

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.171 of 2015
(Against the judgment of conviction, dated 5.1.2015, and order of sentence, dated 09.01.2015, passed by Shri Jagdish Prasad Mishra, Ist Additional Sessions Judge, Bhojpur at Ara in S.T. No. 254 of 2005)

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Om Prakash Gupta Son of Late Radha Kishun Sah Resident of Mohalla Bihia Road,
P.S. Piro , District- Bhojpur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant : Mr. Ramakant Sharma, Sr. Advocate
Mr. Rajesh Kumar, Advocate
Mr. Rakesh Kumar Sharma, Advocate
Mr. Amresh Kumar, Advocate,
For the Respondent/s : Ms. Shashi Bala Verma, A.P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

Date: 25-01-2018

The sole appellant in the present appeal has challenged the judgment of conviction dated 5.1.2015 and order of sentence dated 9.1.2015 passed by 1st Additional Sessions Judge, Bhojpur at Ara in Sessions Trial No. 254 of 2005 arising out of Piro P.S. Case No. 200 of 2003 whereby the appellant has been convicted under section 302 of the Indian Penal Code and section 201 of the Indian Penal Code and the appellant has been awarded R.I. for life and a fine of Rs. 25000/- for offence under section 302 of the Indian Penal Code and also awarded 3 years R.I. for the offence under section 201 of the



Indian Penal Code and on default of payment of fine R.I. for three years. However, the sentence was ordered to run concurrently.

2. The prosecution case, in short, as per Fard-beyan of the informant Sunil Kumar (P.W.10) dated 21.12.2003 addressed to Station House Officer, Piro, Bhojpur is that his uncle Sri Awadh Bihari Singh was Mukhia of Bajari Panchayat and was Chairman of Rajad of Piro Prakhand who is said to have disappeared since 10.12.2003. It is said that with respect to which informant has submitted report to the police station on 19.12.2003 and station diary entry was made. According to informant he alongwith his relations search uncle of the informant to the houses of relations and all political leaders who were said to be in contact but till date he could not be traced out. It is alleged that his uncle used to give loan on interest of heavy amount in Piro Bazar and other places and he was also active in political activity. He is said to have stain relation with Rajeshwar Dubey of Chilbilia village during election and after election it has also been alleged that after inquiry it had transpired about munsii of his uncle namely Rajendra Prasad Gupta (P.W.1) was engaged in collection of interest. It has further been alleged that presently heavy amount was given to appellant Om Prakash Gupta in Bazar. It has further been alleged that no such information used to be furnished in the house about fact mentioned hereinabove. The



informant has full belief that kidnapping incident has been committed with him.

3. On the basis of Fard-beyan dated 19.12.2013, formal FIR was drawn on 21.12.2003 under section 364 of the Indian Penal Code against unknown.

4. Prior to lodging of the formal FIR in Piro P.S. Case No. 200 of 2003 on 22.12.2003 one case under section 302/201/34 of the Indian Penal Code was registered on the Fard-beyan of one Ajay Kumar on 11.12.2003 vide Ara Town P.S. Case No. 269 of 2003 against unknown.

5. The police after investigation submitted charge-sheet on 23.3.2004 in Piro P.S. Case No. 200 of 2003.

6. In Ara Town P.S. a beheaded dead body was found on 11.12.2003 and in Piro (Town) P.S. Case No. 200 of 2003 the police allegedly on the confessional statement of the appellant recovered only part of skull and Hexa bled and mussal with blood stained and ash of burning clothes of the deceased from the house of Narayan Sah. The police after investigation submitted charge-sheet against the appellant for the offence under sections 302/201/34 of the Indian Penal Code.

7. The CJM took cognizance of the offence under sections 302/201/34 of the Indian Penal Code and the case was



committed to the court of sessions. Finally the record was transferred to the Additional Sessions Judge, Fast Track Court No. IV for trial and disposal. The court framed charges under section 364/34 and sections 203, 201/34 of Indian Penal Code. The appellant denied the charges and pleaded innocence and as such he was subjected to sessions trial.

8. On behalf of the prosecution altogether 12 witnesses have been examined.

9. P.W. 10 is the informant of the Piro P.S. Case No. 200 of 2003 whereas P.W.6 is the informant of Ara Town P.S. Case no. 269 of 2003. P.W.5 is the doctor who conducted the post-mortem of the deceased. P.W.8 is another doctor posted in PMCH Forensic Medicine and Toxicology. P.W.9 is the S.I. and P.W.12 is the I.O. of the case.

10. Mr. Ramakant Sharma, learned senior counsel appearing on behalf of the appellant submits that in the present case the appellant was convicted on mere suspicion. In this case there is no eye-witness to the occurrence. The whole prosecution case is based on circumstantial evidence. He submitted that the case against the appellant is based on last seen theory but that last seen case has not been established in the present case.

11. Mr. Sharma has at the very outset submitted that the



first case was registered on 11.12.2003 when unknown dead body was seen in front of the house of P.W.6, the informant of Ara Town P.S. Case No. 269 of 2003.

12. In that case the doctor on examination of headless body was of the opinion that dead body was of a male aged about 25-35 whereas opinion of the doctor P.W.8 that part of the skull was of a male aged about 35-45.

13. Mr Sharma submitted that part of the skull was recovered from the place adjacent to the crematorium. There was no distinctive mark to identify the skull and correlate the skull with the dead body found on 11.12.2003. Referring to **Modi Medical Jurisprudence and Toxicology**, he submitted that the doctor who has examined the skull on 29th December, 2003 has found skull bone with soft tissues and as such the part of the skull could not be correlate with dead body found on 11.12.2003 as soft tissues are found only if the death is caused recently and as such he submitted that in the present case no effort was made for DNA test or finger printing to conclusively connect the skull with dead body found on 11.12.2003.

14. Mr. Sharma next submitted that the trial court has failed to consider the unnatural conduct of the parties and conflicting opinion of the doctor as to the age of the deceased and the corresponding date/age of the death. The skull bone recovered



purportedly on the confessional statement of the appellant by no stretch of imagination could be connected with the dead body recovered on 11.12.2003 for which Ara Town P.S. Case No. 269 of 2003 was registered. The time gap between beheaded dead body was recovered on 11.12.2003 and the examination of the part of the skull dated 29.12.2003 falsify the very case of the prosecution case that part of the skull was of the same dead body without head recovered on 11.12.2003 as the skull bone with some soft tissues falsify the case of prosecution that the skull was of the deceased Awadh Bihari Singh recovered on 11.12.2003.

15. Mr. Sharma next submitted that in the present case the other material allegedly recovered are not of the distinctive nature and as such that materials cannot be connected with the commission of crime. He submitted that in the absence of FSL report or DNA test the appellant cannot be connected with the commission of crime. He submitted that the confessional statement under section 27 is not relevant and admissible in the present case. Firstly the so-called recovery of part of the skull has not been conclusively established that it was the skull of the dead body recovered on 11.12.2003 or the skull of deceased Awadh Bihari Singh. The so-called blood stain in the absence of FSL report cannot be relied for the reasons that the prosecution has not been able to establish that blood stains were



human blood and it was blood of deceased.

16. Mr. Sharma next submitted with reference to prosecution witnesses that the present case is based on suspicion and suspicion how so over strong cannot be taken as a proof. He submitted that the prosecution witnesses has deposed that the deceased was last seen with the appellant, his brother Mohan Sah and two other persons in connection with preparation of partnership deed of mill.

17. Mr. Sharma submitted that in the absence of any material to establish that the appellant has gone alongwith the deceased to the office for preparation of partnership deed of rice mill. The last seen theory is not established. The witnesses have not placed on record any document as to the papers of partnership deed or material to show that appellant and the deceased has in fact gone to the office of the Registrar in connection with preparation of partnership deed, there is no document or materials placed by the prosecution witnesses to conclusively suggests that the appellant and the deceased have been seen for the last time on 10.12.2003. Referring to the conduct of nephew of the deceased, Mr. Sharma highlighted that the informant of Piro P.S. Case No. 200 of 2003 has admitted that his uncle was missing since 10.12.2003. He had political rivalry and tense relationship with one Rajeshwari Dubey of Chilbilia village in the election of Mukhia. The informant has apprehended



kidnapping of his uncle only on 21.12.2003. In the Fard-beyan he has mentioned that the 'Sanha' with regard to missing of his uncle was lodged by him on 19.12.2003 i.e. after nine days of the incident of alleged missing of uncle of the informant.

18. Mr. Sharma next highlighted that the other chain of circumstances on which prosecution has relied upon has not been established. He highlighted the deposition of the two doctors and indicated the infirmity in the prosecution case that in the opinion of the first doctor who has examined the headless dead body on 11.12.2003 and the part of skull on 29.11.2003. The two doctors are at variance as to the age of the deceased. In the opinion of the first doctor the age was about 25-35 whereas the opinion of the second doctor that the age of the skull was assessed as 35-45. In addition thereto the post mortem report in the first case and the report of the Professor in the second case are at variance on the point of time of death. The factum of soft tissues on the skull bone militate against the prosecution case, if the dead body was recovered on 11.12.2003 then the skull could not be connected with the dead body recovered on 11.12.2003. In the absence of distinctive nature of the alleged materials seized can not be connected with the commission of crime. The conviction of the appellant was only based on incomplete chain. He also highlighted that recovery of part of skull near crematorium is



not unusual and cannot be taken as material to have been recovered on the so-called confessional statement which is otherwise not admissible. In addition thereto, the opinion of the doctor on examination of the part of the skull also ruled out any connection of the part of the skull recovered from the crematorium with the deceased.

19. Mr. Sharma next submitted that in the absence of other chain and circumstances, the conviction is unsustainable. He placed reliance on the judgment of the Apex Court reported in AIR 2002 SC 3164 at para 10 to 18 which is quoted below:-

It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence. the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence. the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other persons. (See Hukam Singh v. State of Rajasthan, AIR (1977) SC 1063), Eradu and Ors. v. State of Hyderabad, AIR (1956) SC 316, Earabhadrapa v. State of Karnataka, AIR (1983) SC 446, State of U.P. v. Sukhbasi and Ors., AIR (1985) SC 1224, Balwinder Singh v. State of Punjab, AIR (1987)



SC 350, Ashok Kumar Chatterjee v. State of MP AIR (1989) SC 1890. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram v. State of Punjab, AIR (1954) SC 621, it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

We may also make a reference to a decision of this Court in C Chenga Reddy and Ors. v. State of A.P., [1996] 10 SCC 193, wherein it has been observed thus:

"In a case based on circumstantial evidence. The settled law is that the circumstances from which the conclusion of guilt is drawn would be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete 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....."

In Padala Veera Reddy v. State of A.P. and Ors.. AIR (1990) SC 79, it was laid down that when a case rests upon circumstantial evidence, such evidence must



satisfy the following tests;

(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 from 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.

In State of U.P. v. Ashok Kumar Srivastava, (1992) Crl.L.J.1104, it was pointed out that great care must be taken in evaluating circumstantially evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

Sir Alfred Wills in his admirable book "Wills" Circumstantial Evidence" (Chapter VI) lays down the



following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum, (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability, (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits, (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt, (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted"

There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touch-stone of law relating to circumstantial evidence laid down by the this Court as far back as in 1952.

In Hanumant Govind Nargundkar and Anr. v. State of Madhya Pradesh, AIR (1952) SC 343, wherein it was observed thus:

"It is well to remember that in cases where the evidence is of a circumstantial nature. the circumstances from which the conclusion of guilt is to be drawn the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the



circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

A reference may be made to alter decision in **Sharad Birdhichand Sarda v. State of Maharashtra**, AIR (1984) SC 1622. Therein, while dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of the this Court, before conviction could be based on circumstantial evidence, must be fully established. They are:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established, (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused. that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency, (4) they should exclude very



possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so compete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

Emphasis was laid as a circumstance on recovery of weapon of assault, on the basis of information given by the accused while in custody. The question is whether the evidence relating to recovery is sufficient to fasten guilt on the accused. Section 27 of the Indian Evidence Act, 1872 (in short the Evidence Act') is by way of proviso to Sections 25 to 26 and a statement even by way of confession made in police custody which distinctly relates to the fact discovered is admissible in evidence against the accused, This position was succinctly dealt with by the this Court in *Delhi Admn v, Balakrishan*. AIR (1972) SC 3 and *Md. Inayatullah v. State of Maharashtra*. AIR (1976) SC 483. The words "so much of such information" as relates distinctly to the fact thereby discovered. are very important and the whole force of the section concentrates on them. Clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate, The ban as imposed by the preceding sections was presumably inspired by the fear of the Legislature that a person under police influence might be induced to confess by the exercise of



undue pressure. If all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion: and that in practice the ban will lose its effect. The object of the provision i.e. Section 27 was to provide for the admission of evidence which but for the existence of the section could not in consequences of the preceding sections, be admitted in evidence. It would appear that under Section 27 as it stands in order to render the evidence leading to discovery of any fact admissible, the information must come from any accused in custody of the police. The requirement of police custody is productive of extremely anomalous results and may lead to the exclusion of much valuable evidence in cases where a person, who is subsequently taken in to custody and becomes an accused. After committing a crime meets a police officer or voluntarily goes to him or to the police station and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact. in consequence of the information thus received from him. This information which is otherwise admissible becomes inadmissible under Section 27 if the information did come from a person not in the custody of a police officer or did come from a person not in the custody of a police officer. The statement which is admissible under Section 27 is the



one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any Information obtained from a prisoner. such a discovery is a guarantee that the Information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature but if it results in discovery of a fact. it becomes a reliable information. it is now well settled that recovery of an object is not discovery of fact envisaged in the section. Decision of Privy Council in *Palukuri Kotayya v. Emperor* AIR (1947) PC 67, is the most quoted authority of supporting the interpretation that the "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. [see *State of Maharashtra v. Dam Gopinath Shirde and Ors*, (2000)]



Crl.L.J 2301. No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which "distinctly relates to the fact thereby discovered." But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. Mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given. guilt of any other persons. ([See Hukam Singh v. State of Rajasthan](#), AIR (1977) SC 1063), [Eradu and Ors. v. State of Hyderabad](#), AIR (1956) SC 316, [Earabhadrapa v. State of Karnataka](#), AIR (1983) SC 446, [State of U.P. v. Sukhbasiand Ors.](#), AIR (1985) SC 1224, [Balwinder Singh v. State of Punjab](#), AIR (1987) SC 350, [Ashok Kumar Chatterjee v. State of MP](#) AIR (1989) SC 1890. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. [In Bhagat Ram v. State of Punjab](#), AIR (1954) SC 621), it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

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"In a case based on circumstantial evidence. The settled law is that the circumstances from which the conclusion of guilt is drawn would be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete 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....."

In Padala Veera Reddy v. State of A.P. and Ors.. AIR (1990) SC 79, it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests;

(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 from 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.

In State of U.P. v. Ashok Kumar Srivastava, (1992) Cr.L.J.1104, it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

Sir Alfred Wills in his admirable book "Wills' Circumstantial Evidence" (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum, (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability, (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits, (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt, (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted"



There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touch-stone of law relating to circumstantial evidence laid down by the this Court as far back as in 1952.

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"It is well to remember that in cases where the evidence is of a circumstantial nature. the circumstances from which the conclusion of guilt is to be drawn the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words. there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

A reference may be made to alter decision in [Sharad Birdhichand Sarda v. State of Maharashtra](#), AIR (1984) SC 1622. Therein, while dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be



cured by false defence or plea. The conditions precedent in the words of the this Court, before conviction could be based on circumstantial evidence, must be fully established. They are:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established, (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused. that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency, (4) they should excludee very possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so compete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

Emphasis was laid as a circumstance on recovery of weapon of assault, on the basis of information given by the accused while in custody. The question is whether the evidence relating to recovery is sufficient to fasten guilt on the accused. [Section 27](#) of the Indian Evidence Act, 1872 (in short the [Evidence Act](#)') is by way of proviso to [Sections 25](#) to [26](#) and a statement even by way of confession made in police custody which distinctly relates to the fact discovered is admissible in



evidence against the accused, This position was succinctly dealt with by the this Court in Delhi Admn v, Balakrishan. AIR (1972) SC 3 and [Md. Inayatullah v. State of Maharashtra](#). AIR (1976) SC 483. The words "so much of such information" as relates distinctly to the fact thereby discovered are very important and the whole force of the section concentrates on them. Clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate, The ban as imposed by the preceding sections was presumably inspired by the fear of the Legislature that a person under police influence might be induced to confess by the exercise of undue pressure. If all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion: and that in practice the ban will lose its effect. The object of the provision i.e. [Section 27](#) was to provide for the admission of evidence which but for the existence of the section could not in consequences of the preceding sections, be admitted in evidence. It would appear that under [Section 27](#) as it stands in order to render the evidence leading to discovery of any fact admissible, the information must come from any accused in custody of the police. The requirement of police custody is productive of extremely anomalous results



and may lead to the exclusion of much valuable evidence in cases where a person, who is subsequently taken in to custody and becomes an accused. After committing a crime meets a police officer or voluntarily goes to him or to the police station and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact. In consequence of the information thus received from him. This information which is otherwise admissible becomes inadmissible under [Section 27](#) if the information did come from a person not in the custody of a police officer or did come from a person not in the custody of a police officer. The statement which is admissible under [Section 27](#) is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in [Section 27](#) of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any Information



obtained from a prisoner. Such a discovery is a guarantee that the Information supplied by the prisoner is true. The information might be confessional or non- inculpatory in nature but if it results in discovery of a fact. it becomes a reliable information. it is now well settled that recovery of an object is not discovery of fact envisaged in the section. Decision of Privy Council in Palukuri Kotayya v. Emperor AIR (1947) PC 67, is the most quoted authority of supporting the interpretation that the "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. [see State of Maharashtra v. Dam Gopinath Shirde and Ors, (2000) Cr.L.J 2301. No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which "distinctly relates to the fact thereby discovered." But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. Mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given.-

20. Mr. Sharma contended that the conviction by the trial court runs contrary to the principle laid down by the Apex Court with



regard to circumstantial evidence. He submitted that the principle with regard to circumstantial evidence has been reiterated time and again and the Apex Court judgment reported in (2017) 8 SC 497 is reiteration of the same principle at para 29 to 31 in this regard are set out below:-

It is now well established, by catena of judgments of this Court, that circumstantial evidence of the following character needs to be fully established:

- (i) Circumstances should be fully proved.**
- (ii) Circumstances should be conclusive in nature.**
Crl.A. No. 1074 of 2007
- (iii) All the facts established should be consistent only with the hypothesis of guilt.**
- (iv) The circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than the accused (see [State vs. Dr. Ravindra](#); 1992 (3) SCC 300); [Chandrakant vs. State of Gujarat](#); (1992) 1 SCC 473. It also needs to be emphasized that what is required is not the quantitative, but qualitative, reliable and probable circumstances to complete the claim connecting the accused with the crime. Suspicion, however grave, cannot take place of legal proof. In the case of circumstantial evidence the influence of guilt can be justified only when all the incriminating facts and circumstances are found to be not compatible with the innocence of the accused or the guilt of any other person.**

25) Following tests laid down in [Padala Veera Reddy vs. State of A.P.](#)1 also need to be kept in mind:

“10. (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,

1 1989 Supp (2) SCC 706 : 1991 SCC (Cri) 407

Crl.A. No. 1074 of 2007 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.”

26) Sir Alfred Wills in his book Wills’ Circumstantial Evidence (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence:

“(1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum;

(2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability;

(3) in all cases, whether of direct or circumstantial evidence, the best evidence must be adduced with the nature of the case admits;

(4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation,



upon any other reasonable hypothesis than that of his guilt; and

(5) if there by any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.”

21. Ms. Shashi Bala Verma, learned A.P.P. appearing on behalf of the State has supported the judgment of the trial court saying that the chain of events in the present case leads to only one conclusion that the appellant alone has committed crime and as such the judgment of conviction is well founded.

22. We have gone through the submissions of the parties and on deeper scrutiny of the evidence deposed on behalf of the prosecution and the material available on record, we find that in the present case there is no eye-witness, the entire prosecution case is based on circumstantial evidence. On scrutiny of the materials, it appears that there is no complete chain of circumstances which conclusively leads true conclusion that appellant alone has committed the crime. In the present case the beheaded dead body and the skull has not been scientifically connected with the deceased.

23. In view of the difference of age as per opinion of the doctor and the time of death assessed by the experts while examining the dead body and the bone of the skull, moreover there is no material placed on behalf of the prosecution to suggests that the deceased was



seen alongwith the appellant immediately before the death. In the present case, prosecution has failed to establish that the dead body recovered on 11.12.2003 or the skull recovered on 11.12.2003 was of the deceased as there is no FSL report or DNA test which was necessary requirement to connect the beheaded dead body or part of skull with the deceased. The failure on the part of the prosecution to establish the alleged recovered Hexa blad and mussal with blood stain for FSL report also goes against the prosecution. The inordinate delay in lodging Sanha by the nephew after nine days and expressing apprehension of kidnapping after 12 days creates serious doubts about the prosecution case. The foundation of the case as to last seen has not been established by the prosecution. In addition thereto, when there is no conclusive evidence that the part of the skull and beheaded body was of the deceased the conviction of the appellant is not safe.

24. Referring to alleged part of the skull from (Asmashan) cannot be considered as recovery of distinctive nature connected with the crime. On scrutiny of the material and the entire prosecution case, it appears that the deceased was Mukhia and had political connection and rivalry. The inquest report of the dead body on 11.12.2003 also creates doubt about the prosecution case. Firstly the inquest report indicate that the deceased was wearing Jeans paint and his penis was completely cut. His both arms were amputated and



head was chopped off. The physical status of the dead body is indicative of the fact that he was brutally murdered and such murder are usually committed in revenge and only when the persons are killed as a counter blast of sexual assault.

25. From the discussion of the trial court, it is manifest that the deceased was involved in many other business and has given money for business in Piro market and other places. Thus, on scrutiny of the entire materials of the case, we find that neither confessional statement is reliable in the present case nor the circumstances of the case can be taken as conclusive to rule out any other possibility of death of the deceased but by the appellant alone and in view of the judgment of the Apex Court mentioned hereinabove in the case reported in 2002 SC 3164 and (2017)8 SCC 497 the conviction in the absence of conclusive circumstance is unsustainable.

26. Thus, in the totality of facts situation discussed hereinabove which manifest that there are so many infirmities and absence of complete chain of circumstances which does not conclusively led to only conclusion that the appellant alone has committed crime and there are many other hypothesis of commission of crime and on account of money lending business, political rivalry and on the physical examination of the arms less and headless dead body and penis completely cut also suggests that possibility of brutal



murder in the case of extreme hatred is equally probable, hence in the totality of facts situation we are constrained to hold that the conviction of the appellant is not sustainable.

27. Accordingly, the appeal is allowed. The judgment of conviction passed by the 1st Additional Sessions Judge, Bhojpur at Ara in Sessions Trial No. 254 of 2005 is set aside.

28. Since the appellant is in jail, he is directed to be released forthwith, if he is not otherwise required in connection with any other case.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Ravi/-

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