

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 306 of 2012**

Ramkhilawan Pal S/o Phool Singh Pal, Aged about 40 Years, S/o Phool Singh Pal, R/o Village Doomardihkala, P.S. Ghumka, Distt. Rajnandgaon C.G. **---- Appellant**

Versus

State Of Chhattisgarh Through - SHO. , P.S. Ghumka , Distt. Rajnandgaon C.G. **---- Respondent**

CRA No. 307 of 2012

Raghu Sinha S/o late Bhajan Sinha, aged about 50 years, R/o Village Dumardihkala, P.S. Ghumka, Distt.-Rajnandgaon, C.G. **---- Appellant**

Versus

State Of Chhattisgarh Through P.S. Ghumka, Distt.-Rajnandgaon, C.G. **....Respondent**

For respective Appellants	:	Mr. PKC Tiwari, Senior Advocate with Mr. Shashi Bhushan Tiwari and
		Mr. R.S. Marhas, Advocates
For State	:	Mr. Anil Pillai, Dy. A.G. with
		Mr. Anupam Dubey, Dy. G.A.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Rajani Dubey

Judgment On Board by Manindra Mohan Shrivastava, J.

12.10.2018

Heard.

1. The aforesaid two appeals are being disposed off by this common order as they arise out of impugned judgment of conviction and order of sentence dated 22.02.2012 passed by the Special Judge, Rajnandgaon, District Rajnandgaon in Special Case No.3/2011, whereby and whereunder, the appellants have been held guilty of commission of offence and sentenced as described below :

Conviction	Sentence
Under Section 302 read with Section 34 of IPC	Imprisonment for life and fine of Rs.3000/- each, in default R.I. for 2 years.

2. The prosecution case, as disclosed from the impugned judgment and the records of the case is that on 29.10.2010, Dindayal Lahre (the deceased) had gone to fetch liquor in a country liquor shop at Thelkadih, where quarrel took place between him and two appellants. Further case of the prosecution is that thereafter, Dindayal Lahre was taken by these two appellants in their motorcycle. In the night, an information was received by Ram Dayal (PW3), the brother of the deceased, regarding murder of his brother, which was intimated in the police station leading to recording of morgue intimation. On the next day, morgue inquest of dead body was prepared and the dead body was sent for postmortem. In the postmortem report (Ex.P/19), the doctor upon examination of the injuries, opined that it was a case of homicidal death as Dindayal died due to injuries found on his head and temporal region leading to excess bleeding. On 31st of October, 2010, as the case of the prosecution stands, the appellants being suspects were taken into custody and their memorandum statement were recorded and it is said that on the memorandum statement of appellant Raghu Sinha, the sword, alleged to be used in giving assault to the deceased, was recovered from the side of the road in bushes, approximately 20 to 30 ft. away from the place where dead body was found in the night of 29th of October, The clothes of the appellants seized and sword were sent for forensic examination. The sword and the clothes of the appellants were found to be bloodstains. Upon completion of investigation, charge-sheet was filed against the appellants. Learned Trial Court framed charges against the appellants in the alleged commission of offence under Section 302 IPC read with Section 34 IPC on the allegations that the appellants shared common intention to murder the deceased. As the deceased belong to reserved category of scheduled caste, against both the appellants charge of commission of offence under Section 3(ii)(v) of Scheduled Caste and Scheduled Tribe Act, 1989 was also framed. Both the appellants having abjured guilt, were put to trial, wherein, the prosecution led evidence to prove circumstantial evidence of quarrel, last seen and recovery of weapon and bloodstained clothes.

3. The appellants were also examined under Section 313 Cr.P.C. to offer their explanation and defence against the incriminating circumstances led in the

prosecution evidence. The appellants denied having committed the offence and stated that they have been falsely implicated. Learned trial Court relied upon the prosecution evidence and on the finding that incriminating circumstances were found proved, held the appellants guilty of commission of offence.

4. Learned counsel appearing for the two appellants contended before us that the circumstantial evidence led by the prosecution are not proved beyond reasonable doubt. It is argued that the evidence of scuffle/quarrel between the appellants and the deceased in the country liquor shop is contradictory both with regard to the time of incident and the manner in which, the quarrel is said to have taken place. The evidence of last seen that after the quarrel, the deceased was taken away by the appellants in their motorcycle loses incriminating nature because prosecution's own witness have stated that in the night at about 8 to 9 p.m. Dindayal was found sitting by the side of the road meaning thereby, by that time, he was alive. It is not the case of the prosecution that at that time, the appellants were also present and accompanying him. Thus, the chain of circumstances is broken and the last seen evidence loses its value. On the aspect of alleged recovery of weapon on the disclosure statement of the appellants, particularly, appellant Raghu Sinha is concerned, it is argued that the same is extremely doubtful and appears to be concocted in view of the statement of memorandum and seizure witness Vasudev Lahre (PW8) who admitted that the sword was brought in the police station and all documents were signed by him in the police station. Moreover, it is argued, the seizure witness Vasudev Lahre (PW8) and the Investigating Officer Sandeep Tandon (PW13) have nowhere stated in their Court statement that the appellants disclosed before them regarding the sword and the place where it was kept. All other statements of inculpatory nature were not admissible. Therefore, the prosecution has completely failed to bring about substantive evidence of disclosure leading to discovery of weapon alleged to be used in commission of offence. Lastly, it is submitted that the clothes of the appellants though are stated to be stained with blood, the FSL report does not say that it was human blood much less the blood of the group and origin of the deceased, therefore, the same does not provide a live link between the commission of offence and the recovery of clothes and is inconsequential much less an incriminating circumstantial evidence to bring home the guilt of the appellants beyond reasonable doubt. In support of their submission, reliance has been placed on the judgment of the Hon'ble Supreme Court in the cases of **Sharad Birdhichand Sarda Vs. State of Maharashtra, 1984 (4) SCC 116,**

Sattatiya Alias Satish Rajanna Kartalla Vs. State of Maharashtra, 2008(3) SCC 210, Jagroop Singh Vs. State of Punjab, 2012(11) SCC 768 & Vijay Thakur Vs. State of Himachal Pradesh, 2014 (14) SCC 609.

5. Per contra, learned State counsel supporting the judgment of conviction and sentence argued that even though there is no direct evidence, clinching evidence of quarrel between the appellants with the deceased few hours before the death of Dindayal, proved by evidence of Bisahu Ram (PW2) & Sukhdev (PW5) provides and proves the motive. The witnesses have emphatically stated that Dindayal was in a drunken state and he was carried away by the appellants in their own motorcycle. Next submission of learned counsel for the State is that as far as recovery of weapon is concerned, Vasudev Lahre (PW8) and Investigating Officer Sandeep Tandon (PW13) both have proved that the appellants had stated regarding use of sword in commission of offence and that the same was kept in the bushes near the place of incident where the dead body was found. On this disclosure, recovery of sword was made from the spot, as stated in the disclosure statement, which is highly incriminating circumstance because the sword was found to be bloodstained. Moreover, the appellants' clothes were also recovered and seized from their respective possession and were also found to be bloodstained. He would submit that whether or not, the report states that the blood was a human blood or not and even though serologist report regarding group and origin of blood is not available to ascertain the same, in the circumstances, it was for the appellants to explain as to how their clothes contained blood. This is non-explanation provides an additional incriminating circumstance towards the guilt of the appellants and completes the chain of circumstance to come to the conclusion that in all probability, it is the appellants and the appellants alone and none else murdered Dindayal with the help of a sword in the background of their quarrel with him within few hours. Learned State counsel places reliance on the judgment of the Hon'ble Supreme Court in the case of **Kiriti Pal Vs. State of West Bengal and other connected cases, 2015 (11) SCC 178.**

6. We have heard learned counsel for the parties and perused the records. The entire case of the prosecution rests on the circumstantial evidence and learned trial Court has convicted the appellants holding proved the circumstances of quarrel, last seen as also recovery of bloodstained sword and clothes.

7. Before advertng to various submissions and scrutiny of evidence on record,

we would remind ourselves of the five golden principles laid down by the Hon'ble Supreme Court in the case of *Sharad Birdhichand Sarda (supra)* in the matter of proof of guilt based on circumstantial evidence. It was held :

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793]*, where the following observations were made:

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(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 every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete 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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

The aforesaid principles have been restated time and again.

8. The first circumstantial evidence relied upon the prosecution is that on the date of incident, there was a quarrel between the appellants and the deceased and to prove the same, the prosecution has examined Bisahu Ram (PW2) and Sukhdev (PW5). Bisahu Ram (PW2) states that at about 4 p.m. in the afternoon, when he had reached liquor shop at Thelkadih village along with Sukhdev, he saw the two appellants and a quarrel arose between the appellants and the deceased on the issue of eating and drinking. He later on, went away. He further deposes that what was spoken by the quarreling person were not heard. He did not make any attempt to bring the quarrel to an end. In the cross-examination, he admits

that at the time of incident, about 100 to 150 persons were present and admits that many times, some kind of dispute on lighter side takes place and it is common knowledge that after consuming liquor, there is altercation and hurling of abuses. He further states that he does not know when and with whom, Dindayal had gone. He further states that he does not know when and with whom Dindayal left the shop. He further adds by stating that in the crowd, abuses, quarrel was going on and few of them, over intoxicated were quarreling.

9. The other witness Sukhdev (PW5) also states regarding arrival and presence of the appellants and the deceased. He says that Dindayal did not consume liquor with them but he had come in a drunken state and as soon as he arrived, he started hurling abuses, on which a quarrel took place between him and appellant-Raghu Sinha. It was scuffle and marpeet. He then states that the quarrel was not much and he got it cooled up and immediately thereafter, he came back. In the cross-examination, he admits that Dindayal is a habitual drunkard and after consuming liquor, he keeps on quarreling in the liquor shop and also that there is a common feature that after consumption of liquor, people keep quarreling with each other. In the cross-examination, he says that he does not know when Dindayal came and left the liquor shop or with whom he went back.

10. The evidence of the aforesaid two witnesses proves that in the liquor shop, where the appellants were present, Dindayal had come in a drunken state and started hurling abuse, due to which, he entered into scuffle and there was some marpeet but later on, dispute was got resolved and was pacified. Moreover, it also shows that dispute was not of a very serious nature.

11. Moreover, from the evidence of these witnesses, it is revealed that the incident of quarrel took place around 4 pm. in the afternoon.

12. Deepak Puri (PW6) has stated that at about 7:00 to 7:30 p.m. in the evening, when he had come to the liquor shop, he saw that two appellants were helping Dindayal to sit on the motorcycle and he was made to sit between them and then they left towards village Dumardih in the motorcycle. In the cross-examination, he says that the police enquired regarding incident from him after 5 to 6 days and before that, he has not stated this fact to anybody. In his further cross-examination, omission with regard to time of incident as stated in his case diary statement (Ex.D/2) has been elicited. Moreover, the statement that the

deceased was made to sit between the two appellants in the motorcycle, is also an improvement upon his diary statement. He admits that liquor shop is situated on the side of the road. He then states that he does not say who had gone along with whom from the liquor shop. He further states that he had seen Dindayal along with two appellants and he does not know how it has been recorded in police statement that two appellants made Dindayal to sit in the motorcycle. He further admits that the Dindayal going along with the appellants was disclosed by him to the police for the first time when he was called in the police station and before that, this fact was not disclosed by him. He does not remember as to who were present in the liquor shop on that day, he further says that he had not seen the appellants in the liquor shop but saw them when they were making the deceased sit in his vehicle.

13. From the evidence of this witness that he has seen the deceased being taken by the appellants, has some element of doubt because according to this witness, he saw them at about 7:00 to 7:30 p.m. that the deceased was sitting along with two appellants in their motorcycle and both statements are improvement on his diary statement as not stated therein. Moreover, this witness says that his statement was taken by the police after 5-6 days of incident when he was called in the police station and till that time, this fact was not disclosed to anybody.

14. The prosecution witness Mangal Singh (PW7) has stated something which renders the evidence of last seen not only doubtful but also resulting in breaking of chain of circumstance. This witness, who is resident of village Dumerdih i.e. village of the deceased, has stated that when he was going towards Thelkadih along with one Gulab Sinha at about 8-9 p.m. in the night, they met with Dindayal (the deceased), near Chandani Crusher machine where Dindayal was found sitting by the side of the road and he stopped them and asked for water. Thereafter, as this witness deposes, they went to Thelkadih and returned in 15 minutes with water, which was given to Dindayal. He further says that Dindayal was in state of intoxication. Thereafter, he and Gulab Sinha left the spot. This witness further states that he had also informed Ram Dayal that he had seen his brother Dindayal sitting by the side of the road and provided water. In the cross examination, he admits that Dindayal was habitual drunkard and used to enter into quarrel in such state including third person unknown to him also. He further admits that when he returned along with water from Thelkadih it was about 9:15 to 9:30 p.m. He further states that near the place where Dindayal was found sitting, there is crusher

machine of Chandani and Shrivastava and residential houses of labours working in nearby mines have also been constructed. He further, deposes that at the place where Dindayal was sitting, there is usually traffic movement till late in the night.

15. The brother of the deceased, Ramdayal (PW3) though admits of he having talked to Mangal Singh in the night, according to him, Mangal Singh informed that his brother had entered into quarrel with someone and that he should come to the place and then disconnected. According to Mangal Singh (PW7), only information given by him to Ramdayal was that his brother Dindayal is found sitting by the side of the road and he is in intoxicated condition. Keeping aside as to what was conversation, between them, both the witnesses say that they talked to each other at 9 p.m on 29.10.2010. Ramdayal (PW3), the brother of the deceased, states that both Mangal Singh (PW7) and Vasudev (PW8) asked him to come and then later on, when at about 10:30, he was about to reach his village, he found crowd near crusher machine of Chandani, where he came to know about the murder of his brother and in the torchlight, he found that his brother was lying dead and there were injury signs on the head and neck. He states that at the spot, Upsarpanch Dinesh was also present, who stated that his brother had entered into quarrel with Ram Khilawan and Raghu Sinha (the appellants) in the afternoon. This witness also states that sometime in the year 2005, Ram Khilawan and his brother had quarrelled which led to a case and thereafter Ram Khilawan used to tell him quite often that if his brother does not learn, he would kill him. In his cross examination, he admits that his brother was drunkard and in the state of intoxication, he quite often used to quarrel with the villagers, as learnt by him.

16. The evidence of the aforesaid witness regarding he having heard about the quarrel of his brother with the appellants is based on information given to him by Mangal Singh (PW7) and by Upsarpanch Dinesh. But Mangal Singh does not support his fact in his evidence and Dinesh has not been examined by the prosecution. Bisahu Ram (PW2) and Sukhdev (PW5) do not state in their evidence whether they had informed the fact regarding the quarrel to Dindayal, the brother of the deceased and if so at what time. A morgue intimation (Ex.P/6) has been recorded in the police station at 10:30 on the information given by one Silluram (PW4), the guard working in crusher of one Mr. Shrivastava. It records that at about 8:00 to 8:30 p.m., he saw a person lying on the side of the road and in torchlight, he recognized him that he was Dindayal, who appears to have died having received injury. The FIR (Ex.P/-2A) is lodged by Ram Dayal (PW3), the

brother of the deceased, in which, it is said that some unknown person murdered his brother and the appellants were not named therein, whereas, according to this witness, when he reached the spot at about 10:30 p.m. in the night, he was informed by Dinesh regarding the quarrel of his brother. In the Dehati Nalishi (Ex.P/2), which was recorded at the spot in the night of 29.10.2010 at about 23:30 hours, similar statement has been made. What has been stated by him in the evidence before the Court is that Mangal Singh (PW7) and Dinesh both had informed him that the brother had entered into quarrel. According to him, while Mangal Singh informed that some quarrel had taken place, Dinesh informed him that quarrel took place with the appellants. If these two facts were already disclosed to him, then why this fact was not stated by him in the FIR? This anomaly is worth noticing. It was one of the incriminating circumstance regarding quarrel between the appellants and the deceased in the liquor shop at about 4:00 pm. in the afternoon on 29.10.2010.

17. The third circumstance to implead the appellants in the alleged commission of offence is that the appellants had given disclosure statement and it is said that on the disclosure statement given by the appellant Raghu Sinha, the weapon used in commission of offence, namely, the sword was recovered from the side of the road in bushes which is about 20 to 30ft. away from the place where the dead body was found in the night of 29.10.2010. The memorandum statement is sought to be proved by prosecution by leading evidence of Vasudev, one of the memorandum witness. The other witness of memorandum namely Dinesh was not examined by the prosecution. Vasudev (PW8) in para 4 of his evidence, states that upon being enquired by the police, appellant Raghu Sinha stated regarding abuses and taunts given by the deceased. However, this witness does not depose that the appellant Raghu Sinha had given a disclosure statement to the fact that he had stated before the police regarding the weapon used in commission of offence and hided/kept/thrown by the side of the road near bushes 20 to 30 ft. away from the place where the dead body was found. As far as appellant Ram Khilawan is concerned, this witness states that Ram Khilawan also disclosed regarding the quarrel. Here also, this witness does not depose that Ram Khilawan disclosed regarding the weapon and the fact that it was kept by him or by Raghu Sinha at the place wherefrom the sword is alleged to have been recovered.

18. Even from the statement of Investigating Officer Sandeep Tandon (PW13), we do not find that the Investigating Officer has stated that before him, the

appellants Raghu Sinha or Ram Khilawan gave a disclosure statement regarding the weapon alleged to be used in commission of offence and kept, thrown or hided by the side of the road in bushes 20 to 30 ft. away from the place where the dead body was found.

19. The contents of the memorandum of the statements, by itself, are not substantive evidence. In order to make admissible the memorandum statement for the limited purposes of discovery of fact stated therein, as envisaged under Section 27 of the Evidence Act, it is imperative that the prosecution brings an evidence of the either the officer who prepared the memorandum statement or the witnesses of memorandum statement that such disclosure statement was made by the accused. Where no such evidence is given before the Court by the witnesses, the memorandum statement ceases to be a document relating to discovery of fact for the purposes of Section 27 of the Evidence Act. Mere statement that the memorandum statement was recorded and signatures were obtained is not enough as it does not fulfill the legal requirement of existence of an evidence of disclosure statement having been made by the accused which led to recovery of the weapon from the place as stated in the disclosure statement by the accused.

20. While the witness Vasudev (PW8) states, in his evidence, that the accused had got recovered sword from the bushes 20 to 30 ft. away from the place of dead body in para 11 of his cross-examination states that he was called by the police by telephone stating that certain seizure have to be made and then police went to the spot and brought sword seized by them. He further deposes that all the documentations were done only in the police station and as he was asked in the police station, he signed the documents. He further admits that Ram Khilawan and he had a dispute in the past and cases were pending. He admits that on allegation of assault, a case was registered against the appellants Ram Khilawan which led to compounding. He also admits that quite often he is called by the police. He further admits that on 31st October, he had gone to the police station for signatures and signed the seizure memo of sword. In further cross-examination, he says that the sword was taken out by the appellant Raghu Sinha.

21. This witness as well as Investigating Officer both have admitted, in their evidence, that the place wherefrom the sword was recovered was an open place accessible to all. We also do not find from the evidence that the sword was recovered from a place which was so hidden that it could be taken out only upon

being disclosed regarding the place of hide.

22. Moreover, there is one more circumstance that on 29.10.2010, the place where dead body was found was known to all including the police. According to the Investigating Officer as also Vasudev (PW8), the place at and around where dead body was found, was also inspected by the police people. This was done on 30th of October, that is, the day next to the day, on which, the dead body was found. On the next day, the sword is said to be recovered at a distance of hardly 20 to 30 ft. from the place where dead body was found. Thus, the seizure having been made on the disclosure statement given by the appellants becomes extremely doubtful. There was an intervening day and according to the evidence, the police had come to the spot and the sword was lying about 20 to 30 ft. away from the place of dead body. As we have discussed herein above, there is no evidence that the appellants ever stated before the police in the presence of witnesses regarding the weapon having been kept at a particular place so as to attach importance to the fact of discovery as an incriminating material against the appellants.

23. Much emphasis has been laid on the circumstance that the clothes of the appellants were found bloodstained. In the FSL report, all that has been said that they were certain blood spot but no report of serologist has come to prove that it was even a human blood much less blood of the group and origin of the deceased. As to whether it should be treated as an incriminating circumstantial evidence to point towards the guilt of the appellants, would depend upon the fact regarding the nature of blood spot and other surroundings circumstances. For this purpose, we wish to deal with the legal position as adumbrated in various decisions cited by both the sides and some other decisions of the Hon'ble Supreme Court in the cases of **Mustkeem Alias Sirajudeen Vs. State of Rajasthan, 2011(11) SCC 724**, **Vijay Thakur V. State of Himachal Pradesh, 2014 (14) SCC 609** and **Vijay Shankar Vs. State of Haryana, 2015(12) SCC 644**.

24. In the case of Mustkeem Alias Sirajudeen (supra), it was held :

“19. The AB blood group which was found on the clothes of the deceased does not by itself establish the guilt of the appellant unless the same was connected with the murder of the deceased by the appellants. None of the witnesses examined by the prosecution could establish that fact. The blood found on the sword recovered at the instance of the Mustkeem was not sufficient for test as the same had already disintegrated. At any

rate, due to the reasons elaborated in the following paragraphs, the fact that the traces of blood found on the deceased matched those found on the recovered weapons cannot ipso facto enable us to arrive at the conclusion that the latter were used for the murder.

25. With regard to [Section 27](#) of the Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material objects and its use in the commission of the offence. What is admissible under [Section 27](#) of the Act is the information leading to discovery and not any opinion formed on it by the prosecution.

27. The scope and ambit of [Section 27](#) were also illuminatingly stated in *Pulukuri Kotayya & Ors. Vs. King Emperor*, [AIR 1947 PC 67] reproduced hereinbelow:-

".....it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A' these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

The same were thereafter restated in another judgment of this Court in *Anter Singh Vs. State of Rajasthan* [2004 (10) SCC 657].

28. The doctrine of circumstantial evidence was once again discussed and summarised in *Sattatiya @Satish Rajanna Kartalla Vs. State of Maharashtra* [2008 (3) SCC 210] in the following terms:

"10.It is settled law that an offence can be proved not only by direct evidence but also by circumstantial evidence where there is no direct evidence. The court can draw an inference of guilt when all the incriminating facts and circumstances are found to be totally incompatible with the innocence of the accused. Of course, the circumstances from which an inference as to the guilt 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 the case of *Vijay Thakur* (supra), it was held :

“18. It is to be emphasised at this stage that except the so-called recoveries, there is no other circumstances worth the name which has been proved against these two appellants. It is a case of blind murder. There are no eyewitnesses. Conviction is based on the circumstantial evidence. In such a case, complete chain of events has to be established pointing out the culpability of the accused person. The chain should be such that no other conclusion, except the guilt of the accused person, is discernible without any doubt xxxxxxxxxxxxxxxxxxxxxxxx.”

19. *In Mani v. State of T. N.*, (2008) 1 SCR 228, this Court made following pertinent observation on this very aspect:

“26. The discovery is a weak kind of evidence and cannot be wholly relied upon on and conviction in such a serious matter cannot be based upon the discovery. Once the discovery fails, there would be literally nothing which would support the prosecution case....”

20. There is a reiteration of the same sentiment in *Manthuri Laxmi Narsaiah v. State of A. P.* [(2011) 14 SCC 117] in the following manner:

“6. It is by now well settled that in a case relating to circumstantial evidence the chain of circumstances has to be spelt out by the prosecution and if even one link in the chain is broken the accused must get the benefit thereof. We are of the opinion that the present is in fact a case of no evidence.”

In the case of *Vijay Shankar (supra)*, it was held :

“20. According to the prosecution, after the alleged confession, Budh Ram (PW 12) and Har Sarup produced the appellant before the investigating officer and Dalip Singh (PW-20) arrested the appellant on 19.03.1995. His confession led to the recovery of bloodstained clothes from the box lying in the house of the appellant and also a knife from the field. Bloodstained clothes and also the knife were sent to the Forensic Science Laboratory and human blood was detected in the bloodstained clothes of the appellant. So far as the bloodstained clothes and knife, the material was disintegrated. As discussed earlier, extra-judicial confession made to Budh Ram (PW 12) is highly doubtful and in these circumstances, much weight cannot be attached to the alleged recovery of bloodstained clothes and the knife.”

25. In the present case, on facts, the bloodstains were not human blood. Secondly, it is not invariable proposition of law that under all circumstances, non-explanation of blood in the clothes of the accused would always be treated as an adverse incriminating circumstance. Whether the blood was human blood, whether the recovery of the weapon is free from doubt or is otherwise suspicious, whether there are other established incriminating circumstantial evidence are required to be taken into consideration to attach weight to this circumstance. Where the last seen evidence becomes highly doubtful and the chain of circumstance is broken,

the quarrel between the accused and the appellants do not appear to be of very serious nature and disclosure of weapon at the disclosure of the appellants, itself, becomes highly doubtful, it would be wholly unsafe to convict only on the basis that some blood spots were found on the clothes of the appellants, as has been held in the decision referred to above. We have already noticed that recovery evidence is otherwise a weak evidence. The totality of the circumstances and the evidence on record, raises doubt with regard to involvement of appellants in the alleged commission of offence, the benefit of doubt must definitely go to the accused. We accordingly do so and grant the appellants the benefit of doubt.

26. The impugned judgment of conviction is accordingly set aside. As the appellants are on bail, they need not surrender and their bail bonds and sureties stand discharged.

27. Accordingly, the appeal is allowed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge