

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.480 of 2012

Arising Out of PS. Case No.-207 Year-2003 Thana- KHAJANCHI HAT District- Purnia

Chandra Shekhar, S/o Sri Raghuvansh Prasad Singh, resident of Village-
Chandra Rupaspur, P.S.- Mirganj, District- Purnea, Bihar.

... .. Appellant

Versus

The State of Bihar through the Director General of Police, Government of
Bihar, Patna.

... .. Respondent

Appearance :

For the Appellant/s : Mr.Gajendra Pratap Singh, Advocate
For the Respondent/s : Mr.Dilip Kumar Sinha, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 11-05-2022

The present criminal appeal arises out of the judgment of conviction and order of sentence dated 26th April, 2012 and 01.05.2012 respectively. The sole appellant has though been acquitted for the charge under Section 304-B I.P.C., has been convicted under Section 302 I.P.C. The appellant has been ordered to undergo rigorous life imprisonment and a fine of Rs. 25,000/- has been imposed upon him.

2. The prosecution story starts with the written information of one Dr. Sharat Kumar Singh (P.W.8) who happened to be the father of the deceased. He lodged the First Information Report with K.Hat Police Station in the district of Purnea on 16.07.2003 in respect of the alleged occurrence



which took place on 13.07.2003 at about 8:30 P.M. as told to him by the residents of the Bank Colony.

The informant claimed that his daughter, who was an employee of the State Bank of Indian was posted as Clerk-cum-Cashier in the Zonal Office of Purnea. She was allotted quarter no. B./3-9 in the State Bank Colony, Purnea. She was married to this appellant in accordance with Hindu rites and customs. The appellant who is son-in-law of the informant was serving as a Probationary Officer in the Bank of Baroda and both the husband and wife were residing together in the State Bank Colony quarter. The informant claims that on 13.07.2003 at about 9:00 P.M. when he was in his house at Sarsi, his son Abhishek Kumar Singh telephonically informed him that his daughter Priyanka has suffered burnt and died, the police had locked the quarter. The informant claims that he reached Purnea Hospital where he came to know from his son-in-law (the appellant) that Priyanka caught fire while lightening the lantern. P.W.8 claimed that he gave this fact in writing to police as was told to him by his son-in-law but on



15.07.2003 he came to know in course of inquiry from the residents of Bank Colony that his daughter had not died of an accidental fire rather knowingly her husband had murdered her. The informant lodged the F.I.R. saying that investigation be done by taking into consideration this fact. Accordingly, the F.I.R. was registered under Section 304-B/302 of the Indian Penal Code.

3. On the basis of the aforementioned F.I.R. the police conducted investigation and submitted a charge-sheet. Cognizance was taken and thereafter the charges were framed against the sole appellant under Section 304-B I.P.C. as also under Section 302 I.P.C.

4. In course of trial, the prosecution examined altogether 12 witnesses. P.W.1 is the brother of the deceased, P.W.2 is the maternal uncle, P.W.3 is the cousin sister, P.W.4 is the mother and P.W.8 is the father of the deceased. P.W.5, P.W.6 & P.W.7 were the independent witnesses residing in the Bank's colony who have turned hostile in course of trial. P.W.9 and P.W.11 are the doctors namely, Dr. Ajay Kumar and Dr. Satyendra Kumar Singh who were posted as Medical Officer in Sadar Hospital, Purnea on 14.07.2003 and they had conducted



the post-mortem (Exhibit-6). P.W.10 is the Investigating Officer whereas P.W.12 is the brother-in-law of the informant.

5. On behalf of the defence Dr. Y.K. Sharma (D.W.1) who was also a Medical Officer posted at Sadar Hospital, Purnea and had treated the appellant at Sadar Hospital, Purnea and one Ram Chandra Singh (D.W.2) who was a doctor at Apolo Burn Hospital, Kankarbagh, Patna and had treated the appellant have been examined.

6. The sole accused-appellant was examined under Section 313 Cr.P.C. In his statement under Section 313 Cr.P.C., the appellant explained that why he had tried to save Priyanka who came in the drawing room in burning conditions. He also explained that his relationship with his wife and her family members were very cordial, both of them were in job and there was no dearth of anything, therefore there was no question of killing her. He suffered burn injuries in course of saving her for which he was treated at Purnea, Patna and Delhi.

7. The learned trial court negated the contention of the defence that the prosecution has failed to establish any motive on the part of the accused and held that the circumstantial evidences are so strong in this case and it is proved that the accused had committed the alleged offence and



nobody else has done it, therefore the appellant has been held guilty and after conviction he has been sentenced to life imprisonment for the offence under Section 302 I.P.C.

8. Defence examined two doctors (D.W. 1 and 2) who had treated the appellant at Sadar Hospital, Purnea and then at Appolo Hospital, Patna. One Dr. Lalan Kumar Singh has been examined as court witness (C.W.1).

9. So far as charge under Section 304-B I.P.C. is concerned, the learned trial court came to a conclusion that the prosecution had not produced any positive evidence to prove that the relationship between the wife and husband were not cordial or that there was any demand of dowry from the family of the deceased. Hence, the charge under Section 304B could not be proved.

10. Mr. Gajendra Pratap Singh, learned counsel for the appellant has assailed the impugned judgment of conviction on various grounds. Learned counsel submits that the informant (P.W.8) is himself a retired doctor. He first filed a case of unnatural death of his daughter giving rise to as UD case bearing No. 18/2003. Prior to that on 13th June, 2003 the police had recorded a Sanha on the basis of information provided by the people residing in the Bank's colony. The Sanha was not



exhibited in course of trial whereas the written report of the UD case under signature of the informant (P.W.8) has been exhibited at the instance of the defence as Exhibit 'A'.

11. Learned counsel submits that there is no eye witness of the alleged occurrence and the whole case is at best based on the circumstantial evidence. No motive has been alleged against the appellant. He was having cordial relationship with his wife and the prosecution witnesses who are family members and close relatives of the deceased were initially saying that it was an accidental death but later on they changed their version and this will be evident from the strong contradictions which have come in course of the deposition of the Investigating Officer (P.W.10).

12. Learned counsel further submits that P.W.1 who is the brother of the deceased claims that he was residing with his sister in the same quarter for purpose of studies. Earlier this appellant was posted at Haldia in the State of West Bengal, from where he had been transferred to Purnea only on 29.05.2003 and since then he was residing with his wife in the same quarter. On the date of the alleged occurrence also at about 7:30 P.M. this appellant came and was relaxing on bed when the deceased came there, sat together with the appellant



and got indulged in gossips. He left the quarter at about 7:45 P.M. to purchase medicines for his maternal-grand-mother and there in the market he met his friend Sachin where some bank employees of State Bank Colony came searching him and informed that Priyanka had got burnt. When this witness went there he found that his sister had died and he could sense the smell of kerosene oil. When he reached there this appellant was not found as he had been taken to Sadar Hospital by Police, therefore he straightway went to Sadar Hospital and found injuries on the body of the appellant and asked him as to how it happened. According to P.W.1 this appellant told him that Priyanka caught fire in course of lightening of lantern. It is submitted that the father of the deceased (P.W.8) came during night hours at about 12:00 – 12:30 A.M. directly in the hospital where he was told the same thing.

13. On the next day the police came and opened the lock of the quarter whereafter inquest report was prepared. One of the witnesses of the inquest report is the informant himself. The inquest report (Exhibit-1) does not bear any case number.

14. Learned counsel submits that P.W.1 has stated in his examination in chief that after marriage the relationship between the deceased and the appellant was not good and the



appellant had been demanding a Car and other valuable articles as dowry. In paragraph '75' of his deposition, in course of his cross examination this witness denied his statement made before police that his sister and brother-in-law were having cordial relationship and there was no dispute between the two but the Investigating Officer (P.W.10) has strongly contradicted P.W.1. The I.O. has stated that P.W.1 had made statement before him that there was no dispute between his sister and brother-in-law and there was no demand of dowry. The I.O. has further proved the written complaint on the basis of which UD Case No. 18/2003 was registered. He has stated that the informant (P.W.8) had stated before him in course of investigation of the said UD Case that the relationship between his daughter and the son-in-law was cordial and he never claimed that his daughter has been burnt to death by his son-in-law. This witness had stated before the I.O. that from the people of the State Bank of India Colony he had come to know that while lightening the lantern his daughter had caught fire. He had also told the I.O. that the relationship between his family and the family of his son-in-law was cordial.

15. Learned counsel further submits that in this case all the independent witnesses namely, P.Ws. 5, 6 & 7 have been



declared hostile. They have been cross-examined by the prosecution but nothing material could be elicited from them. The doctors P.W.9 and P.W.11 have conducted the post-mortem. He has stated that according to him, the cause of death was burn injuries and not by throttling of neck. He has stated that according to the medical jurisprudence authored by Modi *“if death has occurred from suffocation, the nasophrnx, trachea and bronchial tubes may contain sooty carbon particles and there mucus membrane may be congested and covered with forthy mucus, the absence of soot, indicates that the deceased was not alive at the time of fire. Some of the sooty mucus may trickle into the stomach.”* This witness has stated that in post-mortem report there is no finding about the laryanx and in case of shock also trachea may be congested.

16. Learned counsel further points out that in this case Dr. Lalan Kumar Thakur, who was also posted as Medical Officer at Sadar Hospital, Purnea has been examined as C.W.1. He has stated that in the post-mortem report the cause of death shown is not asphyxia and from the post-mortem report it does not appear that the deceased was killed first and then was burnt. He has also stated that with Synthetic Sari there may be 100% burnt.



17. Learned counsel submits that the trial court could not appreciate the case of the defence that Priyanka came running to drawing room in burning condition where this appellant saw her and then indulged in saving her. The learned trial court further could not appreciate the evidence of D.W.1 & D.W.2 who are the two doctors who had treated the appellant and they have proved the discharge slip (Exhibit C) and bed-head ticket (Exhibit-D) of the appellant. D.W.1 has stated that the kind of injuries suffered by the appellant may be caused in course of saving someone who is burning. This witness has also stated that the kind of injuries suffered by this appellant cannot be caused while trying to set someone on fire by catching hold of her. D.W.2 has proved some of the medical documents of Apolo Burn Hospital.

18. On behalf of the accused the statement of the informant (P.W.8) given to officer-in-charge of the K.Hat Police Station on 14.07.2003 and UD Case No. 18/2003 were proved as Exhibit 'A' and 'B' respectively by the I.O. (P.W.10). Exhibit – C, D, E, F, F/1, G, H, I, J to J/2, K to K/3 and L have been proved by D.W.2.

19. Learned counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in the case of *Raj*



Kumar Singh @ Raju @ Batya v. State of Rajasthan reported in ***(2013) 5 SCC 722*** to submit that in a criminal trial the purpose behind giving an opportunity to the accused to make statement under Section 313 Cr.P.C. is to furnish him an opportunity to explain regarding the incriminating circumstances associated with him and that the court must take note of such explanation. In a case of circumstantial evidence, the same is essential to decide whether or not the chain of circumstances is complete. It is submitted that in this case the learned trial court has drawn an adverse inference saying that the accused had not made true answers to the questions put under Section 313 Cr.P.C. and that the accused has not given explanation to the incriminating circumstances placed before him.

20. Learned counsel submits that the learned trial court drew an adverse inference saying that the appellant did not make any statement to police as to how his wife had caught fire, therefore, the accused cannot get benefit of the judgment of the Hon'ble Patna High Court in the case of ***Archi Nawal Kishore Kujar v. State of Bihar*** reported in ***1995 43 (2) BLJR 787***. The learned trial court took a view that it is not possible that the appellant was sleeping and his wife caught fire and died



due to such fire injuries. It is the submission of learned counsel for the appellant that the learned trial court could not appreciate that an adverse inference can be taken against an accused only when the incriminating material stood fully established and the accused is not able to furnish any explanation for the same. The accused has a right to remain silent as he cannot be forced to become a witness against himself. In this case, it is submitted that the prosecution had miserably failed to bring any substantive piece of evidence to prove the guilt of the appellant beyond all reasonable doubts, therefore, the learned trial court could not have drawn an adverse inference against the accused because the court could not have substituted the statement of the accused in place of evidence of the prosecution in order to prove his guilt. Reliance has been placed on paragraph 30 to 41 of the judgment of the Hon'ble Apex Court in the case of ***Raj Kumar Singh (supra)***.

21. Learned counsel has further relied upon the judgment of the Hon'ble Supreme Court in the case of ***Nagendra Sah v. State of Bihar (Criminal Appeal No. 1903 of 2019)*** delivered on September 14, 2021. It is submitted that the Hon'ble Supreme Court has laid down the five golden principles which govern a case based on circumstantial



evidence. It is submitted that according to this judgment Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the Court can always draw an appropriate inference.

22. It is submitted that in the present case the prosecution had never been successful in establishing the fact that this appellant had set his wife on fire and if this fact is not established by the prosecution, the appellant could not have been condemned on the ground that he had failed to furnish plausible explanation about the existence of the said fact.

23. Yet another judgment on which reliance has been placed on behalf of the appellant is the case of **Nandu Singh V. State of Madhya Pradesh** decided on 25.02.2022. This case was also based on circumstantial evidence and according to the appellant the prosecution had not alleged any motive on the part of the appellant to commit murder of the deceased. The Hon'ble Supreme Court held that in a case of circumstantial evidence, motive assumes great significance. The Hon'ble Supreme Court



referred the another judgment of the Hon'ble Apex Court in the case of ***State of U.P v. Kishanpal*** reported in ***2008 (16) SCC 73*** to submit that it is only a case in which the evidence is clear and unambiguous and the circumstances proved the guilt of the accused, the same would not get weakened even if the motive is not a very strong one. The motive loses all its importance in a case where direct evidence of eye witnesses is available. In the case of ***Shivaji Chintappa Patil v. State of Maharashtra*** reported in ***(2021) 5 SCC 626*** and ***Anwar Ali vs. State of Himachal Pradesh*** reported in ***(2020) 10 SCC 166***; this court has observed thus:

“27. Though in a case of direct evidence, motive would not be relevant, in a case of circumstantial evidence, motive plays an important link to complete the chain of circumstances.....”

24. Learned counsel has relied on the judgment of Hon'ble Supreme Court in the case of ***Kali Ram vs. State of Himachal Pradesh*** reported in ***AIR 1973 SC 2773 = (1973) 2 SCC 808***. It is submitted that in this case the Hon'ble Apex Court has reiterated that the burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the court cannot record a finding of guilt of the accused. There are certain cases in which statutory presumption



arise regarding the guilt of the accused, but the burden even in those cases is upon the prosecution to prove the existence of facts which have to be present before the presumption can be drawn.

25. On the strength of the aforementioned submissions, learned counsel submits that the trial court has grossly erred in taking an adverse inference against the accused even as the prosecution miserably failed to establish the prosecution case against the appellant.

Submission of the State

26. Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor for the State has opposed the appeal and sought to defend the judgment of the learned trial court. The main submission of the prosecution is that the appellant was present in the quarter with his wife and the alleged occurrence took place in his presence, therefore it is a matter within the special knowledge of the appellant which he failed to explain in course of his statement under Section 313 Cr.P.C.

27. It is further submitted that the doctors who have conducted the post-mortem on the dead body have stated that in an accidental fire 100% burn cannot be caused. Learned Additional P.P. submits that in this case the circumstantial



evidences are consistent and the chain of circumstances furnished by the prosecution is complete inasmuch as it was proved that at the time of alleged occurrence the appellant and his wife were inside the quarter and wife of the appellant died out of burn injuries suffered by her, the manner in which the wife of the appellant suffered 100% burn injuries, it only suggests that she was burnt by the appellant.

Consideration

28. I have heard learned counsel for the appellant and learned Additional Public Prosecutor for the State and also perused the trial court's records. It is evident from the materials on the record that both the appellant as well as his wife (since deceased) were the bank employees, they were residing in the same flat which was allotted to the deceased in State Bank of India colony at Purnea. On 13.07.2003. According to P.W.1 the appellant returned to his quarter and was relaxing on bed when his wife came from kitchen and got indulged in some gossips. P.W.1 who claims that he was residing in the same quarter with his sister (the deceased) has not stated about any quarrel between the appellant and his wife, though he has stated that they were not having cordial relationship but his attention was drawn towards his earlier statement before the I.O. with which



his statement in course of trial is found inconsistent and his statement has been strongly contradicted by I.O. (P.W.10). Regarding the alleged occurrence of 13.07.2003 firstly a Sanha entry was made in the police station but the said Sanha entry has not been proved and the same has been withheld by the prosecution. P.W.10 has proved the UD Case No. 18/2003. On behalf of the defence, it has been got exhibited as Exhibit 'B'. The UD Case was registered on 14.07.2003 in which statements of the informant (P.W.8) was recorded by the I.O. In paragraph 14 of his deposition, P.W.10 has stated that the informant had not told him that this appellant had killed his daughter rather he told the Investigating Officer that the people in the S.B.I. colony told him that his daughter caught fire in her cloths while trying to lightening the lantern and while trying to save her, his son-in-law (the appellant) had also suffered serious burn injuries who is getting treatment in Sadar Hospital. P.W.10 has further stated that P.W.8 had told him that there were good relationship between the two families.

29. This court further finds from the deposition of P.W.1 and P.W.10 that P.W.1 has tried to change his version and has made inconsistent statements in course of investigation of this case. P.W.10 has proved that in paragraph '8' of the case



diary of UD Case the statement of P.W.1 has been recorded. P.W.1 had stated before the I.O. that there was no dispute between his sister and brother-in-law and both were residing together. This witness had also stated to the I.O. that when he came back he was told by the people of the bank's colony that his sister had suffered burn injuries and brother-in-law has also suffered injuries and further he has been taken to hospital by police. When he reached there the quarter was closed, therefore his statement in course of deposition in the present case that when he reached the quarter he found his sister lying on floor is in quite inconsistent from his own statement made to I.O. His attention was drawn towards the statement made before police on 14.07.2003 and then the contradiction has been taken from the I.O. (P.W.10).

30. So far as P.W.2 is concerned, he is said to be the maternal uncle of the deceased. In paragraph 10, in course of his cross examination he stated that the deceased was not her own *Bhagini* rather she happened to be the niece of the brother-in-law (*Bahnoi*) of this witness. His attention has also been drawn towards the statement made by him in UD Case before police where he had stated that he had no doubt against the appellant. This witness has also been contradicted by P.W.10. In



paragraph 20 of his deposition P.W.10 has stated that this witness (P.W.2) had stated that there was good relationship between husband and wife.

31. Similarly regarding P.W.3 who is cousin sister of the deceased, P.W.10 has stated that this witness had also stated in course of investigation of the UD Case vide paragraph 40 that she was told by the informant that the Priyanka had died of burn injuries and the appellant is also badly burnt. This witness had stated that both were having cordial relationship.

32. P.W.4 is the mother of the deceased. She has stated that his daughter used to complain about the demand of dowry by her sasural people. This witness has stated that his daughter (deceased) had got a life insurance policy in which she was made nominee. P.Ws. 5, 6 & 7 are the independent witnesses who have been declared hostile and this court finds no material in the evidence of the prosecution witnesses to support the prosecution case that this appellant had killed his wife. None of them have suggested any motive. The learned trial court has not found any material to prove the charge under Section 304B of the I.P.C. and, therefore, the demand of dowry has not been proved.

33. This court further finds that the post-mortem



report of the deceased prepared on 14.07.2003 does not bear any case number. According to the report, *rigor mortis* were present in all the four limbs and burn injuries were found on the whole body (about 100%). The trachea was intact and congested and the cause of death recorded is due to shock as a result of the burn injuries caused by fire. Regarding the burn injuries the P.W.9 and P.W.11 the two doctors as well as C.W.1 have been examined and cross-examined. These witnesses have reiterated that the death has been caused due to burn injuries. On the point of injuries on the court's question C.W.1 has stated that in his opinion the tongue had come out because the deceased died of burning during living conditions. C.W.1 has also stated that the deceased had deep burn injuries which may occur when a person is put on fire by pouring inflammable materials and in case of accidental fall of kerosene oil 100% burn injuries may not be caused. C.W.1 has stated that 100% burn may be caused in case of burning inside the house and due to deep burn. In this case the burn injuries was 100% means *talwa* (sole) was also burnt. This witness has further stated that in accidental fire the *talwa* (sole) do not burn.

34. Learned Additional Public Prosecutor has given much emphasis on the deposition of the doctors saying that in



this case there was a 100% burn means the entire body was burnt which cannot happen in an accidental fire. In the opinion of this court, the post-mortem report showing 100% injury (about) cannot be the sole basis to conclude that it was not an accidental fire. In the case of ***Balaji Gunthu Dhule v. State of Maharashtra*** reported in ***(2012) 11 SCC 685***; their Lordships of the Hon'ble Apex Court has held that only on the basis of post-mortem report there cannot be a conviction for the offence punishable under Section 302 I.P.C.

35. To me, it appears that the whole prosecution evidence is full of contradictions and has miserably failed to prove the prosecution case. Under these circumstances, the learned trial court has seriously erred in drawing an adverse inference against the appellant for the solitary reason that he had not come out with an explanation as to what happened inside the house. While proving the charge under Section 302 I.P.C. there was no presumption to be drawn. No incriminating material in form of any evidence on this point was placed before the appellant in course of his statement under Section 313 Cr.P.C.

36. In the case of ***Raj Kumar (supra)***, the Hon'ble Supreme Court has summarized the law on section 313 Cr.P.C.



The Hon'ble Court has referred a catena of decisions such as; *State of Maharashtra v. Sukhdev Singh* (1992) 3 SCC 700; *Mohan Singh v. Prem Singh* (2002) 10 SCC 236; *Dehal Singh v. State of H.P.* (2010) 9 SCC 85; *State of M.P. v. Ramesh* (2011) 4 SCC 786; *Rafiq Ahmad v. State of U.P.* (2011) 8 SCC 300; *Dharnidhar v. State of U.P.* (2010) 7 SCC 759; *Ramnaresh v. State of Chhattisgarh* (2012) 4 SCC 257; *Munish Mubar v. State of Haryana* (2012) 10 SCC 464 and *Brajendrasingh v. State of M.P.* (2012) 4 SCC 289. The relevant paragraph 41 of the judgment from *Raj Kumar Singh (supra)* is quoted hereunder for a ready reference:-

“41. In view of the above, the law on the issue can be summarised to the effect that statement under Section 313 CrPC is recorded to meet the requirement of the principles of natural justice as it requires that an accused may be given an opportunity to furnish explanation of the incriminating material which had come against him in the trial. However, his statement cannot be made a basis for his conviction. His answers to the questions put to him under Section 313 CrPC cannot be used to fill up the gaps left by the prosecution witnesses in their depositions. Thus, the statement of the accused is not a substantive piece of evidence and therefore, it can be used only for appreciating the evidence led by the prosecution, though it cannot be a substitute for the evidence of the prosecution. In case the prosecution evidence is not found sufficient to sustain conviction of the accused, the inculpatory part of his statement cannot



be made the sole basis of his conviction. The statement under Section 313 CrPC is not recorded after administering oath to the accused. Therefore, it cannot be treated as an evidence within the meaning of Section 3 of the Evidence Act, though the accused has a right if he chooses to be a witness, and once he makes that option, he can be administered oath and examined as a witness in defence as required under Section 315 CrPC. An adverse inference can be taken against the accused only and only if the incriminating material stood fully established and the accused is not able to furnish any explanation for the same. However, the accused has a right to remain silent as he cannot be forced to become a witness against himself.”

37. On the legal position as to the requirement of motive to prove the prosecution case based on circumstantial evidence the Hon’ble Supreme Court has recently in the case of **Nandu Singh** (supra) held as under:-

“10. In a case based on substantial evidence, motive assumes great significance. It is not as if motive alone becomes the crucial link in the case to be established by the prosecution and in its absence the case of prosecution must be discarded. But, at the same time, complete absence of motive assumes a different complexion and such absence definitely weighs in favour of the accused.

*11. In **Anwar Ali vs. State of Himachal Pradesh**, this court made the legal position clear in following words:-*

24. Now so far as the submission on behalf of the accused that in the present case the prosecution has failed to establish and prove the motive and therefore the accused deserves acquittal is concerned, it is true that the absence of proving the motive cannot be a



ground to reject the prosecution case. It is also true and as held by this Court in Suresh Chandra Bahri v State of Bihar that if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. However, at the same time, as observed by this Court in Babu, absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. In para 25 and 26, it is observed and held as under:

“25. In State of U.P. v. Kishanpal, this court examined the importance of motive in cases of circumstantial evidence and observed:

’38. ...the motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to explain what actually promoted or excited them to commit the particular crime.

39. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction.’

26. This Court has also held that the absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. (vide Pannayar v. State of T.N.)”



12. In the subsequent decision in Shivaji Chintappa Patil vs. State of Maharashtra, this Court relied upon the decision in Anwar Ali and observed as under:-

“27. Though in a case of direct evidence, motive would not be relevant, in a case of circumstantial evidence, motive plays an important link to complete the chain of circumstances. The motive”

38. In the case of **Nagendra Sah** (supra), the Hon’ble Supreme Court referred the five golden principles (panchsheel) which govern a case based on only circumstantial evidence. Referring to **Sharad Birdhichand Sarda v. State of Maharashtra** reported in **(1984) 4 SCC 116** in paragraph 16 their Lordships recorded as under:-

“16. As the entire case is based on circumstantial evidence, we may make a useful reference to a leading decision of this Court on the subject. In the case of Sharad Birdhichand Sarda v. State of Maharashtra, in paragraph 153, this Court has laid down five golden principles (Panchsheel) which govern a case based on circumstantial evidence.

Paragraph 153 reads thus:-

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

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

It may be noted here that this Court indicated that the circumstances concerned ‘must or should’ and not ‘may be’ established. There is not only a grammatical but a legal distinction between ‘may be proved’ and “must be or should be proved” as was



held by this Court in Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra where the following observations were made:

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

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

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

(emphasis added)

paragraph 158 to 160 of the said decision are also relevant which read thus:

*"158. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor General relying on a decision of this Court in **Deonandan Mishra v. State of Bihar**, to supplement his argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor General we are unable to agree with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus:*



But in a case like this where the various links as started above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, such absence of explanation or false explanation would itself be an additional link which completes the chain.”

159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier, viz., before a false explanation can be used as additional link, the following essential conditions must be satisfied:

- (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved,*
- (2) the said circumstance points to the guilt of the accused with reasonable definiteness, and*
- (3) the circumstance is in proximity to the time and situation.*

*160. If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was examined in **Shankarlal** case where this Court observed thus:*

Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can be at best be considered as an additional circumstance, if other circumstances point unfailingly to the guilt of the accused.” (emphasis added)



39. In the case of **Kali Ram** (supra) while discussing the rule of the presumption of innocence of an accused and his entitlement to the benefit of reasonable doubt in a criminal case their Lordships observed in paragraph 22 to 27, which read thus:-

“22-23. One of the cardinal principles which has always to be kept in view in our system of administrator of justice for criminal cases is that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show him to be guilty of the offence with which he is charged. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the courts cannot record a finding of the guilt of the accused. There are certain cases in which statutory presumptions arise regarding the guilt of the accused, but the burden even in those cases is upon the prosecution to prove the existence of facts which have to be present before the presumption can be drawn. Once those facts are shown by the prosecution to exist, the court can raise the statutory presumption and it would, in such an event, be for the accused to rebut the presumption. The onus even in such cases upon the accused is not as heavy as is normally upon the prosecution to prove the guilt of the accused. If some material is brought on the record consistent with the innocence of the accused which may reasonably be true, even though it is not positively proved to be true, the accused would be entitled to acquittal.

24. Leaving aside the cases of statutory presumptions,



the onus is upon the prosecution to prove the different ingredients of the offence and unless it discharges that onus, the prosecution cannot succeed. The court may, of course, presume, as mentioned in Section 114 of the Indian Evidence Act, the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business. In their relation to the facts of the particular case. The illustrations mentioned in that section, though taken from different spheres of human activity, are not exhaustive. They are based upon human experience and have to be applied in the context of the facts of each case. The illustrations are merely examples of circumstances in which certain presumptions may be made. Other presumptions of a similar kind in similar circumstances can be made under the provisions of the section itself Whether or not a presumption can be drawn under the section in a particular case depends ultimately upon the facts and circumstances of each case. No hard and fast rule can be laid down. Human behaviour is so complex that room must be left for play in the joints. It is not possible to formulate a series of exact propositions and confine human behaviour within straitjackets. The raw material here is far too complex to be susceptible of precise and exact propositions for exactness here is a fake.

25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that



unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the court entertains reasonable doubt regarding the, guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable: it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that it is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by resort to surmises, conjectures or fanciful considerations. As mentioned by us recently in the case of State of Punjab v. Jagir Singh Cri. Appeal No. 7 of 1972 dated 06.08.1973 (reported in AIR 1973 2407) a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the, court has to judge, the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy, on grounds which are fanciful or in the nature of conjectures.

26. It needs all the same to be re-emphasised that if a reasonable doubt arises regarding the guilt of the



accused, the benefit of that cannot be withheld from the accused. The courts would not be justified in withholding that benefit because the acquittal might have an impact upon the law and order situation or create adverse reaction in society or amongst those members of the society who believe the accused to be guilty. The guilt of the accused has to be adjudged not by the fact that a vast number of people believe him to be guilty but whether his guilt has been established by the evidence brought on record. Indeed, the courts have hardly any other yardstick or material to adjudge the guilt of the person arraigned as accused. Reference is sometimes made to the clash of public interest and that of the individual accused. The conflict in this respect, in our opinion, is more apparent than real as observed on page 3 of the book entitled "The Accused" by J.A. Coutts 1966 Edition, "When once it is realised, however, that the public interest is limited to the conviction, not of the guilty, but of those proved guilty, so that the function of the prosecutor is limited to securing the conviction only of those who can legitimately be proved guilty, the clash of interest is seen to operate only within a very narrow limit, namely, where the evidence is such that the guilt of the accused should be established. In the case of an accused who is innocent, or whose guilt cannot be proved. The public interest and the interest of the accused alike require an acquittal."

27. It is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse, however, is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot but be felt in a civilized society. Suppose an innocent person is convicted of the offence of murder and is hanged,



nothing further can undo the mischief for the wrong resulting from the unmerited conviction is irretrievable. To take another instance, if an innocent person is sent to jail and undergoes the sentence, the scars left by the miscarriage of justice cannot be erased by any subsequent act of expiation. Not many persons undergoing the pangs of wrongful conviction are fortunate like Dreyfus to have an Emile Zola to champion their cause and succeed in getting the verdict of guilt annulled. All this highlights the importance of ensuring. As far as possible, that there should be no wrongful conviction of an innocent person. Some risk of the conviction of the innocent, of course, is always there in any system of the administration of criminal justice. Such a risk can be minimised but not ruled out altogether. It may in this connection be apposite to refer to the following observations of Sir Carleton Allen quoted on page 157 of "The Proof of Guilt" by Glanville Williams, Second Edition:

"I dare say some sentimentalists would assent to the proposition that it is better that a thousand, or even a million, guilty persons should escape than that one innocent person should suffer; but no responsible and practical person would accept such a view. For it is obvious that if our ratio is extended indefinitely, there comes a point when the whole system of justice has broken down and society is in a state of chaos."

40. From the materials available on the record and the discussions I have made hereinabove, to me it appears that the prosecution has failed to bring home the guilt of the appellant and in absence of clear evidence it would not be possible to record a finding of guilt of the appellant for the charge under Section 302 of the Indian Penal Code.



41. The trial court has erred in appreciation of the evidence on record and has not applied the law and judicial pronouncement of the Hon’ble Supreme Court correctly, hence the judgment of conviction is set-aside. The appellant is already on bail. He is discharged from the liability of the bail bonds.

(Rajeev Ranjan Prasad, J.)

Ashwani Kumar Singh, J.: I agree.

(Ashwani Kumar Singh, J.)

Rajeev/-

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