

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.178 of 2014**

Arising Out of PS. Case No.-80 Year-2010 Thana- KHAGARIA District- Khagaria

Mithun Paswan Son of Ram Sagar Paswan Resident of Village- Bela Simri,
P.S. Khagaria (Gangour), District Khagaria.

... .. Appellant.

Versus

The State of Bihar

... .. Respondent.

Appearance :

For the Appellant	:	Mr. Sanjeev Kumar, Advocate. Mr. Rajiv Ranjan Dwivedi, Advocate.
For the State	:	None.

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE A. M. BADAR)

Date : 05-07-2022

By this appeal, appellant/accused Mithun Paswan is challenging the Judgment and Order dated 15.01.2014 and 18.01.2014 respectively passed by the learned Adhoc Additional Sessions Judge-II, Khagaria, in Sessions Trial No.394 of 2010, thereby convicting him of the offences punishable under Sections 302 and 364 of the Indian Penal Code. For the offence punishable under Section 302 of the Indian Penal Code, he is sentenced to suffer imprisonment for life along with imposition of fine of Rs.5000/- and for the offence punishable under Section 364 of the Indian Penal Code, he is sentenced to suffer rigorous imprisonment for 10 years apart from imposition of



fine of Rs.5000/-. The learned trial court awarded default sentence of imprisonment for six months. Substantive sentences are directed to run concurrently. For the sake of convenience, the appellant shall be referred to in his original capacity as “an accused”.

2. Facts in brief leading to the prosecution of the accused can be summarized thus:

(a). It is case of the prosecution that by kidnapping victim Laxman Paswan on 22.03.2010, the accused along with juvenile in conflict with law Tuntun Paswan had committed his murder by strangulating him by means of scarf.

(b). Laxman Paswan, aged about 12 years was student of Upgraded Middle School of village-Bela Simri. His father P.W.2 Gopal Paswan used to reside at Delhi for earning the livelihood. Accused Mithun Paswan also used to reside at Delhi in the room adjoining to the room of P.W.2 Gopal Paswan. On one day, accused Mithun Paswan spitted ‘Gutkha’ from his mouth on person of P.W.2 Gopal Paswan. This incident caused scuffle between both of them and then accused Mithun Paswan threatened to teach a lesson to P.W.2 Gopal Paswan. Thereafter, accused Mithun Paswan returned to his village-Bela Simri where Laxman Paswan (since deceased), who happens to be son



of P.W.2 Gopal Paswan, was residing along with his uncle P.W.6 Upendra Paswan. P.W.5 Deji Paswan is wife of P.W.6 Upendra Paswan and, as such, was aunt of Laxman Paswan. According to the prosecution case, on 22.03.2010, Laxman Paswan participated in the running competition held at his Upgraded Middle School, Bela Simri, on the occasion of Bihar Diwas and stood first in that competition. On the same day, P.W.5 Deji Paswan saw him in company of accused Mithun and juvenile in conflict with law Tuntun Paswan. Upon being asked by P.W.5 Deji Paswan, Laxman told her that he will return home after seeing posters of a movie. However, Laxman Paswan was not seen thereafter.

(c). On 23.03.2010, P.W.6 Upendra Paswan lodged missing report of Laxman Paswan with the outpost of Police Station-Khagaria (Gangour) and, accordingly, Sanha entry was taken. Search of Laxman Paswan by his relatives and the police yielded no result. On 24.03.2010, P.W.6 Upendra Paswan heard gossip in the village that accused Mithun Paswan and Tuntun Paswan had killed Laxman Paswan because of incident of the slapping Mithun by P.W.2 Gopal Paswan on account of spitting the 'Paan'.

(d). Upon getting this information, accused Mithun so



also Tuntun were called by the Police Station Officer and they were interrogated. It was revealed that accused Mithun committed murder of Laxman Paswan with the help of Tuntun Paswan. P.W.6 Upendra Paswan received information from the police station and he went to the spot of the incident and found dead body of Laxman Paswan lying in the maize field of Md. Javed. Then P.W.6 Upendra Paswan lodged the F.I.R. in respect of the crime in question at 04.15 P.M. of 24.03.2010 at the spot of the incident which was located near brick road adjacent to the maize field of Md. Javed situated at Bagras Tola of village-Bela Simri. Accordingly, Crime No.80 of 2010 came to be registered against accused Mithun Paswan as well as Tuntun Paswan for the offences punishable under Sections 364, 302 and 201 of the Indian Penal Code. It was revealed that Tuntun Paswan was below 18 years of age and, as such, he was referred to the Juvenile Justice Board for further proceedings.

(e). During the course of investigation, inquest notes were taken and dead body of Laxman Paswan was referred for post-mortem examination, which was conducted by P.W.7 Dr. P.K. Sinha at Sadar Hospital, Khagaria, on 25.03.2010. Statement of witnesses came to be recorded and on completion of investigation, the accused came to be chargesheeted. The



learned trial court framed and explained the charges to the accused. He pleaded not guilty and claimed trial.

(f). In order to bring home the guilt to the accused, the prosecution has examined in all eight witnesses. The defence of the accused was that of total denial and false implication. However, he did not enter into the defence.

(g). After hearing the parties, the learned trial court was pleased to convict the appellant/accused and to sentence him as indicated in the opening paragraph of this Judgment.

3. We heard the learned counsel appearing for the appellant/accused at sufficient length of time. He argued that the case is based on the circumstantial evidence and the prosecution has failed to prove the complete chain of circumstances leading to the sole hypothesis of guilt of the accused. It is argued that evidence of the prosecution is discrepant and insufficient to bring home the guilt to the accused. For this proposition, reliance is placed on **Machander Versus The State of Hyderabad** reported in **AIR 1955 SC 792**. It is further argued that the prosecution has failed to establish homicidal death of Laxman Paswan as the learned trial court had not granted opportunity to the defence to cross examine P.W.7 Dr. P.K. Sinha. It is submitted that the learned trial court



ought to have appointed an Advocate at the cost of the State for cross-examining this witness as the learned Advocate appointed by the accused was not in a position to cross-examine this witness at the relevant time. For this purpose, reliance is placed on **Hussainara Khatoun and Others (IV) Versus Home Secretary, State of Bihar, Patna**, reported in **(1980)1 Supreme Court Cases 98**, wherein it is held that the right to free legal services is clearly an essential ingredient of 'reasonable, fair and just' procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21.

4. Despite chances, none appeared for the Respondent-State of Bihar for prosecuting the instant appeal in which the accused is undergoing jail sentence from 25.03.2010. This conduct on the part of the State deserves to be depreciated. Ultimately, after hearing the appeal it was closed for Judgment by us on 30.06.2022. During interrogation, nobody for the State sought permission to advance arguments for the respondent.

5. We have considered the submissions so advanced on behalf of the appellant/accused. We have also examined the records and proceedings including oral as well as documentary evidence.

6. The case in hand, is based on circumstantial



evidence. No person has seen the accused committing murder of Laxman Paswan. Therefore, it is necessary to put on record the standard of proof required for holding the accused guilty in such cases where there is no direct evidence of commission of crime. The court is required to adopt the cautious approach while basing its conviction purely on the circumstantial evidence. It is settled that in order to base conviction, the circumstantial evidence must satisfy the following tests:

1.the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established.

2.Those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused :

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

4. the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation on any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

In such cases, the prosecution has to establish each circumstance by independent evidence and the circumstances so established should form a complete chain without giving a room to any other hypothesis than the guilt of the accused. The court



is bound to make strict scrutiny of each of the fact placed by circumstantial evidence and their cumulative effect is required to be taken into consideration. Only if the proved circumstances are of such nature as to be incompatible with the innocence of the accused and consistent with his guilt then only the conviction follows. Keeping in mind these principles of case based on circumstantial evidence, let us examine evidence adduced by the prosecution in the instant case.

7. Case of the prosecution is based on last seen theory. According to the prosecution case, deceased Laxman Paswan was lastly seen in company of the accused on 22.03.2010. For this purpose, the prosecution is basing its case on evidence of P.W.5 Deji Paswan, wife of P.W.6 Upendra Paswan, who happens to be aunt of the deceased Laxman Paswan, residing at village-Bela Simri. It is in her evidence that on the day of the incident, she was at her home. It was time of about 05.00 P.M. She saw accused Mithun Paswan and the juvenile in conflict with law Tuntun Paswan taking Laxman with them. Laxman then told her that he will return after seeing posters of the movie. P.W.5 Deji Paswan further deposed that Laxman did not return thereafter. Despite search, he was not found. When the accused was asked, he told that he do not



know whereabouts of Laxman. In her cross-examination, she stated that she saw the accused taking Laxman with them on 24.03.2010. In fact, the incident of taking Laxman, according to the prosecution case, took place on 22.03.2010. However, no capital of giving incorrect date by P.W.5 Deji Paswan can be made as she is a rustic woman living in rural area and the court is not expected to judge her evidence by same standard of exactitude and consistency as that of urban witness. Time or date is hardly of the essence of slow rustic rural life. Suffice to state that according to P.W.5 Deji Paswan, she saw deceased Laxman in company of accused Mithun Paswan and Tuntun Paswan at 05.00 P.M. when she was at her house and thereafter Laxman was not seen.

8. P.W.2 Gopal Paswan is father of deceased Laxman Paswan. At the relevant time, he was at Delhi. P.W.2 Gopal Paswan deposed that he received telephonic information about missing of Laxman Paswan and, therefore, he returned to the village. Though he has deposed about disclosure statement by accused to the police allegedly resulted in the recovery of the dead body, this witness had actually not witnessed making of alleged confessional statement by the accused leading to the discovery of the dead body. P.W.2 Gopal Paswan in his chief



examination disclosed that accused Mithun Paswan spitted 'Gutkha' on him leading to the scuffle and then accused Mithun Paswan gave a threat to him. Evidence of this witness is conspicuously silent about the date and time of this incident which allegedly took place at Delhi. It is, as such, not known as to whether the incident of killing of Laxman is proximate to the incident of spitting of 'Gutkha' on person of P.W.2 Gopal Paswan by accused Mithun at Delhi. Cross-examination of P.W.2 Gopal Paswan makes it clear that he had inquired from P.W.5 Deji Paswan about the incident and then she told him that when she was returning home after purchasing rationed articles, she saw Laxman going with Mithun and Tuntun .

9. So far as evidence of P.W.6 Upendra Paswan, who happens to be husband of P.W.5 Deji Paswan is concerned, this witness has not elaborated on disclosure made by his wife P.W.5 Deji Paswan to him regarding taking of Laxman by accused Mithun and Tuntun. In a very cryptic manner, he disclosed that his wife Deji saw Laxman in company of accused Mithun and Tuntun. He has not clarified about when and where.

10. Application of the last seen theory can be seen from the Judgment in **Shivaji @ Dadya Shankar Alhat Vs. State of Maharashtra** reported in **AIR 2009 Supreme Court**



56. Paragraphs 12, 13 and 15 of that Judgment reads thus:

“12. So far as last seen aspect is concerned it is necessary to take note of two decisions of this court. In *State of U.P. v. Satish* [2005 (3) SCC 114] it was noted as follows: “22. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses P. Ws.-3 and 5, in addition to the evidence of P. W. 2”.

13. In *Ramreddy Rajeshkhanna Reddy v. State of A. P.* [2006(10) SCC 722] it was noted as follows: “27. The last seen theory, furthermore, comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case the courts should look for some corroboration”.

“15. Before analyzing factual aspects it may be stated that for a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all



circumstances be proved by direct ocular evidence by examining before the Court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts. To put it differently circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed.”

We have already noted that for making out the case based on circumstantial evidence, each circumstance is required to be firmly established by the prosecution by independent evidence which must be trustworthy and reliable. In the case in hand, substantive evidence of P.W.5 Deji Paswan is to the effect that she had seen Laxman (since deceased) in company of accused Mithun and Tuntun when she herself was at her own house whereas she has disclosed her brother-in-law P.W.2 Gopal Paswan that she saw Laxman in company of the accused when she was returning home after purchasing the rationed articles. Thus, evidence of the prosecution on the last seen theory, of the deceased being in the company of the accused lastly, is discrepant and inconsistent. Her husband P.W.6 Upendra Paswan cryptically disclosed that his wife saw Laxman in



company of the accused persons. Therefore, it is not possible to hold that evidence of the prosecution on last seen theory of the deceased Laxman being seen in company of the accused is trustworthy and reliable.

11. The prosecution has relied on evidence of confessional statement of accused Mithun allegedly leading to the discovery of dead body of Laxman Paswan from the field of Md. Javed. For this purpose, the prosecution is relying on the evidence of P.W.6 Upendra Paswan, P.W.1 Adalat Paswan and P.W.8 Sudhir Kumar, the Investigating Officer. At the cost of repetition, it is stated that according to the prosecution case reflected from the F.I.R. lodged by P.W.6 Upendra Paswan, Laxman went missing from the house on 22.03.2010, on 23.03.2010, he lodged a missing report at Police Outpost-Gangour and on 24.03.2010, he heard gossip in the village that accused Mithun and Tuntun killed Laxman. It is case of the prosecution reflected from the F.I.R. that upon hearing this gossip, the Police Station Officer called accused Mithun and Tuntun to the police station and interrogated them, accused Mithun confessed the guilt by stating that he killed Laxman. Thereupon P.W.6 Upendra Paswan went to the spot of the incident as told by accused Mithun to the police and saw the



dead body of his nephew Laxman Paswan lying in the field of Md. Javed situated at Bagras Tola of village-Bela Simri.

12. In the light of this prosecution case, if the evidence of P.W.6 Upendra Paswan is perused, then it is clear that he claimed that initially he lodged the F.I.R. and then went to the spot of the incident. Thereafter, police came on the spot of the incident with the accused and found the dead body. P.W.6 Upendra Paswan testified that he lodged missing report on 22.03.2010 after Laxman went missing and, accordingly, Sanha entry was taken by police. He further stated that at 10.00 A.M. of 23.03.2010, the Police Station Officer called him, they searched Laxman, who was not found. P.W.6 Upendra Paswan categorically deposed that then on 24.03.2010, the Police Station Officer recorded his F.I.R. and thereafter apprehended accused Mithun and Tuntun, who were then interrogated. He further deposed that during interrogation of the accused, at 04.15 P.M., the Police Station Officer took the accused to the place of the incident as per their say and from that field of Md. Javed, dead body of Laxman came to be recovered. He deposed that neck of Laxman was blackened and blood was oozing from dead body of Laxman. This evidence of P.W.6 Upendra Paswan is totally contrary to his version in the F.I.R.



In the F.I.R., P.W.6 Upendra Paswan has stated that after hearing the gossip in the village regarding commission of murder by accused, police called both of them, interrogated them and after hearing their confession made to the police, he himself went to the spot, saw dead body of Laxman and then lodged the F.I.R. This divergent version of P.W.6 Upendra makes the prosecution case doubtful.

13. Though it is averred by P.W.6 Upendra Paswan in his F.I.R. that he went to the spot of the incident disclosed by accused Mithun to the Police during his interrogation prior to the lodgement of the F.I.R., in his cross-examination, P.W.6 Upendra Paswan has candidly stated that accused Mithun was not interrogated by police in his presence and he saw accused Mithun only after his arrest by the police at 05.00 P.M. of 24.03.2010. As such, it was not expected of P.W.6 Upendra Paswan to go to the spot of the incident to see dead body of Laxman after hearing confession of accused Mithun at the police station. In cross-examination, P.W.6 Upendra Paswan further clarified that he saw dead body of Laxman when he went to the police station. Thus, this version of P.W.6 Upendra Paswan is also totally contrary to the F.I.R. lodged by him in which it is averred by him that he went to the spot of the



incident and saw the dead body of Laxman lying in the field.

14. P.W.1 Adalat Paswan is a co-villager, who saw the dead body and had acted as Pancha to the inquest. As per his version, he along with P.W.6 Upendra Paswan went to the police station where Upendra lodged report and then he as well as Upendra went to Bagras Tola for searching Laxman. P.W.1 Adalat Paswan claimed that then police came to that spot with accused Mithun and Tuntun and, thereafter, on disclosure by the accused, dead body of Laxman was found in the field belonging to a Muslim person. From evidence of P.W.1 Adalat Paswan, it is again clear that the lodgement of the F.I.R. was first in point of time by P.W.6 Upendra Paswan and, thereafter, dead body of Laxman was found in the field of Javed. This version of P.W.1 Adalat Paswan is also totally contradictory to the prosecution case set out in the F.I.R. lodged by P.W.6 Upendra Paswan at 04.15 P.M. of 24.03.2010, allegedly at the spot of the incident after finding of the dead body of Laxman. Thus, evidence of P.W.1 Adalat Paswan is also not consistent with the case of prosecution.

15. Accused Mithun Paswan, according to the prosecution case, was interrogated by P.W.8 Sudhir Kumar, the Police Station Officer, during the course of which, upon his



confessional statement, dead body of Laxman came to be recovered. As per version of P.W.8 Sudhir Kumar, at 01.30 A.M. of 23.03.2010, written information was received by the police station regarding missing of Laxman Paswan which resulted in taking Sanha entry. P.W.8 Sudhir Kumar claimed that on 24.03.2010, he received secret information that accused Mithun and Tuntun kidnapped and killed Laxman and, therefore, he called accused Mithun and interrogated him in presence of Mukhiya of the village Sudha Paswan. P.W.8 Sudhir Kumar in his substantive evidence before the court ventured to depose in detail the alleged confessional statement of accused Mithun Paswan so also that of juvenile in conflict with law Tuntun Paswan in entirety. The learned trial court oblivious to the provisions of Sections 25 and 26 of the Evidence Act went on recording the so-called confession allegedly made by the accused to P.W.8 Sudhir Kumar, a Police Officer. In fact, the learned trial court through the evidence of the Investigating Officer ought not to have recorded the so-called oral confessional statement in its entirety allegedly made by accused Mithun Paswan and juvenile in conflict with law Tuntun Paswan, as Section 25 of the Evidence Act injects proof of confessional statement made by the accused to a Police



Officer. After making the part of record by deposing the inadmissible portion about the alleged confessional statement of accused Mithun Paswan, P.W.8 Sudhir Kumar further deposed that accused Mithun disclosed him that the dead body is left at the maize field of Javed. As testified by P.W.8 Sudhir Kumar, then he along with the police staff went to the field and saw dead body of Laxman Paswan.

16. It needs to be noted here that P.W.8 Sudhir Kumar, the Investigating Officer, failed to record memorandum of statement allegedly made by accused Mithun so also the discovery Panchnama leading to the discovery of dead body of Laxman. The prosecution has failed to examine any independent witness for proving that part of statement of accused Mithun which resulted in discovery of a fact. Mukhiya of the village Sudha Paswan, in whose presence confessional statement was allegedly made by the accused resulting in discovery of the dead body of Laxman Paswsan, is also not examined by the prosecution.

17. We may not be understood to mean that as a matter of rule we are insisting for examination of independent witness for proof of discovery of dead body as a result of confessional statement of accused Mithun. However, in the



case in hand, evidence of the prosecution is far from satisfactory. It is totally inconsistent with the prosecution case. First Informant P.W.6 Upendra Paswan has deposed that initially he lodged the F.I.R., then the accused were summoned by the Investigator for interrogation and, thereafter, the dead body was recovered. Investigator P.W.8 Sudhir Kumar is stating that he received secret information about the accused kidnapping and killing Laxman and, therefore, he called the accused and interrogated them and thereupon recovered the dead body of Laxman on the basis of confession of accused Mithun. As claimed by P.W.8 Sudhir Kumar, then P.W.6 Upendra Paswan lodged the F.I.R. Though P.W.6 Upendra Paswan had stated in his F.I.R. that the Police Officer interrogated the accused and the accused confessed the crime, in his substantive evidence before the court, he stated that no such interrogation was made by police before him. In such situation and with such lacunic evidence, non preparation of the memorandum statement and resultant discovery Panchnama by the Investigating Officer makes the case of the prosecution suspect and casts a serious shadow of doubt on it. When the evidence adduced by the prosecution regarding recovery of dead body of Laxman was discrepant and doubtful, non



examination of Sudha Paswan, Mukhiya of the village before whom the accused allegedly made the confessional statement leading to the recovery further makes the prosecution case suspect. Therefore, it cannot be said that the prosecution has proved that accused Mithun was aware about the location of dead body of Laxman and on his confessional statement, it came to be recovered, making such evidence admissible under Section 27 of the Evidence Act.

18. Somewhat similar situation arose in the matter of **Machander** (supra), the deceased therein went missing on 16.12.1950. The accused came to be arrested on 29.12.1950. Then he made confessional statements resulting in recovery of various articles belonging to the deceased so also the dead body. On these facts, the Supreme Court has held in that case that the mere knowledge, 13 days later, coupled with a motive which three others shared and a lie about the deceased's movements told four or five days after the murder, were not enough to warrant a conclusion of murder by the accused.

19. In the case in hand also, the prosecution attempted to prove that dead body of Laxman was recovered on the basis of confessional statement of accused Mithun but in our considered opinion, this circumstance is also not proved by



the prosecution by adducing trustworthy and reliable evidence. Interested evidence of the Investigating Officer is not sufficient to establish this circumstance when other evidence adduced by the prosecution is contradictory and inconsistent on this aspect. Even otherwise, on such a singular circumstance, it is not possible to infer guilt of the accused in the subject crime.

20. It is not clarified by the prosecution as to when the quarrel took place between P.W.2 Gopal Paswan- father of the deceased and accused Mithun at Delhi over the issue of spitting 'Gutkha' on person of P.W.2 Gopal Paswan by the accused. Therefore, it is not known whether such incident was proximate to the incident in question, providing motive to accused Mithun Paswan to eliminate Laxman. On the contrary, it is seen from the cross-examination of P.W.6 Upendra Paswan-uncle of deceased Laxman, even after the said incident, members of both family were visiting each other. As such, it cannot be said that the prosecution had proved motive allegedly harbored by accused Mithun for killing Laxman.

21. Evidence of P.W.7 Dr. P.K. Sinha of Sadar Hospital, Khagaria regarding post-mortem examination of deceased Laxman cannot be taken into consideration because the learned trial court had not given opportunity to the defence



to cross-examine him. As the learned Advocate appearing for the defence was not ready in the matter, cross-examination of P.W.7 Dr. P.K. Sinha came to be closed by the learned trial court. In fact, adhering to the provisions of Sections 303 and 304 of the Code of Criminal Procedure as well as keeping in mind Article 21 of the Constitution of India, the trial court should have suo motu appointed an Advocate to represent the accused for cross-examining this medical witness. Even if this evidence is discarded, still death of Laxman Paswan is proved by the prosecution through evidence of P.W.1 Adalat Paswan and P.W.6 Upendra Paswan as well as that of P.W.8 Sudhir Kumar, who have deposed that they had seen dead body of Laxman Paswan with blackish neck and the blood oozing from the mouth. However that alone is not sufficient to prove the charge.

22. According to evidence of P.W.6 Upendra and P.W.8 Sudhir Kumar Prasad, Investigating Officer, written missing report about Laxman was submitted by P.W.6 Upendra on 23.03.2010 and accordingly a Sanha entry came to be taken. Neither that written missing report nor that Sanha entry is proved by the prosecution. This is also a factor making the prosecution case doubtful.



23. The net result of foregoing discussion requires us to hold that the prosecution has not established the circumstances which may lead us to infer that it was the accused who had committed murder of deceased Laxman Paswan after kidnapping him with an intention to commit his murder. The accused therefore needs to be granted benefit of doubt and, therefore, the orders:

(I). The appeal is allowed.

(II). The impugned Judgment passed by the learned trial court convicting the appellant/accused for the offences punishable under Sections 302 and 364 of the Indian Penal Code and the order of imposing sentence to him is quashed and set aside.

(III). The appellant/accused is acquitted of the offences held to be proved against him and he be set at liberty, if not required in any other case.

(A. M. Badar, J)

(Rajesh Kumar Verma, J)

P.S./-

AFR/NAFR	AFR
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