

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 202 of 1996

Against the judgment and order dated 7th May, 1996 passed in Sessions Trial No. 287 of 1990 by Sri Subodh Paswan, 4th Addl. Sessions Judge, Vaishali at Hajipur.

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1. Nageshwar Singh
2. Basudeo Singh,
3. Tulsi Singh, All sons of Jamun Singh,
4. Dwarik Singh, son of late Bhajan Singh,
All residents of Village Haribasnsapur, P.S. Bhagwanpur, District Vaishali
5. Bhadai Singh, S/o ... R/o Village Pratap Tntd. P.S. and District Vaishali.

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance:

For the Appellant/s : Mr. Sri Nandan Prasad Singh and
Mr. Naresh Nandan, Advocates.
For the Respondent/s : Mr. S.B. Verma, A.P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 13-03-2018

In the present Criminal Appeal, altogether five appellants moved this Court for setting aside their conviction U/S 302 IPC read with 27 of the Arms Act and Section 302/120B IPC.

2. Accused Basudeo Singh (appellant no. 2) was charged for the offence U/S 302 IPC and Section 27 of the Arms Act whereas the other accused – appellants were charged for the offences U/S 302/120B IPC. The learned trial court – 4th Addl. Sessions Judge, Vaishali at Hajipur vide his judgment dated 15.05.1996 held that the



accused persons, namely, Basudeo Singh, Tulsi Singh, Dwarik Singh, Bhadai Singh and Nageshwar Singh were guilty of the offences U/S 302/120B of the Indian Penal code and, accordingly, they were convicted by way of sentence to undergo life imprisonment. Accused Baleshwar Singh and Satendra Kumar Singh were acquitted of the charges U/S 302/120B IPC and further accused Baleshwar Singh was acquitted of the offence U/S 27 of the Arms Act and Section 302 of the Indian Penal Code.

3. During pendency of the appeal before this Court, appellant no. 5, namely, Bhadai Singh died, therefore, the appeal in so far as it relates to appellant no. 5 stands abated.

4. It appears from the records received from the learned trial court that the informant of this case is the wife of the deceased Firangi Singh. She got recorded her Fardbeyan (Ext.6) stating therein that in the last night, at about 7-8 PM, after taking her meal she was sleeping in the room situated towards southern side whereas her husband Firangi Singh, aged about 75 years, was sleeping in the room situated towards northern side. The door of the room was close when, at about 11 PM, miscreants came to the house with an intention to kill and by opening the door of the room in which her husband was sleeping he fired on his chest and fled away. On Hulla raised by her husband, the informant came to see her husband but, by that time, he



had already died. The informant further claimed that on her crying the neighbours, namely, Akhilesh Chaudhary, Nawlesh Chaudhary, Mahesh Kumar, Sundar Singh and others came running, they had seen the occurrence. The informant claimed that the miscreants killed her husband Firangi Singh with an intention to usurp the landed property by alluring her (the informant).

5. The Fardbeyan (Ext.6) was recorded by one Suraj Nath Singh, ASI, Bhagwanpur P.S. and the same has been witnessed by two persons, namely, Dwarik Singh and Akhilesh Chaudhary. Dwarik Singh is one of the appellants in the present case whereas Akhilesh Chaudhary is Prosecution Witness no. 3. On the basis of the Fardbeyan (Ext.6), a formal F.I.R. was lodged which is Ext.7. The F.I.R. is against unknown. However, in course of investigation, police submitted a charge sheet against the accused persons and after taking cognizance, as stated above, on the commitment of records to the court of sessions, charges were framed against the accused persons. It appears that during the course of investigation, one of the accused Ramji Singh died in an accident, however, the seven accused persons faced trial.

6. The learned trial court recorded the deposition of the witnesses as also perused the same with the documentary evidences brought on the record by the witnesses and came to a conclusion that



there is no eye witness of the actual occurrence of murder of the deceased Firangi Singh and the case is based purely on circumstantial evidence, but the trial court took a view that there are materials to show the chain of circumstances and motive of the accused persons in grabbing the land of the deceased. The gift deed (Ext.9), according to the learned trial court, was forged and fabricated by the accused persons and they also forged the permission petition and affidavit before the Consolidation Officer, Lalganj for taking permission of execution of deed of gift (Ext.9).

7. The trial court proceeded to decide whether the alleged deed of gift (Ext.9), other papers, affidavit and permission petition before the Consolidation Officer have been forged and fabricated or not because the prosecution developed its' case to the extent that to grab the land of the deceased these accused persons conspired together, forged and fabricated documents and also committed murder of the deceased Firangi Mahto.

8. A separate case for committing forgery and fabrication of the documents was registered against the accused persons on the basis of a complaint petition filed by one Ram Sewak Singh before the learned Chief Judicial Magistrate, Hajipur at Vaishali and that case being Bhagwanpur P.S. Case No. 43/89 u/s 419, 420, 467, 468, 471 and 120B of the Indian Penal Code had been investigated and a



charge sheet had already been submitted in the case against some of the accused persons. The trial court found that in the said case the LTI and signature on the relevant papers which are alleged to have been forged and fabricated were sent for examination to the Crime Branch, C.I.D. and a report in this regard had been received. The I.O. Kameshwar Prasad (PW9) deposed before the learned trial court that he had seized the alleged forged and fabricated deed of Gift No. 485 dated 23.01.1989 from the Sub Registrar's office, Lalganj vide Permission no. 46/89 dated 17.01.1989 and he also seized a Sale Deed no. 18316 dated 22.12.1964.

9. The trial court analyzed the evidence of the I.O., the evidence in form of order sheet dated 09.01.89 of case no. 46/89 of the Consolidation Office, Lalganj (Ext.3) and information petition u/s 6(1) of the Consolidation Act (Ext.4). PW4 proved the sale deed dated 22.12.64 said to have been executed by Firangi Singh (deceased) in favour of Sarjug Sah which has been marked as Ext.8. According to the prosecution case, LTIs of Firangi Mahto (deceased) on this document are admitted one for the inspection and comparison purpose and, therefore, those signatures were marked as S, S-1, S-2 & S-3.

10. PW12 Shyam Bihari Singh, who is a Karpardaz and Scribe in the Sub Registrar's office, Lalganj has proved the deed of gift in question dated 23.01.89, which is Ext.9, and he has stated that



on the request of the accused Dwarik Singh he had scribed this deed of gift and, in the capacity of scribe, he had signed on the document. On this document for purpose of inspection and comparison the LTIs of Firangi Mahto (deceased) were marked as R-1, R-2, R-3, R-4, R-5, R-6 and R-7.

11. PW13 Md. Shamim Alam, who was the State Examiner and Photographer, C.I.D., Bihar, Patna proved the report regarding comparison and inspection of the alleged genuine and disputed LTIs, the report is Ext.10. This witness was one of the finger print examiners who found that the signature of the deceased Firangi Singh put on the petition of transfer of land before the Consolidation Officer were not similar. The learned trial court believed the evidence of this witness and further the evidence of PW17 Sri Ashok Kumar Thakur, who was the State Photographer in C.I.D. Branch, Patna, who had to photograph all the LTI marks and had prepared the negatives and also enlarged the positives. The trial court, therefore, concluded that from the evidence of PW13, it appears that the thumb impression of the deceased appearing on the sale deed (Ext.8) does not tally with the finger prints appearing on the petition filed u/s 6(1) of the Consolidation Act and it tallies with the thumb impression purported to have been put by the deceased on the prescribed form u/s 6(1) of the Consolidation Act, filed in support of the petitions were



apparently forged and thus it was clear that the LTI marked Q-3 on Talwana petition for permission and the alleged LTI of the deceased on the petition u/s 6(1) of the Consolidation Act and the alleged LTI of the deceased on the Affidavit marked Q-5 have been forged and they are not of the deceased Firangi Singh.

12. The learned trial court considered another aspect of the matter as to how far the complicity of the accused persons is involved in making forged and fabricated document and how far the prosecution has been able to prove as to whether these accused persons after entering into the conspiracy committed murder of the deceased.

13. The learned trial court thereafter examined the chain of circumstances. According to the learned trial court, from the evidences it appeared that the accused persons were knowing the fact that they were not going to get the properties of the deceased and that will be given to his Gotias and so have made agreement and then forged and fabricated the document of deed of gift and murdered the deceased. The deceased was issueless. The deceased had land measuring 1 acre 23 decimals in the village which were costly one. Accused Dwarik Singh, Basudeo Singh, Tulsi Singh, Nageshwar Singh, Ramesh Singh (now dead) and Bhadai Singh had approached the deceased to transfer the said land which he refused. Jamun Singh



and Mahavir Singh and Dwarik Singh are own brothers and accused Bashudeo Singh and Tulsi Singh are sons of Jamun Singh and Ramesh Singh (now dead) was the son of Mahavir Singh and accused Bhadai Singh is the father-in-law of accused Dwarik Singh and Nageshwar Singh is the brother of accused Bashudeo Singh and thus it is clear that these accused persons are close relation of each other.

14. The learned trial court relied upon the prosecution witnesses. PW4 had stated that the deceased was issueless and he had 26 Kathhas of land which was costly one and after death of the deceased, accused Dwarik and Bashudeo Singh were saying that the deceased had transferred the land in their favour. PW6 Ramji Singh has denied to have attested the deed of gift no. 485 dated 23.01.89, he claimed that he had not appended his signature on the information petition filed under the Consolidation Act and the deed of gift. He admitted that he was examined u/s 164 Cr.P.C. The learned trial court found that this point was not at all proved. The statement u/s 164 Cr.P.C. of this witness was, however, proved by PW19 Sri Radhe Shyam Sharma, Judicial Magistrate, who stated that the witness Ramji Singh had clearly stated before him that accused Bashudeo, Dwarik Singh and Ramesh Singh (now dead) with a view to grab the land of the deceased got the deed registered and in place of the deceased Firangi Singh accused Bhadai Singh personated himself and the



accused persons were also insisting this witness Ramji Singh to be the attesting witness but he refused and thereafter the accused Basudeo Singh got the deed attested by his brother Nageshwar Singh as that of this witness Ramji Singh and, later on, this witness came to know that these three accused persons by making conspiracy committed murder of the deceased.

15. The learned trial court noticed the evidence of the wife of the deceased who deposed as PW8. She did not name anybody in the Fardbeyan, according to the learned trial court, she being an illiterate lady was looking innocent and stated only what she had seen but when she was subsequently examined by police, she stated that 2 ½ moths before the alleged occurrence accused Dwarik Singh, Bashudeo Singh, Tulsi Singh, Nageshwar Singh, Ramesh Singh (now dead) and Bhadai Singh had come to her husband and insisted the deceased to transfer the land and in para 20 she had stated that her husband (deceased) said that he would not execute any deed in any case regarding his land and thereafter the accused persons returned back.

16. The I.O. Surya Nath Singh was examined as PW10 and stated in his deposition that PW8, in her statement before him, had stated that her Gotias insisted her husband (deceased) to transfer the land taking him as issueless but her husband (deceased) did not



like to execute any deed for transfer of the land.

17. The learned trial court finally came to a conclusion that the prosecution has been able to establish that there was an agreement amongst the accused persons which may be gathered from the implication as also from the circumstances as discussed above which established that these accused persons had an intention to grab the land of the deceased and they had insisted the deceased to transfer the same, the deceased had refused and thereafter they forged and fabricated one deed of gift and they had in mind that so long as the deceased Firangi Singh would remain alive they would not get the land and so they committed murder of the deceased by entering into a conspiracy.

18. Learned counsel representing appellants no. 1 to 4 has assailed the impugned judgment and submits that it is a case of no evidence. Learned counsel has pointed out from the deposition of PW3 Akhilesh Chaudhary that immediately after the death of Firangi Singh, his wife (PW8) had executed sale deeds in respect of the land in question in favour of Munna Singh, Ram Uchit Singh, Ram Sundar Singh, Shiv Chandra Singh and Ram Sewak Singh which clearly demonstrates that the prosecution witness, such as, PW4 was looking for acquiring the land through PW8. PW8, in her deposition, has stated that the deceased Firangi Singh was her second husband. In



paragraph 26 of her deposition she had admitted that her first marriage was at Hajipur and the second marriage was in Village Harbanshpur. Learned counsel submits that the credentials of PW8 is highly doubtful inasmuch as she had married this deceased as second husband and immediately after death of Firangi Singh (deceased) she sold out the land in question in favour of the prosecution witness, who had greedy eyes over the land. She had admitted that PW1 Mahesh is brother of Munder Singh, who is one of the purchasers of the land from PW8.

19. Learned counsel submits that despite the fact that there was no direct evidence against the accused persons their conviction based on circumstantial evidence has to be examined in the light of the judgments of the Hon'ble Supreme Court in the case of **State of Himachal Pradesh Vs. Raj Kumar [(2018) 2 SCC 69]**, **Raja @ Rajinder Vs. State of Haryana [(2015) 11 SCC 43]** and **Vijay Shankar Vs. State of Haryana [(2015) 12 SCC 644]**. He has also relied upon the judgments of the Hon'ble Supreme Court in the case of **Varkey Joseph Vs. State of Kerala (AIR 1993 SC 1892, Para 12)**, **Chanchal Kumari & Ors. Vs. Union Territory, Chandigarh (AIR 1986 SC 752)** and **Gian Mahtani Vs. State of Maharashtra Etc. (AIR 1971 SC 1898)** to contend that a mere suspicion is not enough to convict an accused on the ground of circumstantial



evidences. It is also submitted that those whose names are mentioned in the Fardbeyan are the purchasers of land which is evident from the deposition of PW8 and the reports of the handwriting experts alone cannot be a ground to take a view that the accused persons have committed the offence because by causing death of Firangi Singh the accused persons were not going to achieve their alleged goal. Learned counsel submits that in her Fardbeyan the informant has not raised any suspicion against these accused rather she has stated that her husband had been killed with an intention to grab the landed properties by alluring her. According to learned counsel the informant has clearly indicated that there were some persons who were alluring her to transfer her land in their favour, had those persons been these accused she would have definitely named them but the names were not disclosed. Learned counsel submits that it may be possible that those who were alluring the informant being aware of the status of the informant that she could not execute a transfer deed during life time of her old aged husband and conspired to kill Firangi Singh (husband of the informant) to facilitate succession of the properties upon the informant. Learned counsel submits that those who were interested in acquiring the land knew that the land were valuable, they got the land through the informant (PW8) soon after the husband of PW8 was shot dead. Those very persons who acquired the land later became



prosecution witness.

20. Learned counsel further submits that apart from the fact that the learned trial court has wrongly come to a conclusion of guilt on the circumstantial evidences, in this case the trial court has not followed the provisions of Section 313 Cr.P.C. in its' terms and spirit. According to him, the accused were not informed of the circumstantial evidences which were brought against him. In this connection he relied upon judgment of the Hon'ble Apex Court in the case of **Sukhjit Singh Vs. State of Punjab**, reported in (2014) 10 SCC 270.

21. On the other hand, learned A.P.P. representing the State submits that the learned trial court has rightly appreciated the evidences available on the record. According to him, the circumstantial evidences placed before the trial court are completing the chain of events and therefore there is no reason to perceive any flaw in it.

CONSIDERATION

22. Having heard learned counsel for the parties and upon perusal of the paper books containing the depositions of witnesses and exhibits we would first examine as to what should be the approach of a court while appreciating circumstantial evidence of a witness and whether the circumstances cumulatively taken form a complete chain



pointing out that murder was committed by accused and none-else. In the case of **State of Himachal Pradesh Vs. Raj Kumar**, reported in (2018) 2 SCC 69, Hon'ble Apex Court was considering a case based on circumstantial evidence. Their Lordships while taking note of the well settled legal position, in Paragraph 9 and 10 observed as under:-

“9. Prosecution case is based on circumstantial evidence. It is well settled that in a case based on circumstantial evidence, the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established and that those circumstances must be conclusive in nature unerringly pointing towards the guilt of the accused. Moreover all the circumstances taken cumulatively should form a complete chain and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

10. In a case, based on circumstantial evidence, the inference of guilt can be drawn only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused. [In Trimukh Maroti Kirkan v. State of Maharashtra](#) (2006) 10 SCC 681, it was held as under:-

"12.The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence."

The same principle was reiterated in [State of Rajasthan](#)



[v. Kashi Ram](#) (2006) 12 SCC 254, [Ganesh Lal v. State of Rajasthan](#) (2002) 1 SCC 731, [State of Maharashtra v. Suresh](#) (2000) 1 SCC 471 and [State of Tamil Nadu v. Rajendran](#) (1999) 8 SCC 679.”

23. In the case of **Vijay Shankar Vs. State of Haryana**, reported in (2015) 12 SCC 644, although the case was based on last seen theory the Hon’ble Apex Court discussed the principles in respect of evidentiary value and held in Paragraph 8 as under:-

“8. There is no eye-witness to the occurrence and the entire case is based upon circumstantial evidence. The normal principle is that in a case based on circumstantial evidence the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that these circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation of any hypothesis other than that of the guilt of the accused and inconsistent with their innocence vide *Sharad Birdhichand Sarda vs. State of Maharashtra*, (1984) 4 SCC 116. The same view was reiterated in *Bablu vs. State of Rajasthan*, (2007) 2 SCC (Cri). 590.”

24. In the case of **Varkey Joseph Vs. State of Kerala**, reported in AIR 1993 SC 1892, the Hon’ble Apex Court held that suspicion cannot take place of proof. In Paragraph ‘12’ of the judgment, their Lordships concluded as under:-

“12. Suspicion is not the substitute for proof. There is a long distance between ‘may be true’ and ‘must be true’ and the prosecution has to travel all the way to prove its



case beyond all reasonable doubt. We have already seen that the prosecution not only has not proved its case but palpably produced false evidence and the prosecution has miserably failed to prove its case against the appellant let alone beyond all reasonable doubt that the appellant and he alone committed the offence. We had already allowed the appeal and acquitted him by our order dated April 12, 1993 and set the appellant at liberty which we have little doubt that it was carried out by date. The appeal is allowed and the appellant stands acquitted of the offence under [S. 302, IPC](#)”

25. In the case of **Raja @ Rajinder Vs. State of Haryana**, reported in (2015) 11 SCC 43, the Hon’ble Apex Court noted down in Paragraph 10 the circumstance with which the court should be satisfied in a case based on circumstantial evidence alone. Para 10, 11 and 12 of the judgment are quoted hereunder for a ready reference:-

“10. As the factual matrix would show, the case of the prosecution entirely hinges on circumstantial evidence. When a case rests on circumstantial evidence, the Court has to be satisfied that:

“(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be



consistent with the guilt of the accused but should be inconsistent with his innocence.”

[[See Padala Veera Reddy v. State of A.P.](#), 1989 Supp (2) SCC 706 : 1991 SCC (Cri) 407, SCC pp. 710-11, para 10.)

11. [In Balwinder Singh v. State of Punjab](#), 1995 Supp (4) SCC 259 P: 1996 SCC (Cri) 59, it has been laid down that: (SCC p. 262, para 4)

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

12. From the aforesaid it is clear as day that the Court is required to evaluate the circumstantial evidence to see that the chain of events have been established clearly and completely to rule out any reasonable likelihood of the innocence of the accused. Needless to say whether the chain is complete or not would depend on the facts of each case emanating from the evidence and no universal yardstick should ever be attempted [[See Ujjagar Singh v. State of Punjab](#), (2007) 13 SCC 90 : (2009) 1 SCC (Cri) 272.

26. As regards the compliance of Section 313 Cr.P.C. is concerned, the Hon'ble Apex Court in the case of **Sukhjith Singh Vs. State of Punjab**, reported in (2014) 10 SCC 270, in Paragraphs 11, 12 & 13 held as under:-



“11. In this context, we may profitably refer to a four-Judge Bench decision in *Tara Singh v. The State* (1951 AIR 441 : 1951 SCR 729) wherein, Bose, J. explaining the significance of the faithful and fair compliance of Section 342 of the Code as it stood then, opined thus:

"30. I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342 of the Criminal Procedure Code. It is not a proper compliance to read out a long string of questions and answers made in the committal court and ask whether the statement is correct. A question of that kind is misleading. It may mean either that the questioner wants to know whether the recording is correct, or whether the answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them.

He must be questioned separately about each material circumstance which is intended to 1 (2009) 6 SCC 595 2 AIR 1951 SC 441 be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question.

Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the



provisions of Section 342 of the Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice."

12. In *Hate Singh Bhagat Singh v. State of Madhya Bharat*, Bose, J. speaking for a three-Judge Bench highlighting the importance of recording of the statement of the accused under the code expressed thus:-

"8. Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal P.C. are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused, person is not allowed to enter the box and speak 3 AIR 1953 SC 468 8 Page 9 on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness-box."

13. The aforesaid principle has been reiterated in *Ajay Singh v. State of Maharashtra* following terms:

"14. The word "generally" in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed.

The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting



Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give." 4 (2007) 12 SCC 341

27. In the present case from the evidences available on the record we find that the informant (PW8) had solemnized two marriages, the marriage with the deceased Firangi Singh happened to be her second marriage. They had no issue and it is the case of the informant (PW8) that she was sleeping in the room situated towards southern side whereas the deceased Firangi Singh was sleeping in the room situated towards northern side. The door of the room was not fully closed when at about 11 PM the miscreants opened the door, shot dead the deceased Firangi Singh and fled away. It was dead of night and there was no means to identify the assailant. The accused persons are said to be Gotias of the deceased, after the informant reached on Hulla and found her husband Firangi Singh dead, she did not raise any suspicion against the accused persons. One of the accused Dwarik Singh (appellant no. 4) has been a witness to the Fardbeyan recorded by PW8. In her Fardbeyan PW8 has made a statement that the miscreants killed her husband Firangi Singh with an intention to usurp the landed property by alluring her (the informant), this Court finds that had there been any reason for the informant to



believe that the accused persons have killed her husband Firangi Singh with an intention to usurp the land, she would have definitely come out disclosing her belief about the involvement of the accused persons behind the occurrence. The informant rather said in her Fardbeyan that the miscreants killed her husband with an intention to usurp the landed property by alluring her (the informant). This creates a doubt in the mind of the Court as to who were the persons involved behind this act of killing her husband knowing that they would be able to usurp the landed property by alluring the informant. The conduct of the informant in selling the land to the prosecution witnesses and their family members gives rise to a reasonable doubt in the mind of the Court that the circumstances under which Firangi Singh was killed are not unerringly indicating towards the guilt of the accused.

28. Learned counsel representing the accused has submitted before us that immediately after death of Firangi Singh, his wife (PW8) had executed sale deeds in respect of the land in question in favour of Munna Singh, Ram Uchit Singh, Ram Sundar Singh, Shiv Chandra Singh and Ram Sewak Singh which, according to him, the conduct of PW8 and prosecution witnesses clearly demonstrate that they were looking for acquisition of the land through PW8. In our opinion, the fact that these persons have acquired the sale deeds in



respect of the land in question immediately after death of Firangi Singh from his wife (PW8) would go a long way to create a dent in the prosecution story that the accused persons would kill the deceased Firangi Singh with a motive to grab the land in question. In this case there is no direct evidence against the accused persons and their conviction is solely based on the circumstantial evidence.

29. Learned trial court has relied upon the Prosecution Witness no. 4, who is one of the purchasers of the land from PW8 and is related to the other purchasers. In our opinion, the trial court has committed an error in appreciating the evidences and by relying upon the statement of PW4 in proving the chain of circumstances the learned trial court has committed a grave error. The learned trial court has much relied upon the dispute with regard to the deed of gift (Ext.9) and other papers, affidavit and permission petition which were filed before the Consolidation Officer. The learned trial court has found that those documents have been forged and fabricated and for which a complaint case has been filed by one Ram Sewak Singh before the learned Chief Judicial Magistrate, Hajipur at Vaishali. The learned trial court could not appreciate that the complainant Ram Sewak Singh is one of the purchasers of the land from PW8 and the fact that he has filed a complaint case being Bhagwanpur P.S. Case No. 43/89 in which the deed of gift has been alleged to be forged one



clearly indicates that there was a set of persons who were also trying to acquire the land in question and, in fact, after Firangi Singh was shot dead PW8 has executed sale-deeds in favour of PW4 and his family members. This cast a serious down on the prosecution case that these accused persons had a motive to kill Firangi Singh because they wanted to grab the land through the gift deed.

30. The prosecution has not brought on record any evidence to demonstrate that Firangi Singh (the deceased) had filed any case against the accused persons for the said alleged forged gift deed (Annexure-9). The prosecution has not brought any case showing that the deceased Firangi Singh was actively participating in pursuing the complaint case which was filed by Ram Sewak Singh. Firangi Singh was sleeping in his room even without fully closing the door, a question would come in the mind of this Court that if he had any apprehension or a belief in his mind that the accused persons, who are his Gotias, will kill him he would have been sleeping by fully closing the door. It is quite possible to believe the theory of defence that Ram Sewak Singh had lodged the complaint case against some of the accused persons in the year 1989 which was still going on. In the meantime they had talked to PW8 alluring her but then finding that during the life time of Firangi Singh, PW8 cannot acquire any right to the property, a plan was hatched to kill him in order to pave way for



PW8 to execute the sale deed.

31. Whatever be the reasons, in our opinion, the learned trial court has not properly able to appreciate that a mere suspicion cannot take place of proof and as has been held in **Raja @ Rajinder** (Supra) one of the circumstances with which the court is required to satisfy is as to whether the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.

32. In the facts of the present case, on the materials available we do not find it safe to rely upon the evidence of PW4 or the materials which were placed before the Court. We also find that in this case there is no proper compliance of the provision of Section 313 Cr.P.C. and the accused persons have been convicted without giving them an opportunity to explain the circumstances which appeared against them. The Hon'ble Apex Court has held that fairness requires that each material circumstance should be put simply and separately in a way that an illiterate mind or one which is perturbed or confused can rightly appreciate and understand. Even though the error or omission in this behalf would not necessarily vitiate a trial on proper appreciation of the evidence available on the record, we are of the considered view that the evidences are not unerringly pointing out



towards the guilt of the accused. We do not find that the chain of the links in the chain of event have been established beyond a reasonable doubt. The circumstances shown by the learned trial court are not to such an extent that it should be taken as consistent with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. What has been held by the Hon’ble Supreme Court in **Balwinder Singh Vs. State of Punjab [1995 Supp (4) SCC 259 P]** (Supra) as have been taken note of here-in-above would fully apply in the kind of evidences available on the record against appellant no 1 to 4.

33. We are of the view that the judgment of conviction cannot sustain. It is accordingly set aside and appellant no. 1, 2, 3, and 4 are acquitted and they are discharged from the liability of their bail bonds.

34. The appeal is accordingly allowed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

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