P-22) was recorded on 19.10.1998 at 6.00 p.m. Inquest (Ex.P-24) was conducted over the body of deceased on 20.10.1998. Numbered Merg was recorded vide Ex.P-27. Body was sent for post mortem examination which was conducted by Dr. Sanjay Tripathi (PW-3) and the post-mortem report is Ex.P-2 where it was opined by the doctor that cause of death could not be ascertained, but he preserved viscera, right tibia bone & blood and the same were sent for chemical examination, histo-pathological examination and diatom test. After receipt of the report of Diatom test (Ex.P-39), FIR (Ex.P-34) was registered on 9.1.1999 against all the accused persons under Sections 302, 201, 34 of IPC, except accused Subhadra. Diary statement of Rukhmani Bai (PW-1) & Ramchandra Prasad (PW-2) were recorded on 11.1.1999 wherein they have projected themselves to be the eyewitnesses of the incident. Diary statement of Sunil (PW-4) was recorded on 10.1.1999, whereas diary statement of yet another important witness i.e. PW-6, was recorded on 11.4.1999. On the basis of disclosure statement (Ex.P-20) of accused/

appellant Amar Singh, one wrist watch of Lomex company was seized vide seizure memo Ex.P-21 and in the test identification parade the said wrist watch was identified by PW-4 Suneel to be of the deceased.

4. On completion of investigation, charge sheet for the offence punishable under Sections 302, 201 & 34 of IPC was filed against accused persons and accordingly the charges were framed against them by the trial Court. The prosecution in order to bring home the charges levelled against the accused/ appellant examined 16 witnesses in all. Statements of accused persons were recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication. The accused persons have examined eight witnesses in their defence.
5. After hearing the parties, the Court below has convicted & sentenced the accused/appellant in the manner as described above.
6. It is submitted on behalf of the accused/appellants that;
 - testimonies of PW-1 & PW-2, so-called eyewitnesses, are completely unreliable and that is why the trial Court has disbelieved their evidence. Findings recorded by the trial Court in respect of PW-1 & PW-2 are strictly in accordance with law and unless the same is held to be perverse, the same cannot be interfered with.
 - diary statements of PW-1, PW-2, PW-4 & PW-6 have been recorded with inordinate delay but no explanation has been offered by the prosecution in this regard.
 - Other two eyewitnesses i.e. PW-11 & PW-12 have also not supported the prosecution case and turned hostile.
 - Wrist watch belonging to the deceased is said to have been seized at the instance of accused Amar Singh vide Ex.P-21 but mere recovery of wrist watch allegedly belonging to the deceased is not

sufficient to connect the appellants with the crime in question. Even this wrist watch was shown to PW-4 before the TIP proceedings and thus the whole purpose of holding TIP proceedings for identification of wrist watch stood frustrated.

- the cause of death is not evident from the post-mortem report and there is no proof that death was homicidal. Once the cause of death is not proved, the appellants would be entitled to an order of acquittal.
- though the diatom test report did not confirm that the deceased died due to drowning, but in absence of any positive evidence demonstrating the fact that the deceased did not die a natural death or that his death was due to violence, it is difficult to hold that the death of the deceased was from violence. Even the doctor who conducted the post-mortem examination has admitted that the diatom test is not confirmatory for determining the drowning death of a person.
- accidental death is sought to be given the colour of homicidal death.
- last seen theory is also not applicable in the present case because the missing report itself was lodged by one of appellants. Even it is settled that the last seen is a weak type of evidence and unless & until it receives corroboration from the other sources as to the involvement of the appellants in the crime alleged, which is lacking in this case, they cannot be held guilty based thereon.
- even if conduct of an appellants after the incident is found to be unnatural and creates strong suspicion against them, that by itself is not sufficient to convict them, especially when no strong motive to put an end to the life of deceased is made out. In the present case,

no motive has been assigned as to why the appellants would kill the deceased.

- Reliance is placed in the matters of Palvinder Kaur v. The State of Punjab reported in AIR 1952 SC 354; The State Government, Madhya Pradesh v. Ramkrishna Ganpatrao Limsey & others reported in AIR 1954 SC 20.

7. On the other hand, learned counsel for the State submits that the prosecution has discharged its onus in establishing beyond reasonable doubt that the accused/appellants has committed murder of the deceased and therefore the trial Court right in coming to the conclusion that the appellants had committed murder of the deceased.
8. We have heard counsel for the parties and perused the evidence available on record.
9. Mst. Rukmani Bai (PW-1) is the hearsay witness.
10. Ramchandra Prasad (PW-2) is an independent witness who was examined as eyewitness to the incident. He has stated that on the date of incident he was in his house. On hearing commotion, he went near the house of Sanjay Vishwakarma and saw a boy lying there in naked condition. He has further stated that he saw that said Sanjay Vishwakarma was sitting over the chest of said boy and was pressing his nose & mouth. Other accused persons were holding hands & legs of the said boy. In the cross-examination this witness has admitted that his son had been prosecuted and punished for committing murder of father-in-law of accused Sanjay Kashyap. This witness has further admitted the fact that he has applied for cancellation of bail granted to the accused persons.
11. Dr. Sanjay Tripathi (PW-3) is the person who conducted post-mortem

examination over the body of deceased. As per opinion given by this witness, since the cause of death of the deceased could not be ascertained, the viscera, tibia bone & blood were preserved for definite opinion regarding cause of death. The doctor also gave opinion that there was 2 to 5 days duration between the death and post-mortem. In the cross-examination this witness has admitted that he did not notice any external or internal injury on the body of the deceased.

12. Sunil Kumar Rai (PW-4), brother of deceased, has stated that on 18.10.1998 his brother Anil (deceased) had left the house by saying that he is going to his friend's house and when he did not return till afternoon, his father went in search of the deceased but could not find him. Thereafter, he along with his friend Siraj went in search of the deceased and tried to trace his whereabouts but could not trace the same. During the course of search, one Birendra Kashyap informed that he had seen the deceased in the company of accused persons near the stable situated near Basant Talkies. He has further stated that on the same day at about 6-6.30 in the evening accused/appellant Pawan along with others came to his house and informed his father that he along with deceased & others had gone to Manikprakashpur and when they were bathing in the pond, the deceased had gone somewhere by saying that he is going to answer call of nature and thereafter he did not return. He further informed that despite extensive search, they could not find the deceased. He has further stated that thereafter accused Pawan visited the police station and got lodged the report regarding missing of the deceased. He has further stated that when they asked accused persons to show the place where they had gone to bath, firstly they tried to avoid the same, however, thereafter they agreed to show that place. On reaching the said place,

they found that slippers, t-shirt, bermuda & vest of the deceased were lying there. Next day morning, one big fishing net was spread in the pond to search out the deceased and the body of the deceased was found. He has further stated that while the fishing net was spread in the pond, the accused persons fled from there.

13. Jagannath Verma (PW-5) is the Naib Tahsildar who held the test identification parade of seized wrist watch of Lomex company. He has stated that seized wrist watch was mixed-up with three other wrist watches of Lomex make, and witness Sunil Kumar Rai (PW-4) had correctly identified the wrist watch from amongst the articles recovered to be the belonging to his brother (deceased). In the cross-examination this witness has admitted that the seized wrist watch was brought to him in sealed condition and when he had unsealed the wrist watch, the same was seen by the witnesses.
14. Siraj Ahmed Siddique (PW-6) is the person who was accompanying Sunil (PW-4) while he was searching for the deceased. He is also a witness to memorandum (Ex.P-20). Though this witness has reiterated the facts stated by PW-4, but diary statement of this witness was recorded on 1.4.1999 i.e. after lapse of sufficient long time from the date of incident, and no explanation has been offered by the prosecution for the delay in recording his statement.
15. Mahtaab Alam (PW-7) is the friend of the deceased and he has not stated anything incriminating against the appellant.
16. Lochan Prasad Sharma (PW-8) is the Assistant Sub Inspector who assisted in the investigation.
17. Kumari Savita (PW-11), Susaini (PW-12) & Sukhdev (PW-13) have not supported the prosecution case, therefore, they were treated as hostile.

18. Sanjay Tiwari (PW-14) is the Head Constable who assisted in the investigation. Najir Ram (PW-15) is the police person who prepared the spot map Ex.P-23. K.M. Khan (PW-16) is the investigating officer who has duly supported the prosecution case
19. In the present case, the prosecution, to prove its case, examined three eyewitnesses, namely Ramchandra Prasad (PW-2), Kumari Savita (PW-11) & Susaini (PW-12). Out of these, PW-11 & PW-12 did not support the prosecution and turned hostile, whereas, the trial Court did not find it prudent to rely on the testimony of Ramchandra Prasad (PW-2) and rejected his evidence on few grounds. One of the grounds to reject the evidence of PW-2 recorded by the trial Judge is the conduct of this witness in witnessing the incident as silent spectator, despite being at such a short distance and not making any effort to save the deceased or to apprehend the accused persons and non-disclosure of incident to anyone for sufficient long time i.e. till recording of his diary statement on 11.1.1999. This conduct of PW-2, according to the trial Judge, is highly doubtful and suspicious as to whether he at all was present at the time of alleged incident. We have also gone through the statement of PW-2 very minutely and we find that testimony of PW-2 is unreliable and untrustworthy. From perusal of the statement of this witness it is clear that after witnessing the alleged incident, he has not informed anyone about the same. Even on several visits of the police in the village during merger enquiry, he has not chosen to inform the police about the occurrence. It was a highly unusual conduct of this witness that having eye-witnessed a horrendous event like murder, he did not go to the police or tell anyone else. This apart, the incident took place on 18.10.198 and the diary statement of PW-2 was recorded on 10.1.1999, as admitted by the

investigating officer in his statement, however, no explanation has been offered by the prosecution for recording the police statement of such an important witness with such an inordinate delay. As such, the silence of eyewitness (PW-2) for long time creates a reasonable doubt as to the genuineness of the evidence of PW-2. The Hon'ble Apex Court, in **Badam Singh v. State of Madhya Pradesh** reported in **AIR 2004 SC 26** held that:-

"..... The mere fact that the witnesses are consistent in what they say is not a sure guarantee of their truthfulness. The witnesses are subjected to cross examination to bring out facts which may persuade a Court to hold, that though consistent, their evidence is not acceptable for any other reason. If the Court comes to the conclusion that the conduct of the witnesses is such that it renders the case of the prosecution doubtful or incredible, or that their presence at the place of occurrence as eyewitnesses is suspect, the Court may reject their evidence."

20. Another ground for rejection of evidence of PW-2 is that he is an inimical witness. In **Anil Rai v. State of Bihar** reported in **(2001) 7 SCC 318**, the Hon'ble Supreme Court has given guidelines as to how the evidence of inimical witnesses to the accused person should be appreciated by holding as follows :-

"The contention that as the witnesses relied upon by the courts were inimical towards the accused persons, their testimony could not be relied upon without corroboration in material particulars cannot be accepted. Enmity is a double-edged weapon which can be a motive for the crime as also

the ground for false implication of the accused persons. In case of inimical witnesses, the courts are required to scrutinize their testimony with anxious care to find out whether their testimony inspires confidence to be acceptable notwithstanding the existence of enmity. Where enmity is proved to be the motive for the commission of the crime, the accused cannot urge that despite proof of the motive of the crime, the witnesses proved to be inimical should not be relied upon. Bitter animosity, held to be a double-edged weapon, may be instrumental in false involvement or in the witnesses inferring and strongly believing that the crime must have been committed by the accused. Such possibility has to be kept in mind while evaluating the prosecution witnesses regarding the involvement of the accused in the commission of the crime. Testimony of eyewitnesses, which is otherwise convincing and consistent, cannot be discarded simply on the ground that the deceased were related to the eyewitnesses or previously there were some disputes between the accused and the deceased or the witnesses. The existence of animosity between the accused and the witnesses may, in some cases, give rise to the possibility of the witnesses exaggerating the role of some of the accused or trying to rope in more persons as accused persons for the commission of the crime. However, the mere existence of enmity in this case, particularly when it is alleged as a motive for the commission of the crime, cannot be made a

basis for discarding or rejecting the testimony of the eyewitnesses, the deposition of whom is otherwise consistent and convincing."

21. In the present case it is an admitted position that the son of PW-2 Ramchandra had been prosecuted and punished for committing murder of father-in-law of co-accused Sanjay Kashyap. It is also not in dispute that some of the accused/appellants have deposed against his son in the trial pending against him. Thus, it is clear that there was a previous history of inimical relationship between Ramchandra (PW-2) and accused persons and being so, he comes within the category of inimical witness. This apart, there is nothing on record corroborating testimony of this witness and in absence of any corroboration, it will not be safe to base conviction on such uncorroborated testimony.
22. Thus, it is clear from the evidence on record that there is unexplained delay in recording the statement of PW-2 and on his part in disclosing the fact of witnessing the incident to the police. The delay in recording of statement and the conduct of this witness in not disclosing the fact to police or anyone else, coupled with the fact that there is serious history of inimical relationship, alone are sufficient to render his version doubtful and unreliable. In the circumstances, we are of the view that the trial Court was right in rejecting the evidence of Ramchandra (PW-2) as a whole because the infirmities noticed by the trial Court for rejecting the evidence of alleged eyewitness i.e. PW-2, constitute good grounds.
23. Apart from the above eyewitnesses, the prosecution has also relied upon the circumstantial evidence consisting of last seen, recovery of deceased's property i.e. wrist watch, at the instance of accused/ appellant Amar Singh and diatom test report (Ex.P-39). The trial Court while relying

upon the aforesaid circumstantial evidence held the accused/appellants guilty for commission of offence in question vide impugned judgment.

24. Now we shall proceed to examine whether the trial Court was justified in holding the circumstances enumerated above together complete the chain of circumstances to prove the guilt of the accused persons .

1st Circumstance- Diatom Test:

25. When a body is recovered from water, there is usually a suspicion whether it was a case of ante-mortem or post-mortem drowning i.e. whether the body was drowned before or after death. To diagnose the cause of death in such cases, the diatom test is conducted. However, the diatom test is not confirmatory because diatom could be detected in the post-mortem drowning, if the same water in which the body was found was drunk by the deceased before the death. As per Modi's Medical Jurisprudence and Toxicology, 23rd Edition, water may not be present in the stomach, if the person died from sudden cardiac arrest or became unconscious immediately after falling into water, so that he could not struggle and swallow water in the act of drowning. It further says that the typical signs of drowning are seen only in the body of drowned person when it is removed from water, within a few hours after death and examined immediately.

26. In the present case, no doubt, diatom test (Ex.P-39) did not confirm that the deceased died due to drowning in water. In other words, there was no water in the body of the deceased which matched with the water in the pond from which the body of deceased was recovered. Admittedly, the deceased went missing from the morning of 18.10.1998 and his body was recovered from the village pond on the next day at about 4 in the evening. Post-mortem was conducted on 20.10.1998 at 12.35 p.m. and as per

post-mortem report (Ex.P-2), the probable duration between the death and post-mortem was between 2 to 5 days. Diatom test was conducted on 30.12.1998. No sign of injury, external or internal, was noticed on the body of deceased. Thus, it is clear that the body of deceased was not recovered and examined within a few hours of his death. According to Modi's jurisprudence, the typical signs of drowning are seen only in the body of drowned person when it is removed from water, within a few hours after death and examined immediately. In this situation, mere absence of diatoms will not exclude the possibility that the deceased died due to drowning more particularly when the doctor (PW-3), who conducted the post-mortem, could not detect the exact cause of death through the post-mortem. Needless to say here, if a doctor is not in a position to commit himself as to the manner of death, namely, accident, suicide or homicide; on principles of law relating to appreciation of evidence and burden of proof in criminal cases, it would not be appropriate to say, in point of view of jurisprudence, that death occurring in shallow waters should be considered as homicide unless otherwise proved. If we do so, obviously, we would be putting the burden of proof on the accused in a criminal case to disprove himself of having committed an offence, calling upon him to show that a death by drowning in shallow waters was either suicidal or accidental and, therefore, not homicidal. That is impermissible.

2nd circumstance - Last Seen:-

27. It is settled position of law that in a case of circumstantial evidence the various links in the chain of evidence have to be clearly established and the chain must be complete so as to rule out a reasonable likelihood of the innocence of the accused. In the present case, even assuming that the deceased did accompany the accused/appellants to village

Manikprakashpur, this circumstance by itself does not lead to the irresistible conclusion that the appellants had killed him and thrown his body in the pond, though grave suspicion arises against them. However, it is well settled that suspicion howsoever grave does not take the place of proof and if there is any reasonable doubt about the complicity of an accused in the commission of the crime he is entitled to benefit thereof.

That apart, to prove that the deceased was last seen in the company of the deceased the prosecution has examined Sunil Kumar Rai (PW-4), brother of deceased, but evidence of this witness regarding last seen is more or less hearsay and does not lead the prosecution anywhere. He himself had not seen the accused/appellants with the deceased. He was told the said fact by other persons i.e. Ganesh Kashyap, Virendra, who were not cited as witness by the prosecution in this case.

There is yet another aspect of the matter. The prosecution came out with a specific case that deceased was murdered by smothering and thereafter his naked body was thrown in the pond, but the same is not established from the medical evidence that has come on record. In other words, the homicidal death of the deceased is not proved beyond doubt by the prosecution. In the post-mortem it is noted that no injury was found on the body of deceased. The doctor, who had conducted post-mortem examination, opined that cause of death could not be ascertained. In **Madho Singh v. State of Rajasthan** reported in (2010) 15 SCC 588 the Supreme Court has held thus;-

“8. In absence of proof of homicidal death the appellants cannot be convicted merely on the theory of last seen-
'they having gone with the deceased in the manner

noticed herein before. The appellants' conviction cannot be maintained merely on suspicion, however strong it may be, or on their conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that all the three were good friends for over a decade.”

Furthermore, it is opined in the post mortem report that the death must have occurred between 2 to 5 days before the conducting of the post mortem examination. Since the time of the death is not known and as per the post-mortem examination the death could have occurred between 2 to 5 days before the post-mortem examination was conducted, the 'last seen together' theory cannot be applied even assuming that the prosecution has proved that the deceased was seen in the company of accused/appellants on 18.10.1999 because there has to be a proximity of time between the occurrence of death and the time when the accused and the deceased were last seen together.

3rd Circumstance: Recovery of wrist watch:

28. In the present case, it is alleged against accused/appellants that wrist watch of the deceased was recovered at the instance of accused/appellant Amar Singh and the same has been identified by the witnesses in the test identification parade to be that of the deceased. However, there is nothing on record to show that the deceased was wearing this watch when he left the house. No document regarding its purchase or ownership was produced before the court. Though PW-4 Sunil Rai, brother of deceased, has stated that the deceased used to wear this watch but he did not testify in his examination-in-chief that he had seen his brother with watch on his wrist. This watch was identified by the

identifying witnesses to be belonging to the deceased but they have not given any reason before the Court for identifying the said watch. Such types of watches are easily available in the market and in absence of any specific identification mark on it, the test identification of wrist watch becomes highly doubtful.

The test identification Parade of the wrist watch cannot be relied for another reason that the wrist watch had been seen by the identifying witness prior to test identification parade. According to the Naib Tahsildar (PW-5), who conducted the test identification parade, when the seized wrist watch was opened for the purpose of identification, the same was seen by the witnesses. Thus, we are of the view that the prosecution has failed to beyond doubt that the wrist watch recovered at the instance of accused concerned and identified by the witnesses to be that of the deceased was infact of the deceased and that at the time of alleged incident of murder the deceased was wearing the same. Therefore, we are of the view that recovery of the wrist watch allegedly belonging to the deceased is most uninspiring.

29. That apart, there is no evidence of motive on record. In whole of the evidence, there is no whisper that there was any personal enmity in between the accused/appellants and the deceased, therefore, merely on the basis of last seen together, it cannot be said that prosecution has proved the case beyond reasonable doubt by any cogent evidence. The Hon'ble Supreme Court in catena of judgements examined the issue of motive in a case of circumstantial evidence and observed that in cases based on direct evidence, motive is not important. But in cases, based on circumstantial evidence, motive will act as a guide to test the veracity of the witnesses examined to speak about incriminating circumstances.

Motive shall not merely be stated. It must also be proved like any other fact. Absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused.

30. It is true that the conduct of accused persons after the incident had taken place is very unnatural and creates strong suspicion against them but, that by itself is not sufficient to convict them, especially when no strong motive to put an end to the life of the deceased is made out.

31. In view of the above, there is nothing on record to conclusively establish that the appellants are the author of the crime in question. All the circumstances even if taken together do not lead to the inference that it is the accused and accused only who committed the crime in question and in our view, the prosecution has failed to prove its case against the appellants beyond reasonable doubt. In these circumstances, the appellants are entitled to the benefit of doubt.

32. For the reasons aforesaid, we allow the appeals filed by the appellants. Impugned judgment of conviction and order of sentence is hereby set aside. The appellants are acquitted of all the charges. The appellants are reported to be on bail. Their bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Arvind Singh Chandel)
Judge

roshan/-