

Sl. No. 1

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 1 of 2012

Manjil Rai & Anr.

-Vs-

State of West Bengal & Anr.

For the Appellant no.1: Mr. Arindam Jana, Adv.
Mr. Soumajit Chatterjee, Adv.
Mr. Prithish Bandyopadhyay, Adv.

For the Appellant no.2: Mr. Partha Sarrathi Bhattacharyya, Adv.
Ms. Swarnali Saha, Adv.

For the State : Mr. Swapan Banerjee
Ms. Purnima Ghosh

Heard on : 24.06.2022

Judgment on : 28.07.2022

Ananya Bandyopadhyay, J.:-

This instant appeal arises out of a judgment and order of conviction dated 25.11.2011 and 28.11.2011 passed by the Learned Additional Sessions Judge, Fast Track Court, 2nd Court, Alipurduar in Sessions Case No. 24/11, Sessions Trial No. 18/11 convicting the appellants under Sections 302/34 of the Indian Penal Code (for short IPC) and sentencing them to suffer rigorous imprisonment for life and to pay fine for Rs. 5000/- each in default further rigorous imprisonment of one year each.

The complaint dated 30.08.2010 narrated that the complainant Pradip Kalikote, uncle of Sarat Kalikote since deceased was asleep in his house on 29.08.2010 accompanied by his wife Binda Kalikote and daughter Ritu Kalikote. In between 10 pm. to 10:30 pm, he heard his aforesaid nephew crying out his name as 'uncle'. Thereafter, he lit up the lamp and saw the convicts namely Manjil Rai and Bidhan Mongar, the co-villagers to flee besides his house. Having heard the voice of his nephew the complainant and his family members reached out to find his nephew Sarat Kalikote lying injured with a sharp weapon. Consequently he sought for the punishment of the culprits.

Based on the written complaint Jaigaon P.S case No. 294/2010 dated 30.08.2010 under Section 302 IPC was

instituted and the investigation culminated through submission of charge-sheet against the aforesaid Manjil Rai and Bidhan Mongar under Section 302/34 IPC. Subsequently, charges were framed against the appellants under Section 302/34 IPC to which they pleaded not guilty and claimed to be tried.

The prosecution cited 16 witnesses including 2 hostile witnesses and exhibited 9 documents in order to establish its case.

Mr. Arindam Jana, Learned Advocate appearing for the appellant no.1 stated that the written complaint mentioned a lamp whereas the prosecution evidence evinced the existence of a torch and stressed on the infirmity and inconsistency of the version of the complainant (PW1) with regard to the source of light in the complaint and the statements of the wife and daughter of the complainant (PW 1) to have seen the appellants to run away in the torchlight. It had been strenuously argued that despite PW1, PW 2 and PW3, no other independent witness corroborated their respective statement to have seen the appellants to flee from the spot. The Ld. Advocate further stated the deceased used to reside alone in his house and it was surprising that the de facto complainant who used to look after the deceased and his property was unable to state the name and address of the son

of the deceased Sarat Kalikote as such PW1, PW2 and PW3 were interested witnesses. He further stressed upon the fact that during his cross-examination the de facto complainant stated that the appellants had been good boys of the locality. Motive to commit the murder of the deceased could not be established by the prosecution. The seizure of blood stained wearing apparel of the appellant Bidhan Mongar by the Police was not witnessed by PW5 and PW6 as adduced in their evidence and the said appellant too denied such seizure by the Police in his statement recorded under Section 313 Cr.P.C. and consequently the prosecution had failed to prove the seizure list marked as Exbt. 3. It was arduously argued that the FSL report did not elucidate the exact group of the blood on the offending weapon and the Ld. Trial Judge had erroneously concluded, the blood present on the offending weapon, control earth and the wearing apparels of the victim and the blood on the wearing apparel of the appellant Bidhan Mongar to be of the same group since the origin of the blood present in the earth of the Place of Occurrence and the PM blood could not be ascertained due to disintegration. The fingerprints of the appellants were not examined. The F.S.L. Report did not categorically state the blood on the seized articles matched with blood group of the victim. It was further argued that the torch in question was not seized by the Investigating Officer. The prosecution considerably failed to

prove its case and the appeal be allowed and the conviction be set aside.

Mr. Partha Sarathi Bhattacharyya, Ld. Advocate for appellant no. 2 stated that the prosecution has failed to produce direct evidence. The entire case was based on circumstantial evidence. Motive to commit the crime was pivotal and the prosecution failed to establish the existence of motive to commit the crime. There have been inconsistencies in the evidence of prosecution witnesses. In view of the infirmities in the prosecution evidence, impugned order of the conviction and sentence is liable to be set aside.

Mr. Swapan Banerjee, Ld. Advocate for the State submitted the complaint to have been written in Nepali language which however mentioned the torchlight and the same was mistakenly typed as lamp during its translation into english. The appellants did not cite any defence witness in support of their innocence. The offending weapon was recovered and identified by the PW10, the Doctor conducting the Post Mortem whose evidence and the inquest report corroborated its presence on the body of the deceased victim to have caused his death. The FSL report indicated the blood to be of human origin which was present on the articles sent to FSL for identification. The PW 1, 2, 3 had seen the appellants to escape from the spot after committing the

offence and the prosecution had been able to prove its case and the impugned order should be upheld.

At the outset it is germane to assess the evidence of the prosecution witnesses precisely.

The PW 1 namely Shri Pradip Kalikote the de facto complainant during his examination-in-chief stated that on 29.08.2010 at about 10/10.30 pm, he heard somebody uttering “Kaka”“Kaka” while he was asleep in his room. His wife and daughter witnessed the appellants to flee from the spot in the light of a torch through the window of his room. Having heard a groaning sound, three of them went out of their house to find Sarat Kalikote since deceased, lying on the ground with an injury inflicted on his neck with a penetrated sharp cutting knife and the aforesaid Sarat Kalikote died being attended by the de facto complainant. Thereafter, the police arrived at the Place of Occurrence at about 10.30 pm. PW 1 had submitted the written complaint dictated by him, scribed by one Madan Kalikote (PW 5) thereafter signed by him. During his cross examination PW1 inter alia stated that he along with his family members used to look after the deceased and his property who lead a solitary life in the house at a distance of 25 to 30 feet behind his house. However, PW 1 could not state the name and address of the son of the deceased whom he claimed to be his nephew.

During his cross-examination PW1 stated that on the date of the incident due to "*Kirtan*" i.e. a religious function organized in the village for 24 hours a day to continue for 7 days, there was a concourse. His wife and daughter i.e. PW 3 and PW 2 respectively came out of their room and peeped through the window in the torch light, saw the appellants to escape. It took 2 to 3 minutes to open the door having heard a groaning sound. They raised a hue and cry after 10 minutes of search. Subsequently, 10 to 15 local people being his relatives rushed to the Place of Occurrence. Thereafter, they found the deceased lying on the unlit pathway. The knife, fixed on the right side of the neck of the deceased was devoid of any butt/handle. He further stated that Bidhan Mongar and Manjil Rai were good boys of the locality. The Police did not seize the torch through which his wife and daughter witnessed the appellants to flee.

PW 2 i.e. Ritu Kalikote and PW3 Binda Kalikote substantively and essentially corroborated the version of PW1 in his examination in chief. During her cross examination, PW 2 stated that she knew the appellants since her childhood as they were her neighbours.

PW 4 i.e. Sapna Diyali stated being informed over phone by PW 2 about the murder of Sarat Kalikote, she intimated her brother-in-law Inswar Dewali who in turn

informed the same to Jaigaon P.S. over telephone and both of them proceeded towards Dalsinhpara by a car and met the police on the way and altogether arrived at the Place of Occurrence.

PW 5 i.e. Madan Kalikote inter alia stated on being informed and accompanied by Ram Alley, a local person, they reached the Place of Occurrence in the presence of Police. He had written the complaint as dictated by the PW 1 and signed the same which was subsequently signed by PW 5. Police seized one spectacle and one piece of Hawai Chappal from the PO under a seizure list. The Police seized a blood stained wearing apparel of appellant Bidhan Mongar under a separate seizure list and both were signed by him as witness with his signature marked as Exhibit 3 and 3/A respectively. During his cross-examination PW 5 stated that he did not accompany the Police to recover the wearing apparel of the appellant no.2 i.e. Bidhan Mongar. The Police had shown him the wearing apparel of the aforesaid appellant in front of the house of PW1 on the road stating it to be the shirt and pant of the appellants bundled in a plastic carry bag in absence of any other person. He knew the contents of the seizure list. Police had called him at Jaigaon Police Station after two days of the incident at about 2 pm. and asked him to sign the seizure list. He further stated that he did not state to the Investigating

Officer of having received a phone call from Ram Alley regarding the information of murder of Sarat Kalikote and the fact of Ram Alley coming to his house and taking him to the PO on his motor cycle. He did not state to the IO that PW 2 i.e. Ritu Kalikote disclosed to have seen the appellants Manjil Rai and Bidhan Mongar to run away from the PO. It was for the first time he disclosed such facts before the Court.

PW6 i.e. Mahipal Mongar during his examination-in-chief inter alia stated that being informed by Ram Alley over telephone about the murder of Sarat Kalikote, he went to the spot. He had seen the Police to seize a spectacle and a chappal from the PO. The Police had shown him a Ganji, however, he was unaware to whom it belonged. The Police had prepared a seizure list bearing his signatures marked as Exhibit 3/1 and 3A/1. During his cross examination PW6 stated that the seizure list was signed by him at the house of the deceased and he was not aware of the contents of the seizure lists, neither of the same was read over to him by the Police. During his cross examination he stated that the family members of PW 1 did not reveal anything to him about the incident and he never had any discussion with the Police about the case.

PW 7, Saran Biswakarma was declared hostile by the prosecution. PW8 Shri Manu Gurung stated upon a hue and

cry he reached the Place of Occurrence when the Police left with the deadbody. He did not hear anything about the incident and the reason of the appellants' arrest, was beyond his knowledge.

PW 9, Shri Amar Rana stated to have heard about the murder of Sarat Kalikote by the appellants known to be his co-villagers after two to three days of its occurrence.

PW10, Dr. Rina Saha Deb inter alia during her cross examination stated that she had prepared the postmortem examination report which had been marked as Exhibit 4. According to her opinion the death was the result of severe haemorrhagic shock out of the injury. She transferred the wearing apparels of the deceased together with viscera and PM blood alongwith one sharp pointed weapon to the Constable who brought the deadbody for PM examination which had penetrated the wound and identified the same marked as MAT Ext. II. She further stated that in this kind of injury the injured was not in a position to speak out or make a sound.

PW11, Shri Lakshan Singha the Constable of Police was present during the seizure of wearing apparels of the deceased and one knife stained with blood and PM blood.

PW 12 Bidhan Chakraborty received the written complaint, whereupon Jaigaon PS case No. 294/10 was registered along with the endorsement marked as Exhibit 1/3 and 1/4. The formal F.I.R was drawn marked as Exhibit 6 and the case was endorsed to S.I. Balmiki Lohar i.e. PW 15 for investigation.

PW 13 i.e. Shri Soran Mongar was declared hostile by the prosecution. PW 14 i.e. Shri Gopal Chakraborty had taken the dead body of Sarat Kalikote to Apd. S. D. Hospital for PM examination through a deadbody challan marked as Exhibit 7. The wearing apparels of the deadbody, PM blood and the blood stained knife were seized by the Investigating Officer and his signature on the seizure list was marked as Exhibit 5/1.

PW 15 i.e. Shri Balmiki Lohar during his examination-in-chief stated after being entrusted of the investigation of Jaigaon PS case no. 294/10, he visited the Place of Occurrence, held the inquest of the dead body in the presence of the witnesses, obtained the signature of the witnesses on the same which was marked as Exhibit 2/1 and thereafter sent the deadbody for post mortem examination through a dead body challan and the carbon copy of the same was prepared and signed by him marked as Exhibit 7/1. He thereafter prepared a rough sketch map of the Place of

Occurrence together with index in separate sheets marked as Exhibit 8. He further recorded the submissions of the available witnesses under Section 161 Cr.P.C. , seized the blood stained earth and the control earth from the Place of Occurrence, one goggles and one chain made of nylon thread under the seizure list on 30.08.2010 at 1.10 am which was marked as Exhibit 3/2. He further seized a white coloured vest, an ash coloured pant and a handkerchief stained with blood in the presence of the witnesses from the house of Bidhan Mongar and obtained their signatures under a seizure list marked as Exhibit 3A/2 and the signature of the appellant Bidhan Mongar was marked as Exhibit 3A/3. Thereafter, he had arrested appellant Bidhan Mongar interrogated him and on his revelation arrested appellant Manjil Rai to be his associate in the crime. He seized the wearing apparels of the deceased, PM blood and a knife being produced by Constable Gopal Chandra Roy (PW14) at PS and the carbon copy of the seizure list bearing the signature of the witnesses was marked as Exhibit 5/2. He sent the seized articles to FSL for examination. He collected the PM examination report. The seized nylon chain and goggles were collectively marked as MAT Ext. IV. The blood stained vest, full pant and handkerchief of accused Bidhan Mongar were marked as MAT Ext. V. He submitted the chargesheet against the appellants under Section 302/34 IPC at the end of the

investigation. During the cross examination he stated to have submitted the chargesheet in the absence of the FSL Report as the other evidence of the case was sufficient to prove the case. He did not record the statement of ASI D.Darji nor examined S.I Pradip Sarkar. He did not seize any document pertaining to the residence of Bidhan Mongar or expressed the source of identification of appellant Bidhan Mongar's house in his CD nor did he draw a rough sketch map of his house. None of the dwellers of the house of appellant Bidhan Mongar was cited as seizure witness. The seized blood stained wearing apparels were not dried by him before packing and wrapping separately into a bundle. The seizure list was silent of the absence of the butt of the knife and the CD did not record that he tried to find out the butt of the knife during investigation. During investigation he learnt there was enmity between the deceased and the appellants regarding previous assault. He did not examine Inswar Dewali and Ram Alley as witnesses. During his cross examination on 09.09.2011, he produced the report of FSL received by him which was accepted by the Court.

PW 16 i.e. Alamin Ahmed had been a seizure list witness who signed its carbon copy marked as Exhibit 5/3.

An analysis of the evidence adduced on behalf of the prosecution revealed the absence of an eye witness to the incident.

According to PW1, PW2, PW3, a “*Kirtan*” was organised in the village attended by the local people using the pathway without an electric street light, continuously throughout the day and night whereupon the injured victim lay and was surprisingly unnoticed by the passerbyes on the fateful night. None other than PW1, PW2 and PW 3 heard the groaning sound of the victim and seen him in an injured condition or seen the appellants to flee from the spot.

Considerable time must have elapsed in the process of the prosecution witness nos. 1, 2, 3 to awaken, to get hold of the torch, to open the window, and to see through the same, having heard the voice of the victim calling “Kaka”, “Kaka”.

In generic terms, it would be the proclivity of the assailants as a trait of human psychology to abandon the spot as soon as an offence was committed and an alarm was raised in an inhabited locale. The torch was not seized to assess the efficacy of the same with regard to the extent of visibility to identify the convicts in an otherwise dark pathway, if at all it was used to justify the credence of the evidence.

Moreover, PW-10, Dr. Rina Saha Deb, during her cross examination stated that “in this kind of injury the injured was not in a position to speak out or make a sound.”

Inswar Diwali and Ram Alley were not cited as witnesses who informed the incident of murder to the police, PW 5 and PW 6. There was no endeavour on the part of the prosecution to examine SI Pradip Sarkar or ASI Dhruba Darji.

During his cross-examination PW 15 stated that the de facto complainant did not disclose any fact in addition to the facts mentioned in the FIR nor did PW 2 Ritu Kalikote state on hearing the voice of Sarat Kalikote uttering “Kaka” “Kaka”, she alongwith her mother woke up and saw in the light of the torch in the hand of her mother two persons running away through the window of the room. She also did not state that she heard the groaning sound of Sarat Kalikote from “outside of her room”. PW2 did not state that she and her parents opened the door of her room and found a sharp cutting weapon on the neck of her brother Sarat Kalikote i.e “a knife was affixed on the margin of injury”. She did not state that her sister PW 4 arrived at PO at 11.30 pm together with Police. PW 15 further stated that PW 3 i.e. Binda Kalikote did not state to have heard the victim Sarat Kalikote utter “Kaka” “Kaka” which awakened her and in the light of the torch she saw two persons running away. However, she stated that she

had seen two persons to run away. PW 3 did not state that she had heard the groaning of Sarat Kalikote from the side of her house and thereafter, she opened the door and three of them came out of the room. PW 4 Sapna Diwali did not state in her statement recorded under Section 161 Cr.P.C that on receiving a telephone call she intimated her husband's brother about the incident of murder who in turn informed the matter to Jaigaon PS over telephone. She also did not state that she proceeded towards Dalsinghpara together with her husband's brother by car and on the way she met the Police and reached the PO together with the Police.

PW15 during his cross-examination on 29.06.2011 further stated that PW5 i.e. Madan Kalikote in his statement recorded under Seciton 161 Cr.P.C did not state that he received a telephone call from Ram Alley intimating that Sarat Kalikote had been murdered and he reached the Place of Occurrence along with Ram Alley who had come to his house on a motorcycle. He did not state to have heard from PW 2 Ritu Kalikote that she had seen Bidhan Mongar and Manjil Rai to run away from the PO. PW 6 i.e. Mahipal Mongar did not state in his statement recorded under Section 161 Cr.P.C. that Ram Alley informed him over telephone that Sarat Kalikote had been murdered.

The aforesaid statements of omissions on the part of PW1, PW2, PW3, PW 4, PW5, PW 6 amounts to contradiction and raises suspicion concerning the reliability of the witnesses in the light of the observation of the Apex Court in **Tahsildar Singh and another vs. The State of Uttar Pradesh**¹ and **Subhash vs. State of Haryana**.²

Moreover, the evidence of PW-4, 5, 6, 7, 8, 9 and 13 are based on hearsay.

In the case of **Sharad Birdhichand Sarda vs. State of Maharashtra**³, the Hon'ble Supreme Court as observed that,

“ 151. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured

¹ 1959 AIR 1012, 1959 SCR Supl. (2)875

² (2011) 2 SCC 715

³ (1984) 4SCC 116

or supplied by a false defence or a plea which is not accepted by the Court.

152. Before discussing the cases relied upon by the High court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh. This case has been uniformly followed and applied by this court in a large number of later decisions up-to date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh and Ramgopal v. State of Maharashtra. It may be useful to extract what Mahajan, J. has laid down in Hanumant case:

“it is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete

as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

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 Sahab Rao Bobade v. State of Maharashtra where the observations were made: [SCC para 19, p.807: SCC (Cri) p. 1047]

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

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

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

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

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

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

In **Krishnan v. State** ⁴, the Hon’ble Apex Court after considering a large number of its earlier judgments observed as follows: **(SCC p. 435 para 15)**

“15....This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

- i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;**
- ii) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused**
- iii) 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**
- iv) the circumstantial evidence in order to sustain conviction must be complete and**

⁴ (2008) 15 SCC 430

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. (see Gambhir v. State of Maharashtra (1982) 2 SCC 351.

None of the prosecution witnesses stated to have witnessed any specific overt act committed by the appellants resulting in the murder of the victim. At a glance the appellants seemingly to flee from the Place of Occurrence cannot be concretely attributed to their active involvement in the commission of the crime where there are vital lapses on the part of the prosecution to create a chain of link to establish the crime to have been committed by the appellant. The appellants being the co-villagers were known to the prosecution witnesses namely 1, 2, 3, 4, 5, 6 however, none of them mentioned any episode of enmity or acrimony between the appellants and the victim to have instigated or provoked them to commit the murder of the victim. The Ld. Trial Judge believed the probity of the seizure list prepared by the PW15 from the house of the appellant no. 2 being contended that PW 15 acted in an unbiased manner. However, preparation of the seizure list raised suspicion since the same was signed by the witnesses namely PW 5 and PW 6 not at the time of the seizure but afterwards at different places which endorsed the

fact of actual seizure of articles from the appellants no. 2's residence in their absence. None of the inmates of the appellant No. 2's house or from the locality was made the seizure list witnesses or was interrogated with regard to the antecedents of appellant no. 2. The appellant no. 1 was inculpated on the basis of the statement of co-accused exclusively without any other probative instance of real and indisputable action in the murder of the victim. During investigation no seizure was made from the house of Manjil Rai. Implicating appellant no. 1 into the scene of crime becomes nugatory in absence of direct as well as circumstantial evidence.

In absence of an eyewitness to adduce the active participation of the appellant no. 1 and 2 in the murder of the victim, corroborative evidence with regard to the concerted motive of the appellants, or the theory of last seen together, or any incident of animosity or grudge between the appellants and the victim in recent past, or any instance of meeting of minds yielding conspiracy, in my opinion the prosecution has grossly failed to create a chain of linkage to intricate the appellants as perpetrators of crime. Moreover, the appellants and the victim were known to the relatives and the neighbours of the victim. The prosecution claimed, the pathway to be used by the local people throughout the day

and night owing to the “Kirtan” held in the vicinity. However, the prosecution did not cite any person to have witnessed the appellants to run away besmeared with blood.

The butt of the offending weapon could not be traced to obtain the fingerprints thereon in order to connect to the indictment. Evidently the offending weapon was not recovered from the possession of the appellants.

The seizure conducted at the residence of the appellant Bidhan Mongar is doubtful and unreliable. The seizure list marked Exbt. 3A/2 did not bear the signature of any of the inmates or local people in the neighbourhood of the appellant’s house. It bore the signatures of PW 5 and PW6 as seizure witnesses who did not accompany PW 15 to the house of the appellant Bidhan Mongar. On the contrary PW-5 during his cross-examination stated to have signed the seizure list at the Jaigaon Police Station after a lapse of two days of the incident at 2 pm. During his cross examination PW5 stated that the Police had shown him the wearing apparels of the accused in front of the house of PW1 on the road and he never went to recover the wearing apparels of the accused with the Police. He was further informed by the Police of the shirt and pant of accused Manjil Rai and Bidhan Mongar in a bundle kept in a plastic carry bag. He had signed the seizure list after going through the contents of the same. Similar

stance was taken by PW 6 endorsing his absence at the time of seizure at the house of the appellant Bidhan Mongar, PW 6 stated to have signed the seizure list at the house of the deceased. He was not aware of the contents of the seizure list which was not read over to him by the Police. PW 6 also stated being informed about the murder of the victim by Ram Alley over phone, he reached the Place of Occurrence and was present there till the arrival of the Police for investigation. During his cross-examination he denied of speaking to any person during his stay at the Place of Occurrence. The family members of PW 1 did not express anything about the incident to him nor did he have any discussion with the Police regarding the case at any point of time.

The existence of human blood on the wearing apparels by itself in absence of accurate determination of the blood group matching with the blood found on the wearing apparels of the appellant no. 2 and the victim cannot conclude the appellants to be the murderers in absence of corroborative evidence.

The prosecution failed to examine the serologist who had prepared the FSL report. PW 15 during his cross-examination stated that he did not send any piece of gauge soaked with blood to the FSL. From the FSL report marked as Exhibit 9 in four sheets, it appeared that the item nos. 3,4

and 5 i.e. Sando Genji (cuttings), full pant (cuttings), handkerchief (cuttings) respectively which were seized from the house of appellant Bidhan Mongar and through the seizure list marked as Exhibit 3A/2 were assessed to have been stained with B group blood. It further appeared from the result of analysis that item nos. 2,3,4,5,7,8,9 being, the blood soaked in piece of gauge, dagger, sando genji, full pant, handkerchief, mala, half pant, petty vest had been stained with human blood and the item no 1 and 6 i.e. the blood soaked in piece of gauge and the earth respectively were disintegrated and their origin could not be determined.

There is contradiction with regard to the evidentiary value of the blood soaked in piece of gauge as PW 15 in his cross-examination has denied to have sent any blood soaked piece of gauge to FSL for examination. There is absence of credible seizure witnesses to the seizure list as PW 5 and 6 in unison have stated to sign the same at different places and time with regard to the seizure of wearing apparels from the house of appellant no. 2.

In **Sattatiya alias Satish Ranjana Kartalla vs. State of Maharashtra** ⁵ it is observed by the Hon'ble Apex Court that,

⁵ (2008) 3 SCC 210

“ the credibility of the evidence relating to recovery is substantially dented by the fact that even though as per the chemical examinations report the blood stains found on the shirt, pants and half blade were those of human bloods, the same could not be linked with the blood of the deceased. In the aforesaid case one of the crucial factors considered to be a serious lacuna on the part of the prosecution laid to reverse the conviction as the blood stains on the items seized in the recovery cannot be linked with the blood of the deceased.”

In Raghav Prapana Tripathi vs. State of UP ⁶, the Hon’ble Supreme Court observed in Page 78 Para 21 that,

“In this connection, reference may also be made to the circumstances 9 and 10 relating to the recovery of the blood stain earth from the house. The blood stained earth has not been proved to be stained with human blood again whereof opinion that it would be farfetched to conclude from the mere presence of blood stained earth that earth was stained with human blood and that the human blood was of Kamla and Madhusudan. These circumstances have, therefore, no evidentiary value.”

In the instant case the blood group of the stains on the items seized from the appellant no. 2 did not match with the item seized from the place of occurrence as well as the wearing apparels of the deceased including the weapon. The blood stains on the item no. 1 i.e. the blood soaked in piece of gauge which according to PW15 was not sent for examination to the FSL as well as item no. 6 were disintegrated and their

⁶ AIR 1963 SC 74

origin could not be determined. In my opinion this piece of evidence of the prosecution raises reasonable doubt about the credibility and authenticity of the investigation which is definitely an important aspect to be considered amongst others in a case based on circumstantial evidence.

The Ld. Trial Judge exhorted the act of the Investigating Officer to be indubitable. However, in my opinion the prosecution has digressed from creating plausible and probable linkage to unify the role of the appellants in their intention to commit the crime and its obvious culmination into murder.

The prosecution has further failed to establish any motive on the part of the appellants to commit the murder of the deceased on the contrary PW 1 during his cross-examination stated that the appellants were good boys of the locality. PW 2 during her cross-examination stated that "I know the accused person since my childhood as they are my neighbours". However, PW 2 did not elucidate or emphasise any incident or occasion whereby strong presumption can be established with regard to their motive to implicate them. The other local PWs also stated to have known the appellants as co-villagers. None of them stated of any hostility or rivalry between the appellant and the victims to corroborate the statement of PW15 of an incident of earlier assault between

the parties in absence cogent and credible evidence. PW 15 did not effectuate to prove such an incident as claimed by him.

In the case of **Nandu Singh v. State of Madhya Pradesh**, The Hon'ble Supreme Court observed that,

“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, (2020) 10 SCC 166 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, 1995 Supp (1) SCC 80** 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 v. State of Kerala, (2010) 9 SCC 189**, absence of motive in a case depending on circumstantial evidence is a factor that*

weighs in favour of the accused. In paras 25 and 26, it is observed and held as under: (Babu case, SCC pp.200-01)

*“25. In **State of U.P. v. Kishanpal, (2008) 16 SCC 73** this Court examined the importance of motive in cases of circumstantial evidence and observed: (SCC pp. 87-88, paras 38-39)*

’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 the 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., (2009) 9 SCC 152**)”*

12. In the subsequent decision in Shivaji Chintappa Patil vs. State of Maharashtra, (2021) 5 SCC 626 this Court

relied upon the decision in Anwar Ali1 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.”

In view of the aforesaid discussion I am of the opinion that the prosecution has failed to complete a chain of evidence establishing the circumstances beyond reasonable doubt to conclusively incriminate the appellants. Hence, the appellants are entitled to the benefit of doubt.

The appeal is accordingly, allowed.

The appellants shall be released from custody, if not wanted in any other case, upon execution of a bond to the satisfaction of the trial Court which shall remain in force for a period of six months in terms of Section 437A of the Code of Criminal Procedure.

Lower court records along with a copy of this judgment be sent down at once to the learned trial court for necessary action.

Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)