

IN THE HIGH COURT OF JUDICATURE AT PATNA
DEATH REFERENCE No.2 of 2018

Arising Out of PS. Case No.-99 Year-2012 Thana- BARHARA KOTHI District- Purnia

The State Of Bihar

... .. Petitioner

Versus

Prashant Kumar Mehta and Ors.

... .. Respondents

with

CRIMINAL APPEAL (DB) No. 301 of 2018

Arising Out of PS. Case No.-99 Year-2012 Thana- BARHARA KOTHI District- Purnia

Prashant Kumar Mehta S/o Koko Mehta, R/o Village- Gulabtal Maldiha, P.S.-
Barhara Kothi, District- Purnea.

... .. Appellants

Versus

The State Of Bihar

... .. Respondents

with

CRIMINAL APPEAL (DB) No. 493 of 2018

Arising Out of PS. Case No.-99 Year-2012 Thana- BARHARA KOTHI District- Purnia

Rupesh Kumar Mandal Son of Umesh Mandal, Resident of Village-Lakunma,
P.S.-Baunsi, District-Araria. at present-resident of Village-Laxmipur, Bhitta,
P.S. Barhara, District-Purnia.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 501 of 2018

Arising Out of PS. Case No.-99 Year-2012 Thana- BARHARA KOTHI District- Purnia

Sonu Kumar S/o Lal Bahadur Mandal, R/o Vill.- Laxmipur Bhitta, P.S.-
Barhara, District- Purnea.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

Appearance :

(In DEATH REFERENCE No. 2 of 2018)

For the Petitioner/s :

For the Respondent/s : Mr. Pratik Mishra, Amicus Curiae



(In CRIMINAL APPEAL (DB) No. 301 of 2018)

For the Appellant/s : Mr. Ansul, Adv.
Mr. Ram Pravesh Nath Tiwari, Adv.
Mr. Abhinav Ashok, Adv.
Ms. Sagarika, Adv.
Mr. Aditya Pandey, Adv.
Mr. Navneet Srivastava, Adv.
Mr. Shubham Prakash, Adv.

For the Respondent/s : Mr. Mayanand Jha, APP

(In CRIMINAL APPEAL (DB) No. 493 of 2018)

For the Appellant/s : Mr. Ansul, Adv.
Mr. Pramod Kumar Mallick, Adv.
Mr. Abhinav Ashok, Adv.

For the Respondent/s : Mr. Ajay Mishra, APP

(In CRIMINAL APPEAL (DB) No. 501 of 2018)

For the Appellant/s : Mr. Pramod Kumar Mallick, Adv.

For the Respondent/s : Ms. Shashi Bala Verma, APP

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and**

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 05-04-2021

These appellants have been held guilty in the Sessions Trial No. 965 of 2012 arising out of Barhara P.S. Case No. 99 of 2012 by the learned 1st Addl. Sessions Judge-cum-Special Judge, Purnea for the offences punishable under Sections 302 read with 34, 376(2)(g) and 120-B of the Indian Penal Code vide judgment dated 7.02.2018. The trial court, thus, by its order passed on 15.02.2018 awarded death sentence to the appellants for the offence under Section 302 read with 34 of the Indian Penal Code and rigorous imprisonment for life under two counts i.e. Sections 376(2)(g) and 120-B of the Indian Penal Code. Further, the trial court awarded sentence of a fine of Rs. 1 lac upon the appellants without specifying the particular offence for which it was imposed. The death sentence was subject to



confirmation by the High Court.

2. The reference made by the trial court under Section 366 of the Code of Criminal Procedure (for short 'the Cr.P.C.') has been registered as Death Reference No. 2 of 2018. The appellants have separately challenged their conviction and sentence imposed by the trial court by filing these criminal appeals before this Court. The appeals as well as the reference have been heard together.

3. The prosecution in the instant case was launched by registering Barhara P.S. Case No. 99 of 2012 dated 12.05.2012 under Sections 302 and 201 read with 34 of the Indian Penal Code against unknown accused persons. Though, the information of the incident was received by the police at 11:00 p.m. on 11.05.2012 but the first information report (F.I.R.) was registered at 10:00 a.m. on 12.05.2012. The FIR reveals that initially a station diary entry was made by the police bearing no. 341. The informant was Jagdish Mandal, who has deposed as PW-11 and Rameshwar Mandal (PW-2) has signed as a witness to the fardbeyan of the informant, which was written by one Deep Narayan Yadav, S.I. of Barhara P.S.

4. From the FIR, it would appear that the oral statement of the informant was recorded on 12.05.2012 at 5:10



a.m. at village Ahrighat Maldiha Kamat. The informant stated that his daughter aged about 13 years was a student of Class-V in the Middle School Lakshmipur Bhatta. She used to go to her school at 06:00 a.m. and return from the school at 11:30 a.m. whereafter she used to attend the coaching classes near her house. After returning from coaching classes at about 2:00 p.m., she used to come to Maldiha Kamat of village Ahrighat and cook food. She used to return to her house at 6:00 p.m. The informant further stated that on 11.05.2012 at 06:00 a.m., she had gone to her school. He himself was at Maldiha Kamat on Ahrighat till 02:00 p.m. and after taking lunch, he had gone to Maldiha Bahiyar to graze his cattle. By that time, his daughter had not come to the Kamat. After grazing the cattle, he returned at 06:30 p.m. at his Kamat. At 08:00 p.m., his younger brother Rameshwar Mandal (PW-2) inquired from him about his daughter and also told that she had not reached her home. Thereafter, his brother Rameshwar Mandal told him that in the evening at 04:00 p.m., one Rukmani Devi (PW-4), wife of late Parmeshwar Mandal had told him that a person was sleeping in maize field of Satyanarayan Mandal. His brother sent his wife and two labourers to the field of Satyanarayan Mandal. The labourers and the wife of his brother came back and told that a



dead body of a girl was lying in the maize field and they were unable to identify the girl. On receipt of such information, the informant, his two brothers and a nephew went to the maize field of Satyanarayan Mandal. He further stated that he identified that the dead body was of his daughter. Thereafter, all of them returned to the village and informed the Mukhiya, who in turn Mukhiya informed the police. All of them returned to the place of occurrence where police had already arrived. The informant expressed apprehension that some unknown persons had tried to ravish his daughter and either on failure in their attempt or due to fear of disclosure of their identity, they killed her and threw her body in the maize field.

5. An inquest was held on the body of the deceased on 12.05.2012 at 5:30 a.m., by Arbind Kumar, S.I.-cum-officer-in-charge, Barhara Police Station at the place of occurrence itself. The body was sent to the Purnea Sadar Hospital for postmortem examination. It was received in the hospital at 01:35 p.m. on 12.05.2012 and, immediately thereafter, autopsy was done. PW-13, Dr. Parmanand Thakur, who conducted the autopsy found the following ante-mortem injuries on the body of the deceased:

(i) 2 1/4" x 1" whole thick sharp wound in front of neck in



which a bamboo had been introduced about 5" deep;

(ii) 2" x 1 c.m. x skin deep sharp cut wound on left chest;

(iii) 2" x 1 1/4"x skin deep cut in lower part of ventral surface of right forearm;

(iv) 2 1/4" x 1 c.m. x muscle deep cut wound in left iliac region; (v) 2 1/4" x 1 1/4" x skin deep sharp cut wound in pubic region.

(vi) two other cut mark below injury no.v

(vii) 1"x1 c.m. x skin deep cut in labia majora.

The doctor opined the cause of death to be shock and haemorrhage due to above injuries. He also opined that the time elapsed since death was 24 hours.

6. During investigation, PW-16 (Dipak Kumar Mandal), a boy aged ten years son of Mithilesh Mandal was firstly apprehended by the police, who was suspected to be a participant in the commission of offence. He was taken before a Magistrate, Mr. Sandeep Singh (PW-17), who recorded his statement under Section 164 of the Cr.P.C.. In his disclosure made before the Magistrate, PW-16 stated that Prashant Kumar Mehta used to teach him and his sisters S and K. He also used to teach the victim M. He told to the victim that he will marry her. When the victim returned from the school, then sister of



Rupesh, namely, Rinky told her to go to the field. Thereafter, M took *Sarbat* and *Khichri* and went together with Rinky towards the field. However, Rinky returned from the middle of the way. He further disclosed that Prashant Kumar Mehta came and caught hold of the victim M after pressing her mouth. At that time, Sonu and Rupesh were also there. Sonu caught her hands and Rupesh caught her legs. All of them lifted her to the field. The victim shouted four times to save her, whereafter, she died. He disclosed that he had seen the incident. According to him, Rupesh slit the throat of M from knife, Sonu cut the belly from blade and Rupesh pierced bamboo stick in the neck. He further disclosed that Rupesh cut the victims cheek, mouth and hand by blade and Prashant also caused cut injuries. Further, Sonu took away the nose-pin of the victim. All the three accused persons washed their hands after committing the incident at the house of one Nawal. He disclosed that the accused persons had threatened him that if he would tell to anyone, they would kill him.

7. Upon vivid disclosure regarding the manner of occurrence, involvement of the appellants and their individual role, raids were conducted by the police and the appellants were arrested. They confessed their guilt in their respective



statements made before the police.

8. It is the case of the prosecution that Sonu Kumar made disclosure that the knife used in the crime was thrown at Targhat in the river stream. On his disclosure, the place was searched and the knife used in the offence was recovered from the disclosed place in presence of the witnesses.

9. The confessional statements made by the accused persons recorded by the police were exhibited during trial and marked as Exhibits-8, 8/A and 8/B. The confession of the accused-appellants corresponds to each other admitting particular role played by them. Their version was the same, as described by PW-16, Dipak Kumar Mandal.

10. On completion of investigation, the police submitted charge-sheet against the accused-appellants and one Rinky Kumari for the offences punishable under Sections 302, 201, 376 and 120-B read with 34 of the Indian Penal Code.

11. After taking cognizance of the offences and complying with the mandatory provisions prescribed under Section 207 of the Cr.P.C., the learned Magistrate committed the case to the Court of Sessions for trial.

12. The trial court framed charges against the accused-appellants for the offences punishable under Sections 302 read



with 34, 201 read with 34, 376 read with 34, 120-B and 376(2) (g) of the Indian Penal Code. The accused Rinky Kumari was separately charged for the offences punishable under Sections 302 read with 34, 201 read with 34 and 120-B of the Indian Penal Code.

13. The prosecution examined, in all, 19 witnesses in order to establish the charges levelled against the accused-persons. The prosecution also proved Exts. 1 to 10/1 and Material Exts. 1 to XVIII in support of the charges during trial.

14. On completion of the prosecution evidence, the trial court examined the accused persons under Section 313 of the Cr.P.C. They denied their complicity in the case.

15. The defence neither examined any witness nor produced any document in support of its case.

16. The trial court closed the defence case and after hearing the parties passed the impugned judgment of conviction and consequent order of sentence. It would be pertinent to note here that while convicting the accused-appellants, the trial court acquitted the accused Rinky Kumari giving her benefit of doubt.

17. We have heard Mr. Ansul, learned advocate for the appellants, Dr. Mayanand Jha, Mr. Ajay Mishra and Ms. Sashi Bala Verma, learned Additional Public Prosecutors for the State.



We have also heard Mr. Pratik Mishra, learned advocate, whom we appointed as *amicus curiae*.

18. The learned counsel for the parties and the learned *amicus curiae* have taken us through the material on record as well as relevant evidences which were produced by the prosecution before the trial court.

19. Mr. Ansul, learned advocate appearing for the appellants submitted that from the evidences adduced during trial, it is apparent that the prosecution witnesses themselves have not witnessed either rape or killing of the deceased. They have not claimed to have seen the accused persons in and around the place of occurrence. They are witnesses to the recovery of the dead body and the incident thereafter. He contended that no witness has claimed to have seen the appellants with the deceased on the date of occurrence. He further contended that the conviction of the appellants is based on surmises and conjecture. According to him, the gravity of the offence cannot by itself outweigh as far as legal proof is concerned and there can be no conviction merely on the basis of suspicion howsoever grave it may be. He argued that since the case is of circumstantial evidence, motive assumes great importance. However, the motive alleged by the prosecution for



such ghastly and brutal killing is very feeble and weak in the present case. He further argued that in the entire evidence, apart from suspicion based on a feeble motive, nothing is brought on record to suggest making or existence of a criminal conspiracy amongst the accused persons to commit the act. He contended that apart from suspicion, there is no other material to suggest that the victim was subjected to rape or that the victim was ravished by the appellants.

20. Based on the aforesaid submissions, Mr. Ansul, learned advocate submitted that the impugned judgment of conviction passed by the trial court is bad in law and fit to be set aside.

21. Mr. Pratik Mishra, learned *amicus curiae* has also taken us to the deposition of witnesses recorded during trial. He contended that the FIR was lodged against unknown. There is no eyewitness to the actual commission of the offence. Hence, it is a case of circumstantial evidence. According to him, on the point of last seen, the only witness, who has deposed is PW-5 (Kundan Mandal), who has stated in his evidence that on the date of occurrence, the deceased was seen with Rinky Kumari at 2:00 p.m. having ice-cream and, in the evening, he had informed Rameshwar Mandal (uncle of the deceased) about the same.



However, PW-2 (Rameshwar Mandal) has not, in his entire evidence, supported this version. There is no witness, who has deposed about the deceased having been last seen with the appellants. He also contended that in case of circumstantial evidence, motive for commission of crime is vital, but the prosecution has failed to establish even the motive part.

22. Learned *amicus curiae* further submitted that the prosecution case regarding the confession leading to recovery of weapon of crime (knife) is also not clean. The prosecution has failed to establish that the same knife was used in the alleged incident. He contended that the evidence of the doctor Parmanand Thakur (PW-13) and the postmortem report clearly suggest that there is no sign of rape. He further contended that Dipak Kumar Mandal (PW-16) did not support the prosecution case during trial. He has been declared hostile by the court at the request of prosecution. His statement made under Section 164 of the Cr.P.C. cannot be used as a substantive evidence in order to arrive at a finding of guilt. He further contended that the substantial evidence, on which rests the prosecution case, was not sufficient to record a finding of guilt against the appellants.

23. On the other hand, Dr. Mayanand Jha, Mr. Ajay Mishra and Ms. Sashi Bala Verma, learned Additional Public



Prosecutors for the State submitted that the prosecution case revolves around the rape and brutal murder of a 13 year innocent minor girl of a village by the appellants. Referring to the deposition of the investigating officer, they contended that during course of investigation, the police had deputed spy to know the truth about the case. There was talk in the village that the victim was murdered as she had exposed the bad conduct of the appellant Prashant Kumar Mehta and his affair with another girl of the village whom, too, he used to teach. Accordingly, the police firstly apprehended one Dipak Kumar Mandal (PW-16) aged about 10 years, who was suspected to be a participant in the occurrence. Upon his disclosure regarding the manner of occurrence and involvement of the accused appellants and role played by them, respectively, raids were conducted and they were arrested. They confessed their guilt. He contended that one of convicts Sonu Kumar made disclosure that the knife used in the crime was thrown in Targhat river near the bamboo orchard of Tarmanjhi. On this disclosure, the place was searched and the knife used in the offence was recovered from the disclosed place in the presence of witnesses. He further contended that the confessional statements made by the accused persons recorded by the police were exhibited in course of trial and marked as



Exhibits-8, 8/A and 8/B. The confession of all the convicts corresponds to each other admitting the role played by them. Their version was the same as described by Dipak Kumar Mandal (PW-16). He argued that the scene of crime is a maize field where the deceased was forcibly taken by the appellants, who ravished her one by one and when she told them that she will expose their acts after going home, she was brutally murdered. According to him, the statement made by PW-16 and confessional statement made by the accused-appellants are corroborated by the medical evidence. The doctor Parmanand Thakur (PW-13), who conducted the postmortem examination of the deceased had found several ante-mortem injuries on various part of the body including around private parts as disclosed by PW-16 in his 164 statement. He further argued that the place of occurrence has been established by the investigating officer and the FSL report also goes to suggest that the blood found on the clothes of the victim was human blood of Group-B and the semen found on sample packet was also of blood Group-B. He lastly contended that the above materials completed the chain of circumstances leading to the murder of the deceased by the appellants. Therefore, the trial court rightly convicted the appellants for the offences of gang rape and



murder of the victim and awarded them capital punishment, as their gruesome act fell in the category of the rarest of rare case.

24. We have carefully considered the submissions made at the Bar and perused the entire materials on record.

25. PW-1 (Arun Mandal) has stated in his deposition that he knew Jagdish Mandal. His daughter M had been murdered. On that day, he was making bamboo implements at the Basa (temporary residence) of Rameshwar Mandal. On that day, Sudama Mandal was also making bamboo implements with him. Rameshwar Mandal and his wife were also there. The incident had occurred on Friday about nine months ago. On that day at 04:00 O'clock in the evening, Rukmani Devi came at his Basa. She asked him to see as to whether any person is sleeping in the maize field of Satyanarayan Mandal. Then he himself, the labourers working with him and Sudama Mandal went to the maize field of Satyanarayan Mandal to see that person. But, wife of Rameshwar Mandal and Rukmani Devi remained at the ridge of the field. When he entered the maize field, he saw the dead body of a girl soaked with blood having many injuries. They could not identify it. Later on, in the night, they came to know that the dead body was of the victim M, the daughter of Jagdish Mandal, who had gone out of her house with Rinky



Kumari, but she did not return to her house. He also came to know that the accused Prashant, Rupesh and Sonu in collusion with each other had murdered the victim.

26. Apparently, PW-1 is not a witness to the killing of the deceased. He is also not a witness to the presence of movement of the accused persons either with the deceased or in and around the place of occurrence.

27. PW-2 (Rameshwar Mandal) is the uncle of the deceased. He claims to have seen the dead body on the information provided by PW-4 (Rukmani Devi). He was a witness to the fardbeyan. He has proved his signature on the fardbeyan and the thumb impression of his brother on the fardbeyan which were marked as Exts-1 and 1/1. He was also a witness to the inquest report. He identified his signature on the inquest report which was marked as Ext-‘X’. He has stated in his evidence that on 16.05.2012, the police took him to Taraghat Barhara Police Station. At that time, Sanjay Mandal was also with them. He stated that the accused Rupesh Kumar dug out the pointed sharp knife of iron from the mud in front of bamboo orchard of Tarmanjhi on the bank of river Targhat and handed over it to the S.I. of police. The S.I. of police had prepared the seizure list at the place of recovery of knife in his presence as



well as the presence of Sanjay Mandal. He proved his signature on the photocopy of the seizure list, which was marked as 'X/1' for identification. He stated that thereafter the police took Rupesh to the police station. In cross-examination, he admitted that he himself had not seen the occurrence. He stated that he saw the dead body of the victim in the evening.

28. From the deposition of PW-2, also, it would evident that he is not a witness to the actual killing or movement of the accused persons either with the deceased or in and around the place of occurrence.

29. PW-3 (Sanjay Mandal) was also a witness to the seizure of knife. He stated that the occurrence took place on 16.05.2012. On that day, he had gone to Kamat at Lakshmipur. The police had come there at 07:00 a.m. with whom he had gone to Taraghat. They had gone to the bank of river in front of bamboo orchard. At that time, Rameshwar Mandal and accused Rupesh were also with them and it was Rupesh, who had handed over the knife buried in soil in front of the bamboo orchard to the A.S.I. of police. The knife was sharp and pointed and had blood stains on it. The A.S.I. of police had prepared its seizure list and read over its contents to him. In his cross-examination, he admitted that he had put his L.T.I. on a blank



sheet of paper. However, he denied the defence suggestion that the knife was not recovered in his presence and that he had given a false evidence.

30. PW-4 (Rukmani Devi) claims to have seen the dead body and informed PW-2 (Rameshwar Mandal) about it. She claims to have come back to her house after informing Rameshwar Mandal about it.

31. PW-5 (Kundan Mandal) claims to have seen Rinky Kumari with the deceased having ice-cream and going towards the east of canal on a path way. He stated that in the evening he had informed about it to PW-2. He stated that on the next day of the incident, he came to know that the victim had been murdered. In his cross-examination, he admitted that he is not a witness to the commission of murder.

32. PW-6 (Jawahar Mandal) was a witness to the inquest report, the photocopy of which was produced and marked as Ext-‘X/2’ for identification.

33. PW-7 (Satan Mandal) claims to be a witness of recovery of blood stained blade, hair clip and slippers. In his cross-examination, he admitted that the murder was not committed in his presence and he came to know from somebody else that the victim was killed.



34. PW-8 (Satya Kumar Mandal) was also one of the witnesses of the seizure list of blood stained blade, hair clip, slippers and a bamboo stick. He proved the seizure list, which was marked as Ext-2. He also admitted in his cross-examination that the murder had not been committed in his presence.

35. PW-9 (Sudama Mandal) was a person, who was working at the Kamat of Rameshwar Mandal with Arun Mandal when Rukmani Devi came there and told that a person was lying in the maize field of Satya Narayan Mandal. When he went there together with others, he saw the dead body of a girl. After two days, he came to know that the body was of the daughter of Jagdish Mandal. He also came to know that Sonu, Prashant Mehta, Rupesh and Rinky had committed the murder.

36. In cross-examination, PW-9 admitted that he has no knowledge as to who had killed the deceased. He further stated that his evidence is based on hearsay account.

37. PW-10 (Sita Devi) is the mother of the deceased. She is also not a witness to the occurrence. She explained the daily routine of her daughter and alleged that the accused Prashant and the daughter of Mithilesh Mandal were having affair. She stated that her daughter also attended coaching classes of the accused Prashant. However, since Prashant had



inappropriately behaved with her daughter earlier, she opted to discontinued her studies. She stated that despite knowing the inappropriate behaviour of Prashant, Mithilesh Mandal allowed him to teach his daughter. She stated that the news that the daughter of Mithilesh Mandal was having affair with Prashant had spread in the village. She alleged that the friends of Prashant, Sonu, Rinky Kumari and their colleague Rupesh had killed her daughter. In her cross-examination, she admitted that she herself had not witnessed either commission of rape of her daughter or her murder. She admitted that she came to know about the incident later on through rumour. She also admitted that she had not named anyone in the incident.

38. PW-11 (Jagdish Mandal) is the informant of the case. In his deposition, he has reiterated the allegations made in the FIR. He has stated that the police had arrived in the night itself at 11:00 p.m. Since it was a dark night the formalities were done by the police in the morning after the arrival of the officer-in-charge of the police station. He has also stated about the recoveries made by the police from the place of occurrence. He stated about the misbehaviour of Prashant Kumar Mehta with his daughter when she used to take tuition from him at the residence of Mithilesh Mandal about six months ago. The above



incident was narrated by his daughter to his wife. He stated that he discontinued tuition of his daughter and apprised Mithilesh Mandal about the misbehaviour of Prashant Kumar Mehta, but inspite of that daughter of Mithilesh Mandal continued taking tuition from Prashant Kumar Mehta. However, after three months, the bad conduct of Prashant Kumar Mehta became known to villagers whereafter Mithilesh Mandal also stopped the tutor Prashant Kumar Mehta from offering tuition to his daughter and it was the reason behind the commission of the offence by Prashant Kumar Mehta.

39. In cross-examination, he admitted that he is not a witness to the commission of the offence and his deposition is based on gossip/rumour. He also admitted that he had no enmity with Prashant.

40. PW-12 (Chitrlekha Devi) is the wife of Rameshwar Mandal (PW-2). In her evidence, she has stated that she had gone together with Rukmani Devi and the labourers to the maize field to see the person lying there. She is also not a witness to the commission of murder of the deceased or her rape. After the dead body was recovered, she saw injuries on her person.

41. She admitted in cross-examination that she herself



had not seen the offence being committed. She also admitted that she was not knowing on the date of occurrence as to who had killed the daughter of Jagdish Mandal. She further admitted that she has given name of the accused persons on the basis of rumour/gossip/hearsay after the commission of the crime.

42. PW-13 (Dr. Parmanand Thakur) was posted at Purnea Sadar Hospital as a Medical Officer at the relevant time. On 12.05.2012, he had conducted the autopsy on the body of the victim and found ante-mortem injuries on her person. He proved the photocopy of the original postmortem report, which was marked as Ext-3 with objection.

43. In cross-examination, he admitted that he does not know as to when and where the original postmortem report was copied. He stated that he cannot say who had copied of the original postmortem report. He denied the defence suggestion that the photocopy of the postmortem report does not belong to the deceased M and that he had conducted autopsy on the body of someone else.

44. PW-14 (Banarsi Mandal) is the uncle of the deceased. He stated that the accused Rinky Kumari is his cousin sister. He is also a witness on the point of recovery of the body from the maize field. He stated that after the body was



recovered, he along with others had reached there. There were too many wounds on the body of the victim.

45. In cross-examination, he admitted that he is not a witness to the actual commission of crime.

46. PW-15 (Arvind Kumar) was posted as in-charge of Barhara Police Station on 11.05.2012. He stated that on that day, he received information that a dead body of a girl, namely, M was lying in the maize field of Satyanarayan Mandal. He entered the information into the station diary vide S.D. No. 331 dated 11.05.2012 and proceeded to the place of occurrence with police party. He reached at the place of occurrence at 11:35 p.m. and informed his superior officer about the occurrence. He remained there for the whole night and, in the morning, recorded the statement of Jagdish Mandal, the father of the deceased. Thereafter, the dead body was sent for autopsy. He inspected the place of occurrence and the dead body was also photographed. He recorded the statement of Rameshwar Mandal and Jawahar Mandal. He seized blood stained maize plant from the maize field and recovered hairs from the hand of the deceased, which were seized for sample. He sent the body of the deceased for postmortem examination to Sadar Hospital, Purnea through chowkidar Joginder Paswan and Nirmal Paswan. He



sent the fardbeyan of the informant to the police station for institution of the FIR through S.I. of Police Deep Narayan Yadav. He recorded the statement of witnesses to the seizure list, namely, Sanjay Mandal and Rameshwar Mandal and raided the house of suspects Sonu Kumar, Dipak Kumar Mandal (PW-16), Rupesh Kumar Mandal and Rinky Kumari for their arrest. He further stated that he apprehended the accused Rupesh Kumar Mandal, Prashant Kumar Mehta and Sonu Kumar Mandal and recorded their voluntary confessional statements over which they put their respective signatures. He stated that the accused Sonu Kumar Mandal stated that he had thrown away the knife used by him in the incident at Targhat in the river stream. On the next day, the knife was recovered from the bamboo orchard of Tarmanjhi near Targhat and was seized in presence of witnesses Sanjay Mandal and Rameshwar Mandal. He stated that blood stains were found on the knife. He stated that on the same day, the FSL team also came and they drew blood of the three arrested accused for examination and also took samples of their hairs and pubic hairs. He got the statement of Dipak Kumar Mandal recorded under Section 164 Cr.P.C. and handed over him to his family members. He completed the investigation of the case and submitted charge-sheet before the court. He has



also proved the formal FIR which was drawn by S.I. Suren Hembram and bore signature of S.I. Deep Narayan Yadav, which was marked as Ext-7. He contended that for the articles seized from the place of occurrence as also for the seizure of knife, respective seizure lists were prepared by him on which he had put his signature. The seizure lists were marked as Exts. 2 and 2/A. He also stated that confessional statements of Prashant, Rupesh and Sonu had been recorded by the S.I. of police Deep Narayan Yadav on his direction. He identified the handwriting and signature of Deep Narayan Yadav on the fardbeyan, which was marked as Ext.5. He stated that the pagination of the fardbeyan was also done by him. He identified his hand writing and signature on the fardbeyan, which was marked as Ext.6

47. In cross-examination, he stated that the blood stained maize plant from the place of occurrence and hairs found in the hand of the deceased were seized by the FSL team. He admitted that he had not recorded in the case diary that the seized knife was sent to the expert for test. He admitted that the confessional statements of the accused were recorded in the police station. He proved the confessional statements with objection, which were marked as Exts. 8 to 8/B. He admitted that Section 376 and 120-B were added to the FIR on the



direction of superior officer. He also admitted that the expert report from FSL was not received till the submission of charge-sheet.

48. PW-16 (Dipak Kumar Mandal) stated in his deposition that the deceased was his cousin sister. He stated that he did not have any knowledge about the occurrence. He stated that he had not seen the dead body of the deceased. He also stated that he did not give any statement before the police. At this stage, he was declared hostile by the trial court at the request of the prosecution and the prosecution was permitted to cross-examine him.

49. In cross-examination also, he stated that he did not give any statement before the police. He stated that his statement was recorded in the court before a Magistrate. He proved his signature on the statement recorded by the Magistrate, which was marked as Ext-4. In reply to the query made by the accused persons in this regard, he stated that he had given his statement before the Magistrate under threat and coercion. He stated that he does not remember the contents of the statement he had made before the Magistrate. He stated that he does not know as to how the victim died.

50. PW-17 (Sandeep Singh) was a Judicial Magistrate-



1st Class, Civil Court, Purnea on 16.05.2012. He had recorded the statement of Dipak Kumar Mandal (PW-16) under Section 164 of the Cr.P.C., He has proved his signature on the statement made under Section 164 Cr.P.C. which was marked as Ext-9. He stated that PW-16 had given his statement voluntarily.

51. In cross-examination, he stated that at the time of recording statement, the age of the witness Dipak Kumar Mandal was 10 years. He admitted that he had not asked any question from him in order to ascertain his capacity of giving statement. He also admitted that in his certificate given below the statement of the witness, he had written that the witness is unable to read his statement. He denied the defence suggestion that the witness, a child, was incapable to give his statement. He also denied the defence suggestion that police personnel were standing at the door when he was recording the statement of witness Dipak Kumar Mandal.

52. PW-18 (Mithilesh Jha) was posted at F.S.L., Bihar, Patna on 08.10.2012 as a Senior Scientific Officer. He had received seized samples and Material Exhibits kept in a wooden box in sealed condition. He deposed that the wooden box was sent to the F.S.L., Bihar, Patna through Chowkidar No. 9/10 (Arjun Paswan) on forwarding memo issued by the C.J.M.,



Purnea, which was received on 09.06.2012. He deposed that on opening of the sealed wooden box, he found 18 paper packets marked A, A/1, A/2, B, C, D/1, D/2, E/1, E/2, F/1, G/1, G/2, H, I/1, I/2, J and K. He described the details of paper packets.

(i) The paper packet marked A contained a few black filaments said to be hairs collected from right hand of the deceased.

(ii) The paper packet marked A/1 contained a few black filaments said to be scalp hairs of the deceased.

(iii) The paper packet marked A/2 contained a few black filaments said to be hairs attached with the hair band.

(iv) The paper packet marked B contained one dry leaf said to be bamboo leaf which bore reddish brown stains practically all over.

(v) The paper packet marked C contained on wooden piece said to be piece of bamboo danda which bore reddish brown stains practically all over.

(vi) The paper packet marked D/1 contained a few black filaments, said to be scalp hairs of Sonu Kumar.

(vii) The paper packet marked D/2 contained a few black filaments, said to be pubic hairs of Sonu Kumar.

(viii) The paper packet marked E/1 contained a few black filaments, said to be scalp hairs of Prashant Kumar Mehta.



- (ix) The paper packet marked E/2 contained a few black filaments, said to be pubic hairs of Prashant Kumar Mehta.
- (x) The paper packet marked F/1 contained a few black filaments said to be scalp hairs of Rupesh Kumar.
- (xi) The paper packet marked G/1 contained one five ml. plastic syringe in built middle filled with two ml. reddish brown liquid said to be blood samples of Rupesh Kumar Mandal.
- (xii) The paper packet marked G/2 contained one 5 ml. syringe in built middle filled with 2 ml. reddish brown liquid said to be blood sample of Prashant Kumar Mehta.
- (xiii) The paper packet marked G/3 contained one five ml. plastic syringe in built middle filled with 2 ml. reddish brown liquid said to be blood sample of Sonu Kumar.
- (xiv) The paper packet marked H contained one old (torn) and dirty black colour panty which bore reddish brown stains at place. It also contained three spot marked as 1, 2 and 3, respectively, in this laboratory. Spot marked H-1 bore grayish white stains which were stiff to feel and also produced characteristic bluish white fluorescence in ultra violet light. The spot marked H-2 bore grayish white stains which were stiff to feel and also produced characteristic bluish white fluorescence in ultra violet light. The spot marked H-3 bore grayish white



stains which were stiff to feel and also produced characteristic bluish white fluorescence in ultra violet light.

(xv) The paper packet marked I/1 contained one old torn and dirty yellow colour top which bore reddish brown stains practically all over. It also bore grayish stains which were neither stiff to feel nor did they produce any characteristic bluish white fluorescence in ultra violet light.

(xvi) Paper packet marked 1/2 contained one old torn and dirty green colour tape which bore reddish brown stains practically all over. It also bore grayish stains which were neither stiff to feel nor did they produce any characteristic bluish white fluorescence in ultra violet light.

(xvii) The paper packet marked J contained one old and dirty white purple striped skirt which bore reddish brown stains over large areas. It also bore grayish stains which were neither stiff to feel nor did they produce any characteristic bluish white fluorescence in ultra violet light.

(xviii) The paper packet marked K contained one iron knife with handle which bore reddish brown stains practically all over.

53. He contended in his deposition that after conducting examination and test of above mentioned exhibits as per Forensic Science Manual published by Directorate of



Forensic Science, M.H.A. Government of India, New Delhi and other test methods used in analytical testing adopting AS/MISO and BIS methods following results were found:-

(i) Blood has been detected in the exhibits as follows:-

(a) Ext. Marked B-all over.

(b) Ext. Marked C-all over.

(c) Ext. Marked G/1 over large areas.

(d) Ext. Marked G/2-over large areas.

(e) Ext. Marked G/3- over large areas.

(f) Ext. Marked H-at places.

(g) Ext. Marked I- all over.

(h) Ext. Marked I/2-all over.

(i) Ext. marked J- all over.

(j) Ext. Marked-K. All over.

(ii) Semen has been detected in each of the spots marked H-1, H-2, and H-3, of the Ext. marked-H.

(iii) Semen could not be detected in the Exts. Marked I/1, I/2 and J.

(iv) On the basis of morphological and microscopic examination Exts. marked A/1, A/2, D/1, E/1 and F/1 were found to be human scalp hairs.

(v) On the basis of morphological and microscopic examination



the Exts. marked A, D/2 and E/2 were found to be human pubic hairs.

(vi) Serological report on origin and group of blood and group of blood and semen was later on submitted by another expert Nitu Pandey who was also working as a Senior Scientific Officer in F.S.L., Bihar, Patna with me at that time and she was working in Serology section.

54. He further stated that as per forensic examination on report of Nitu Pandey submitted by her vide F.S.L. report no. 915/12 dtd. 26.02.2013 bearing her signature and seal and counter signed by Director F.S.L. Bihar, Patna Umesh Kumar Sinha with his signature and seal available on the record of this case following test results regarding origin and group of blood and semen discussed above were found:-

(i) Result of serological analysis portion of stains concerning Ext. marked B was found to be human blood and Antigen A and Antigen B were present. The blood stains found on Ext-C which happened to be a bamboo danda was found to be human blood and Antigen A and Antigen B were present. Similarly, the blood sample marked Ext. G/1 was also found to be of human origin and group-B blood. The blood sample marked Ext. G/2 was also found to be human origin and group-



B blood. The blood sample marked Ext. G/3 was also found to be of human origin and of group 'B' blood. Blood stained black colour pant marked-H was also found to be of human origin having Antigen A and Antigen B. The semen stains on black colour panty marked Ext. H/1 was found to be of human origin and of group-B blood. The seminal stains on the black colour panty marked Ext. H/2 was also found to be of human origin and of group-B blood. Seminal stain on black colour panty marked H/3 was found to be of human origin and of group-B blood. Blood stains on yellow colour tap marked as 1/1 was found to be of human origin and Antigen A and Antigen B were present. Blood stains on green colour tap marked as Ext-1/2 was found to be of human origin and Antigen A and Antigen B were present. Blood stains on white purple skirt marked Ext.J was found to be of human origin and Antigen A and Antigen B were present. Blood stains on the iron knife marked Ext. 'K' was found to be of human origin and Antigen A and Antigen B.

55. He contended that the report bearing F.S.L. No. 915/12 was typed by the computer operator Shyam Sundar Pandit as per his dictation which was signed by him and counter signed by the Director Umesh Kumar Sinha and bears his seal as well as the seal of Sri. Umesh Kumar Sinha. He proved the



F.S.L. report, which was marked as Ext.10.

56. In cross-examination he stated that the scalp hairs and pubic hairs of each human are different in structure. The scalp hairs and pubic hairs sent to F.S.L. in this case were not having their roots. Hence, he cannot say as to which specific individual the scalp hairs sent to F.S.L. in this case belong. He admitted that the same is the case with pubic hairs. They are also without root. Hence, it cannot be decided as to whether those hairs belonged to male or female person.

57. He stated that his report establishes the only fact that Exts. H/1, H/2 and H/3 were seminal stains. However, the report does not specify as to whether those seminal stains were of human or animal origin and his report does not connect those seminal stains with any particular human being.

58. He stated that human blood has been divided into four groups A, B, O and AB. Antigen A and B are not found in every blood group. Similarly Antigen A and B will not remain present in blood group 'O' and 'B'. He admitted that blood group 'B' is found in lac of persons. He also admitted that blood group of other persons besides the accused Sonu, Rupesh and Prashant may also belong to group B.

59. PW-19 (A.S.I. Arvind Rai) is a formal witness, who



had produced Material Exhibits before the court from Malkhana. He had proved those Material Exhibits. He contended that the Materials exhibited in the court were kept in Malkhana of Barhara Police Station. He also stated that he had produced those Material Exhibits under the orders of the Superintendent of Police, Purnea.

60. The trial court found that the following circumstances established the guilt of the appellants:-

(1) PW-16 (Dipak Kumar Mandal) has accepted in his deposition that he had made his statement before the court of Magistrate and had put his signature after the statement was read over to him.

(2) PW-16 (Dipak Kumar Mandal) had fully supported the prosecution case in his statement made under Section 164 of the Cr.P.C..

(3) PW-17 (Sandeep Singh), a Judicial Magistrate has stated in his deposition that he had recorded the statement of PW-16, which was voluntarily made. He has also deposed that he had read over the statement



recorded by him to PW-16 (Dipak Kumar Mandal).

(4) The postmortem report of the deceased corroborated the prosecution case.

(5) The accused Prashant Kumar Mehta, Sonu Kumar and Rupesh Kumar Mandal had confessed their guilt before the police and had vividly described the manner of occurrence in their confessions, which would be evident from Exts- 8, 8/A and 8/B.

(6) The knife used for commission of crime was recovered pursuant to the confessional statements made by the accused persons from the bamboo orchard of Tarmanjhi near Targhat.

(7) The expert's report of the F.S.L. Patna, Bihar also corroborates the prosecution case.

61. Having heard learned counsel for the parties, we have reappreciated the entire evidence on record in detail.

62. We have noticed from the evidence that PW-1 is a labour, who went to the field of one Satya Narayan Mandal and saw the dead body of the victim. PW-2 is the brother of the



informant, who has witnessed the inquest report, the fardbeyan of the informant and seizure of the blood stained knife from the bamboo orchard of Tarmanjhi at Targhat. PW-3 is also a witness to the seizure of the knife. PW-4 Rukmani Devi was the first person to see a person lying in the maize field of Stayanarayan Mandal and informed PW-2 about it. PW-5 saw the deceased with one Rinky Kumari (acquitted by the trial court) on 11.05.2012 at 02:00 p.m. having ice-cream. PW-7 is a witness of blade, hair clip and slippers of deceased. PW-8 is a witness to seizure of blade, hair clip, slippers of deceased and one bamboo stick. PW-9 went to the field of Satya Narayan Mandal together with PW-1 and saw the dead body of the victim. PW-10 is the mother of deceased and a hearsay witness. PW-11 is father of the deceased. He is also a hearsay witness. PW-12 is the wife of PW-2, who had gone together with PW-4 and the labourers to the maize field of Satya Narayan Mandal to see the person lying there. PW-13 had held autopsy on the body of the deceased. PW-14, an uncle of the deceased is a witness on the point of recovery of the dead body from the maize field of Satya Narayan Mandal. PW-15 is the investigating officer of the case, who had inspected the place of occurrence, recorded the statement of witnesses, seized the incriminating materials from



the place of occurrence, sent the dead body for the postmortem examination recorded the confessional statement of the accused persons and submitted charge-sheet against them. PW-16, a minor, whose statement was recorded under Section 164 Cr.P.C. turned hostile while deposing in the court. PW-17 was a Judicial Magistrate, who had recorded the statement of PW-16 in exercise of powers conferred upon him under Section 164 Cr.P.C. PW-18 was a Senior Scientific Officer of F.S.L., Patna, Bihar, who had examined and tested the seized knife and the other exhibits sent to F.S.L. for forensic examination. PW-19 is a formal witness, who had produced material exhibits before the trial court from Malkhana.

63. As mentioned above, the FIR was lodged against unknown. It is also an admitted position that there is no eyewitness to the actual commission of the offence.

64. Since there is no eyewitness of killing of the deceased or sexual assault made upon her, we have to see from the circumstantial evidence or other evidence as to whether charges for which conviction were recorded were established or not.

65. In this regard, we shall first consider the evidence on record to see whether the guilt of the appellants is



conclusively established on the strength of the Material on record; and whether the circumstances on record form a clear and consistent chain to rule out every other hypothesis except the guilt of the appellants.

66. The law on the point of proving guilt on the basis of circumstantial evidence is clear from the following observations of the Hon'ble Supreme Court in ***Sharad Birdichand Sarda Vs. State of Maharashtra reported in (1984) 4 SCC 116:***

“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 where the 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.”

67. In ***G. Parshwanath Vs. State of Karnataka, reported in (2010) 8 SCC 593***, the Supreme Court made the following observations when considering a case based on circumstantial evidence:

“23. In cases where evidence is of a circumstantial nature, the circumstances



from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts.”

68. The legal position relating to cases hinging on circumstantial evidence was summarized in ***Padala Vera Reddy Vs. State of Andhra Pradesh & Ors. reported in 1989 Supp (2) SCC 706*** as under:

(a) the circumstances from which an inference of guilt is sought to be drawn,



must be cogently and firmly established;

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

(c) 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

(d) 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.”

69. We would first like to discuss the evidence of last seen, on the point of last seen, the only witness, who has deposed is PW-5 (Kundan Mandal). He has stated in his evidence that on the date of occurrence, the deceased was seen in the company of acquitted accused Rinky Kumari at 02:00 p.m. eating ice-cream and in the evening he informed PW-2 (Rameshwar Mandal) uncle of the deceased about the same.



However, PW-2 (Rameshwar Mandal) has not, in his entire evidence, supported this version. At this stage, it is important to mention that no witness has deposed about the deceased being last seen with the appellants in and around the place of occurrence prior to or even after the occurrence.

70. In a case of circumstantial evidence, motive plays an important role. In the instant case, the motive attributed for the occurrence against the accused Prashant Kumar Mehta is that the deceased used to take tuition from him at the house of Mithilesh Mandal about six months ago. Since Prashant Kumar Mehta had inappropriately behaved with the deceased, she had disclosed it to her mother, whereafter her mother took a decision not to send her to attend tuition classes being offered by Prashant Kumar Mehta. She had also informed about it to Mithilesh Mandal. Added to this motive is the allegation that Prashant Kumar Mehta had developed intimacy with the daughter of Mithilesh Mandal and the rumour in this regard had spread in the village. Thereafter, Mithilesh Mandal discontinued the services of Prashant Kumar Mehta as a teacher to teach his daughter. This decision of Mithilesh Kumar Mandal annoyed the appellant Prashant Kumar Mehta so much that he brought the other appellants into collusion and committed the offences



alleged.

71. In this regard, it is pertinent to note that the motive attributed against the appellants would appear from the confessional statements of the accused persons and the statement made by PW-16 (Dipak Kumar Mandal) under Sections 164 of the Cr.P.C.

72. Admittedly, the confessional statements of the accused appellants were recorded after their arrest and when they were in custody of police. Hence, such statements were inadmissible having regard to the provisions of Sections 25 and 26 of the Indian Evidence Act, 1872. Section 25 of the Indian Evidence Act mandates so, in certain and unequivocal terms, as is clear from the language thereof, which reads as follows:

***“25. Confession to police-officer
not to be proved.-No confession
made to a police-officer, shall be
proved as against a person
accused of any offence.”***

73. Likewise, Section 26 of the Indian Evidence Act makes any such statement inadmissible, if given when in police custody. It reads as under:

“26. Confession by accused



while in custody of police not to be proved against him. — No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.”

74. Thus, as per the aforesaid provision, when an accused makes a confession to a police officer or like while he is in custody, such a confession cannot be proved in evidence against the accused unless such a confession is made in the immediate presence of a Magistrate. This is with a purpose to do away with the torture of the accused and use of force against him in the hands of police.

75. In **Bullu Das Vs. State of Bihar** reported in **(1998) 8 SCC 130**, while dealing with the confessional statements made by the accused persons before a police officer, the Supreme Court held as under:

“7. The confessional statement, Ex. 5, stated to have been made by the appellant was before the police officer in charge of the Godda



Town Police Station where the offence was registered in respect of the murder of Kusum Devi. The FIR was registered at the police station on 8-8-1995 at about 12.30 p.m. On 9-8-1995, it was after the appellant was arrested and brought before Rakesh Kumar that he recorded the confessional statement of the appellant. Surprisingly, no objection was taken by the defence for admitting it in evidence. The trial court also did not consider whether such a confessional statement is admissible in evidence or not. The High Court has also not considered this aspect. The confessional statement was clearly inadmissible as it was made by an accused before a police officer after the investigation had started.”

76. Notwithstanding the aforesaid provisions of the Indian Evidence Act coupled with the ratio laid down by the Supreme Court and the objections raised by the defence during trial, the trial court had erroneously relied upon these confessions for arriving at a conclusion of guilt against the



appellants.

77. Apart from the immediate presence of a Magistrate prescribed under Section 26 of the Indian Evidence Act, Section 27 provides another situation when confession made to a police is admitted in evidence.

78. According to Section 27 of the Indian Evidence Act, when a statement made by the accused leads to discovery of a fact in relation to the offence then it may be proved.

79. Section 27 of the Indian Evidence Act reads as under:-

“ 27- How much of information received from accused may be proved- provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved”.

80. It is clear from bare reading of the above stated



provision under Section 27 of the Indian Evidence Act that the same is in the form of proviso to Section 25 and 26 of the said Act. It makes it abundantly clear that so much of such information, which is received from a person accused of any offence, in the custody of a police officer, which has led to discovery of any fact, may be used against the accused. Such information as given must relate distinctly to the fact discovered.

81. From a reading of confessional statements marked as Exts. 8, 8/A and 8/B, it would appear that they were made on 15.05.2012 between 09:10 p.m. and 10:00 p.m. and a blood stained knife was recovered on 16.05.2012 and that too not from the river stream as disclosed by the accused-appellants but from the bamboo orchard of Tarmanjhi at Targhat. Therefore, the situation contemplated under Section 27 of the Indian Evidence Act also does not get attracted. Even if a blood stained knife was recovered pursuant to the disclosure statement, it would have made the fact of recovery of knife only, as admissible under Section 27 of the Indian Evidence Act. It will not make the entire so called disclosure statements of the accused-appellants admissible.

82. The trial court has permitted the prosecution to



exhibit the entire confessional statement inspite of the objection raised by the defence. The law relating to confession leading to recovery is fairly clear. Only that part of the statement which distinctly relates to the fact discovered can be admissible under Section 27 of the Indian Evidence Act. The trial court has completely erred in introducing the entire confessions made to the police during investigation under the guise of recovery under Section 27 of the Indian Evidence Act.

83. That apart, on the point of confession leading to recovery, we have seen from the evidence that the investigating officer PW-15 (Arvind Kumar) has stated in his evidence that on confession of Sonu Kumar, a knife allegedly used in the incident was recovered in presence of PW-2 (Rameshwar Mandal) and PW-3 (Sanjay Mandal). However, both PW-2 and PW-3 have stated in their evidence that police came with Rupesh Mandal and Rupesh dug out the knife, which was buried in the soil. Therefore, even the so-called confession leading to a recovery of the knife is not clean.

84. Another issue, which would be worth consideration is whether the prosecution conclusively proved that the knife recovered was the weapon used in the murder of the victim. A killer may leave their finger prints on the suspected murder



weapon. In an assault case, the perpetrators may also have their fingerprints on the victims skin. In the absence of DNA, fingerprints may be used to verify an offenders identity. There is evidence that blood stained knife was sent to F.S.L. for forensic examination, but there is no evidence that fingerprint was taken from the murder weapon or compared to fingerprint of the accused appellants. The report only states that the blood found on the knife was human blood having Antigen A and Antigen B. The F.S.L. expert, who deposed as PW-18 admitted that lots of people in the area may be having Antigen A and Antigen B group blood. Thus, there is no conclusive material to suggest that the knife recovered was the weapon used in the murder or that the accused-appellants were the perpetrators of the crime.

85. So far as the reliance of the trial court on the statement of PW-16 (Dipak Kumar Mandal) made under Section 164 Cr.P.C. the same cannot be used as a substantive piece of evidence. Section 164 Cr.P.C. enables recording of statement of witnesses by Magistrate and confession from the accused. The statement given by a witness under Section 164 Cr.P.C. is like a previous statement given during investigation under Section 161(3) of the Cr.P.C. It is not a substantive evidence because it is recorded from a witness during investigation and the maker is



not subjected to cross-examination.

86. With regard to the value to be given to a statement recorded under Section 164 Cr.P.C, in ***Ram Kishan Singh Vs. Harmit Kaur reported in AIR 1972 SC 468***, the Supreme Court held as under:

“ A statement under Section 164 of the Cr.P.C. is not substantive evidence. It can be used to corroborate the statement of a witness. It can be used to contradict a witness....”

87. Thus, a statement under Section 164 of the Cr.P.C. is a former statement made before a Magistrate. If the witness sticks to the statement given by him to the Magistrate under Section 164 Cr.P.C., no problem would arise but if the witness resiles from the statement given by him under Section 164 Cr.P.C. in the trial court, the witness can be cross-examined by the person, who calls him and the trial court may permit for putting any question on his earlier statement, which might be put in cross-examination by the adverse party in terms of Section 154 of the Indian Evidence Act. Further, nothing shall disentitle the person so permitted to rely on any part of evidence



of such witness.

88. In the present case, the approach of the trial court in relying upon the statement of PW-16 made under Section 164 of the Cr.P.C., otherwise inadmissible in evidence, is contrary to law.

89. It is a matter of record that PW-16 had resiled from his statement made under Section 164 Cr.P.C. while disposing before the court. The prosecution was permitted to cross-examine him. He stated in his cross-examination that his statement under Section 164 Cr.P.C. was given under threat and coercion. The prosecution did not draw his attention towards the previous statement made by him before the police or the Magistrate. Hence, the prosecution cannot take any benefit out of his statement made under Section 164 Cr.P.C. even for the purposes of corroboration of his previous statement.

90. From the evidence of PW-17, a Judicial Magistrate, who had recorded the statement of PW-16 under Section 164 Cr.P.C., we find that even necessary statutory precautions, as provided under Section 164 Cr.P.C., was not taken by him before recording the statement of PW-16, who admittedly was a minor aged 10 years at the relevant time. PW-17 clearly admitted that he had not asked any question to ascertain the



intelligence level of child. He also admitted that the child was not able to read the recorded statement. It is relevant to mention that the threat and fear alleged by the child were not imaginary. His house was the tuition centre and his sister was alleged to having affair with the accused-appellant Prashant Kumar Mehta. The investigation officer has deposed that he was a suspect and raid was conducted to apprehend him. The sword of imminent prosecution was dangling over his head. Thus, we are of the opinion that not only the statutory requirements as mentioned in Section 164 of the Cr.P.C. were not complied by the PW-17 while recording the statement of PW-16, the trial court also completely erred in appreciating the evidences adduced by the PWs-16 and 17.

91. Coming back to the forensic evidence adduced by the prosecution, we find that the same is of no assistance to the prosecution case. It would appear from the record that samples were taken from the place of occurrence on 12.05.2012, from the accused on 15.05.2012 and from the place of recovery of knife on 16.05.2012. Records would further reveal that the samples were taken to the learned C.J.M., Purnea on 06.06.2012. The learned C.J.M. passed order on 06.06.2012 itself and the samples reached F.S.L., Patna on 09.06.2012.



There is nothing on record to suggest that samples were kept in safe custody between 12.05.2012/16.05.2012-06.06.2012 and 06.06.12-09.06.2012. The test report and the expert assertion that the samples were not taken in a proper manner would be apparent from the evidence noted above. The blood sample of the deceased was not taken though the dead body was recovered and samples from the place of occurrence were collected within 12 hours. It is common medical practice to collect blood sample from the dead body. The blood found on the knife was Antigen A and B. The blood on the top worn by the deceased was also found Antigen A and B, but the absence of definite finding regarding blood group of the deceased, the connection of blood group of Antigen A and B has to be speculated. We further find from the report of the investigating officer that the F.S.L. report had not been given till filing of the charge-sheet. The same was not given to the accused persons under Section 207 of the Cr.P.C. It came in the court for the first time during the deposition of PW-18 (Mithilesh Jha). It is relevant to point out that PW-18 and one Neetu Pandey were the authors of the serological report, but Neetu Pandey was not examined during trial and PW-18 has also proved the serological report submitted by Neetu Pandey.



92. The deficiencies of the F.S.L. report are glaring to say the least. Hair samples were taken from the hands of the girl, which must be having roots. Samples of scalp hairs and pubic hairs of the accused persons were also taken by a team of F.S.L. Still elementary care of knowledge, which must be presumed to be available were not put into operation. PW-18 (Mithilesh Jha) has clearly stated in his deposition that the scalp hairs and pubic hairs sent to F.S.L. were not having roots. Hence, they cannot be connected to any male or female.

93. Similarly, in the case of semen also, the report says that it cannot be stated whether they belong to human or animal origin. Hence, they cannot be connected to any particular individual. Further, Ext. 'H' was the black panty of the deceased. It was found to have blood at all places but the group was not detected. Ext. 'C' was probably the bamboo pierced in the neck of the deceased. It was also having blood, but the group does not seem to have been detected. These were the articles which indisputably must be having blood of the deceased. Thus, non-collection of the blood of the deceased and non-grouping of blood from these samples has grossly damaged the prosecution case and impeaches the credibility of forensic evidence. Furthermore, the blood was found on yellow 'top', skirt and



knife (Ext. 1, 1/1, 1/2, J and K, respectively). The collection of blood of victim was vital to provide the connecting link, which has now been pushed in the realm of suspicion/assumption.

94. Forensic evidence is scientific evidence and can provide proof to establish a person's guilt or innocence. The material collected and sent to the F.S.L. in the instant case for test were scalp hairs, pubic hairs, seminal strains on certain exhibits, blood strains on knife etc. but, reports submitted by the experts and the evidence of PW-18 do not in any way provide proof to establish the guilt of the accused-appellants.

95. The trial court has held the appellants guilty for the offences under Section 120-B of the Indian Penal Code. We have seen that there is no eyewitness to the occurrence. None had seen the appellants committing any act leading to death of the deceased. No witness has come forward to even suggest that the appellants were seen either with the deceased on the fateful day or were seen in and around the maize field of Satyanarayan Mandal where the dead body was recovered either prior to or after the occurrence.

96. In the instant case, as there is no eyewitness to the occurrence and no witness has come forward to even suggest that the appellants were seen either with the deceased on the



fateful day or were seen in an around the maize field of Satyanarayan Mandal where the dead body was recovered, the only link of criminal conspiracy against the appellants is the allegation that they committed offence together and, on that basis, a criminal conspiracy to commit the act has been erroneously presumed to be proved by the trial court.

97. The aforesaid discussion leads us to conclude that the entire bucket of evidence is either inadmissible or unbelievable and untrustworthy.

98. In **Subhash Chand Vs. State of Rajasthan reported in 2001 Supp (4) SCR 163**, the Supreme Court explained that in a case of circumstantial evidence, the Court should:

“... proceed to examine each of the pieces of incriminating evidence so as to find out if one of the circumstantial evidence is proved individually and whether collectively ii forges such a chain of incriminating circumstances as would fasten the guilt on the accused beyond reasonable doubt.”

99. Also, in the same judgment, the Supreme Court



observed:

*“ Though the offence is gruesome and revolts the conscience but an accused can be convicted only on legal evidence and if only a chain of circumstantial evidence has been so forged to rule out the possibility hypothesis excepting the guilt of the accused. In **Shankarlal Gyassilal Dixit Vs. State of Maharashtra** reported in **AIR 1981 SC 765**, this Court cautioned-*

“ human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicious”.

This Court has held time and again between may be true and must be true there is a long distance to travel which must be covered by clear, cogent and unimpeachable evidence by the prosecution before an accused is condemned a convict”.

100. Thus, on consideration of the entire evidence, we reiterate that the prosecution has miserably failed to prove each of the links in the chain of circumstances beyond reasonable doubt against the accused-appellants. No doubt that the offence committed was gruesome and revolts the conscience but that alone could not have been a ground to convict the accused-



appellants in absence of legal evidence against them.

101. For all the aforesaid reasons, the appeals are allowed. The impugned judgment of conviction dated 07.02.2018 and the consequent order of sentence dated 15.02.2018 passed by the learned 1st Additional Sessions Judge-cum-Special Judge, Purnea are, accordingly, set aside.

102. The appellants, namely, Prashant Kumar Mehta, Sonu Kumar and Rupesh Kumar Mandal are acquitted of the charges levelled against them. They shall be released from the jail forthwith unless they are required in any other case.

103. Since, we have allowed the appeals and set aside the impugned judgment of conviction and the consequent order of sentence passed by the trial court, the reference made by the trial court for confirmation of death sentence vide Death Reference No. 2 of 2018 is, hereby, rejected.

104. Before parting with the death reference and these appeals, we would record our appreciation for the able assistance rendered by Mr. Pratik Mishra, learned *amicus curaie*.

105. The Patna High Court, Leagal Services Committee is, hereby, directed to pay Rs. 7500/- to Mr. Pratik Mishra, learned *amicus curaie* in Death Reference Case No. 2 of



2018 as a consolidated fee or the services rendered by him.

(Ashwani Kumar Singh, J)

(Arvind Srivastava, J)

rohit/-

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