

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.365 of 2023

Arising Out of PS. Case No.-20 Year-2015 Thana- KATORIYA District- Banka

Nehali Mian @ Nihali Mian, son of Hanif Mian, Resident of Village Manjhlaila, Police Station Anandpur, District- Banka.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s	:	Mr.Ajay Mukherjee, Advocate Mr. Ganesh Sharma, Advocate
For the Respondent/s	:	Mr.Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and

HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA)

Date : 12-10-2023

Heard Mr. Ajay Mukherjee, learned counsel for the appellant and Mr. Ajay Mishra, Learned Additional Public Prosecutor for the State.

2. At the outset, this matter was taken up on Board for consideration of the prayer for bail made on behalf of the accused-appellant namely, Nehali Mian @ Nihali Mian. During the course of hearing, it was requested by learned counsel appearing on behalf of the appellant that appellant-accused is in custody for about nine years, therefore, the matter may be heard finally. The request of early hearing in view of custody period of the appellant-accused was also not objected



by learned Additional Public Prosecutor for the State.

3. Accordingly as, Lower Court Records (in short 'LCR') and typed copy of depositions are available on the record, on joint request as made above by the parties, we have taken this appeal for its final hearing.

4. The present appeal preferred under Section 374(2) of the Code of Criminal Procedure (in short the 'Cr.P.C.') challenging the judgment and order of conviction dated 28.02.2023 and order of sentence dated 02.03.2023, respectively as passed by Shri Ashutosh Kumar, learned 1st Additional District & Sessions Judge, Banka, in Sessions Trial No. 642/2016 arising out Katoriya Suiya P.S. Case No. 20 of 2015, whereunder appellant-accused was convicted for offence punishable under Section 302 of the Indian Penal Code (in short "IPC") and ordered to undergo rigorous imprisonment for life, and further directed to pay a fine of Rs. 10,000/- where in default, ordered to undergo simple imprisonment of three months.

5. The prosecution case in brief as it spring from narration of First Information Report (in short 'FIR')/*fardbeyan* authored by one Mubarak Ansari, son of Tauhid Ansari examined before the trial court as PW-9, that his father was



proceeded for Banka in the morning at about 6:30 am on 21.01.2015, but failed to return home, consequently a *Sanha* (information) was lodged on 23.01.2015 at Suiya Police Station. It is stated that father of the informant seen going together with Kamruddin Ansari. It is submitted further that informant came to know from one Akhtar Ansari, son of Abdul Ansari, brother-in-law of his brother who is resident of village Sarkanda that he saw his father on 21.01.2015 at about 6:45 AM, near east of Laheriya village going toward Satletwa. He asked to come along with him but he denied. He further came to know that on moving ahead, he found Ahsan Ansari, Kamruddin Ansari and Alauddin Ansari, all son of late Shaheed Ansari were sitting behind a bush in a road side ditch. Further moving ahead towards east, he found Nehali Mian, son of Hanif Mian, resident of Majhalatila, P.S. Anandpur, along with other co-accused, standing near a tree beside road. He asked him as what they are doing there, where it was replied that they are doing their own work and asked Akhtar Ansari to go away from there. It appears from the narration of *fardbeyan* that after 3-4 days when he visited to his brother-in-law and asked about his father he came to know that he is missing since 21.01.2015, and on so he said that he is also aware about the occurrence as he received the



said information over phone. He again started search for his missing father and found that dogs were digging the sand one kilometer ahead of *Chouripita* village. They also found knife and dead body of his father which was buried inside the soil. The said dead body was identified by him, both hands and legs were found chopped along with head from the rest of the body. Chopped hands and legs were also found near to the dead body. The said information was given over phone to Suiya Police Station. Thereafter, police Incharge O.P. Suiya came over there. It was stated that as there was enmity with Ahsan Ansari, out of which Ahsan Ansari along with other co-accused persons, might have killed his father. It further appears from the narration that said Ahsan and others also made attempt on earlier occasion to kill his father by open firing. He claimed that all three brothers of Ahsan Ansari, Nehali Mian (appellant accused), Jarina Bibi and 1-2 other unknown accused persons committed the brutal murder of his father.

6. On the basis of aforesaid written information/*fardbeyan*, Suiya P.S. Case No. 20 of 2015 was registered on 25.01.2015, where after investigation, police submitted charge-sheet against four accused persons, including appellant-accused Nehali Mian under Sections 364/302/201/120-B/34 of IPC



through charge-sheet bearing No. 54/2015 dated 09.12.2015 for the offences as mentioned above, where learned jurisdictional Magistrate took cognizance and after supplying police papers under Section 207 of Cr.P.C. committed the present case to the Sessions Division under Section 209 of Cr.P.C.

7. On the basis of the materials collected during the course of investigation, learned trial court framed charges against the accused persons namely, Ahsan Ansari, Kamruddin Ansari, Mohsin Ansari @ Mousim Ansari and Nehali Mian (appellant-accused) under Section 364/34, 302/34, 201/34, 120-B on 25.06.2016, which were duly explained to him, which they denied and claimed for trial, accordingly, the trial of case was commenced before the learned trial court.

8. To substantiate its case before the learned trial court, prosecution altogether examined 12 witnesses, who are namely, PW-1 Aabid Ansari, PW-2 Md. Moin Ansari, PW-3 Md. Kamruddin Ansari, PW-4 Rustam Ansari, PW-5 Taslim Ansari, PW-6 Sharafat Ansari, PW-7 Manjoor Ansari, PW-8 Dr.Mukesh Kumar, PW-9 Mubarak Ansari (the informant), PW-10 Umashankar Kamat (first I.O. of the case), PW-11 Md. Adalat Ansari and PW-12 is Raj Kapoor Kushwaha (second I.O. of this case).



9. Prosecution also substantiate following Exhibits in support of present case before the learned trial court, which are as under:

Sl.No.	Exhibit	Documents
1.	Exhibit 1	Signature of Abid Ansari on <i>fardbeyan</i> as a witness.
2.	Exhibit 1/1	Signature of Mubarak Ansarai (PW.9) who has written informant/ <i>fardbeyan</i> .
3.	Exhibit 2	Signature of Bhikan on seizure list.
4.	Exhibit 3	Post mortem report
5.	Exhibit 4	Forwarding report over <i>fardbeyan</i>
6.	Exhibit 4/1	Endorsement over <i>fardbeyan</i> as to lodge the present case.
7.	Exhibit 5 and 5/1	Seizure list.
8.	Exhibit 6	Inquest report.
9.	Exhibit C/1	Requisition of M/s Airtel
10.	Exhibit X	CDR of mobile no. 9931150303
11.	Exhibit X/1	CDR of mobile no. 7759986679

10. Accused persons including appellant-accused Nehali Mian examined under Section 313 of Cr.P.C. by putting them incriminating circumstances/evidences surfaced during the course of trial, which they replied in negative and shown their complete innocence.

11. A court witness was also examined namely,



Balmiki Kumar as CW-1 before the learned trial court who brought the document in support of SIM issued by M/s Bharti Airtel in favour of accused-appellant Nehal Ansari and Tauhid Ansari which were exhibited before the court as Exhibit -C1/CW-1.

12. On the basis of evidences/circumstances which surfaced during the course of trial and also by taking into consideration of submissions as advanced by learned counsel appearing on behalf of the parties, the learned trial court acquitted accused persons namely, Ahsan Ansari, Kamruddin Ansari and Mousim Ansari, whereas convicted Nehali Mian under Section 302 of IPC. It appears from the impugned judgment that appellant-accused also acquitted from the charges of 364, 201, 120-B/34 of the IPC by giving him benefit of doubt. On conviction under section 302 of the IPC appellant-accused Nehali Mian was ordered to undergo sentence for life imprisonment along with fine of Rs. 10,000/-, and in default of payment of fine, he was directed to undergo simple imprisonment for three months. Being aggrieved with said order of conviction and sentence, accused-appellant Nehali Mian preferred the present appeal.

13. Hence, the present appeal.



14. It is submitted by learned counsel appearing on behalf of the appellant-accused that admittedly this case is rest upon circumstantial evidence where motive is the prime concern. It is pointed out that save and except suspicion nothing appears on record which may suggest inimical terms of appellant-accused with deceased and his family. It is pointed out that through *fardbeyan* it is specifically stated that it was four brothers of Ahsan Ansari along with this appellant-accused were in inimical term but after trial Ahsan Ansari, Kamruddin Ansari and Mousim Mian were acquitted. It is also pointed out that the alleged mobile set in which SIM of accused-appellant was used, recovered from the house of Mausim and not from the house of this accused-appellant. It is submitted that even the dead body was not recovered on instance of appellant-accused. It is pointed out that the present FIR was lodged after four days of missing of father of the informant (PW-9) and also recovery of dead body parts and alleged knife were recovered prior lodging FIR. It was submitted that no forensic report regarding alleged weapons were obtained during the course of investigation. It is pointed out that having this limited single circumstance in hand, the prosecution cannot said that none else than this appellant-accused committed the murder of father of the informant by



claiming that chain of circumstances are completed. It is also pointed out that appellant-accused acquitted from the charge of kidnapping and conspiracy. It is also submitted that seizure list witnesses were not examined before the learned trial court, where conviction and order of sentence were recorded only on the basis of single circumstance, where non-examination of seizure list witnesses appears fatal for prosecution. The learned counsel for the appellant while concluding argument relied upon the judgment of Hon'ble Supreme Court in the case of **Sharad Birdhi Chand Sarda Vs. The State of Maharashtra** reported in **(1984) 4 SCC 116**.

15. Learned Additional Public Prosecutor while arguing on behalf of the State submitted that the appellant-accused failed to explain as to how his SIM/mobile number which was issued in his name used in the handset of deceased, which appears proved before learned trial court through appropriate Exhibits. It is submitted that non-explanation of this circumstance in itself appears sufficient to suggest that none else than the accused-appellant committed the murder of father of the informant and as such, the finding of conviction and sentence recorded by learned trial court is correct.

16. We have perused the materials available on the



records and the argument canvassed by learned counsel appearing on behalf of the parties. It appears that for just disposal of the present appeal the reappreciation of evidences are required as available on record and, therefore, it appears apposite to us to discuss the prosecution witnesses and documents which were exhibited before the trial court as under.

17. PW-1 is Abid Ansari, who deposed that his father left his house on 21.05.2015 at about 6:30 PM, having bag in hand and his mobile and when he did not returned to home by evening, he called his father on his mobile but the same was found switched off. It was deposed that on 22nd January, 2015 his brother Mubarak Ansari (PW-9) went Banka in search of his father where he came to know that his father did not reached there. They went to police station on 23.01.2015 and given name of Ahsan Ansari, Kamruddin Ansari and Alauddin Ansari that they killed their father. He deposed also that in the year 2004 these three persons also made firing on his father but at that time, he survived. He deposed to supply mobile number of his father to SHO and thereafter he returned to home, where brother-in-law of his brother, namely, Akhtar Ansari, resident of village – Sarkanda came to them and asked that whether he could traced his father but he replied him that he was murdered.



On this reply, it was said by Akhtar, that on 21.01.2015, while he was going to Katoriya, he met with my father and asked him to sit over his motorcycle but he denied and so he moved further and found Ahsan Ansari, Kamruddin Ansari and Alauddin Ansari were sitting together in a road side ditch. After moving further, he found Akhtar Mian, Nehali Mian and Jareena Bibi were also sitting there. Thereafter, he deposed to search his father along with said Akhtar till 24.01.2015 and in course of searching on 25.01.2015, when he reached to village-Chandopira he found the dogs were barking towards one kilometer south of *Ghaghat* river and when they went there, they found sand mixed-up with blood. On digging, they found the dead body of his father. Both hands and legs were chopped and were buried under sand at a distance of 200 yards. He deposed that his brother Mubarak (PW-9) called up SHO of Suiya Police Station, but same was found switched off, thereafter he called SHO of Bhairoganj who came over there and he called up then Suiya Police Station. It was deposed that SHO of Bhairoganj also called SHO of Katoriya and thereafter police personnel from three police stations came over there. They asked to all gathered persons over there, who said that this is the dead body of Tauhid Mian. He deposed to find one bullet



injury mark in chest of his father, thereafter he came to Katoriya Police Station for doing the paper formalities and thereafter went for *post-mortem* examination. It was stated that police visited at his house on 23.01.2015. It was deposed that Police Inspector visited to Ladaniya Chowk where he gave two mobile numbers to one Dr. Khurshid and asked him to dial said number where one number connected *Bharjor* village where wife of Karki Mian namely, Jareena Bibi picked up. On second number one lady picked up the phone which was found in charging condition at the house of Mohjin. When he along with police personnel went to the house of said Mohjin and asked him to give mobile, he said that same belongs to Nehali Mian (appellant-accused). Mobile was brought to them by a child, where SIM was removed by said child. For such act, police inspector slapped the said child and thereafter said mobile was taken by police inspector. It was deposed by him that post-mortem was conducted on 25.01.2015. Police of Bhairoganj also brought Sniffer dogs at the place where dead body of his father was recovered. The dogs were moved here and there and thereafter they sat at outhouse, near '*Tewa*'. He identified his signature over *fardbeyan* as a witness which was Exhibited as Exhibit-1 and also identified accused persons including



appellant-accused Nehali Mian, Mohjim Mian, Ahsan Mian and Kamruddin Mian, who were present before the learned trial court.

17.1. On cross-examination, it was stated by him that all papers were prepared at Katoriya Police Station. It was also stated by him that information given to Suiya Police Station was not signed. It was also stated that his statement was recorded on 25th at about 4:00 PM, the day on which the dead body was recovered. The statement of his brother Mubarak (PW-9) was also recorded on that day. No further statement was recorded on said day. His statement was recorded at Katoriya Police Station. It was stated by him that he came to know first time regarding death of his father from Akhtar at his home, at that point of time, his brother and entire family members were present over there. Akhtar Ansari is brother-in-law of his brother Riyasat Ansari. It was stated that he never made statement before police that Khurshid was given two mobile numbers by police. It is stated that they have long standing land dispute with the accused persons including the appellant-accused. It is stated that he is not aware about the fact that whether his father was accused regarding hurling bomb on one Kalim and he remain in jail, in said occurrence. He also deposed to know one Usman but failed



to depose that his father remains in jail in connection with murder of said Usman. He denied to depose falsely out of previous enmity. It was stated by him that this case was lodged by him along with Mubarak, but statement was given by Mubarak (PW-9). It was stated that his father leave home on 21st January 2015, he gave *Sanha* on 23rd January, 2015 and the dead body was recovered on 25th January 2015. It was stated that after registration of case, he given his statement before police. It was stated by him that the head of dead body was not recovered. It was stated that a firing was made on his father in the year 2004 for which the court case is pending, where named accused were Ahsan, Kamruddin, Alauddin, Nehali and Jareena Bibi. It was stated that Nehali Mian was arrested through mobile. He denied to have any previous enmity with Mohjim and Rewa.

18. PW-2 is Md. Moin Ansari, who is a seizure list witness of recovered dead body. It was deposed by him that the dead body of Tauhid Mian was found on search and knife measuring length of one ft. was also found there. The dead body was identified by him and others. He deposed that informant is his co-villager and relative. He denied to depose falsely being relative of informant/PW-9 and also that no signature was done by him at Katoriya Police Station rather same was done at place



of recovery itself. He deposed that he is not the eye witness of kidnapping.

19. PW-3 is Md. Kamruddin Ansari. He deposed to be present, when headless dead body of father of the informant was dig out. He also deposed to find one knife near the place of recovery of dead body. He also deposed that dead body was identified by Mubarak i.e. PW-9. It was stated by him that several villagers of *Mohalla* were gathered on *hulla*/public alarm. It was stated that police did not recorded his statement and he is the younger brother of deceased Tauhid Mian and was brought before the court by PW-9.

20. PW-4 is Rustam Ansari, who deposed that he came to know on 20th January 2015 from the informant (PW-9) at about 9:00 A.M. that his father Tauhid Mian is missing and also made him request to accompanied him to search his father. It was deposed that for 2-3 days they searched him in nearby forest but did not find. Thereafter, they proceeded for west and as they reached near to river they found that four dogs were digging sand, which was stained with blood, where on direction of Mubarak/ PW-9 the digging work was started by Moin and Manjur and they found a dead body without head, leg and hand and near to said body a knife was also there. Dead body was



pulled up from dig. It was said by Mubarak/ PW-9 that it is the dead body of his father. It is deposed by him that he has no knowledge regarding this case and is not in inimical terms with any of the accused. It was stated that his statement was not recorded by police.

21. PW-5 is Tasleem Ansari. He also deposed on same line as of PW-4 and as such same not required to be repeated for the sake of convenience. It was stated by him also that he has no knowledge about the present occurrence, but deposed to be a witness of digging process of recovery of dead body and its parts.

22. PW-6, is Sharafat Ansari, for whom, deceased was proceeded in early morning on 21.01.2015, the day was Wednesday and it was deposed that whenever deceased proceeded for him in past, he was informed in advance regarding his visit, but on that day deceased not turned up till evening and thereafter he called up his elder brother Mubarak Ansari (PW-9) but his phone was switched off, thereafter he thought that the persons who fired earlier on his father might killed him this time, thereafter his elder brother came to Banka in search of his father but could not trace him and returned on 23.01.2015. Five persons went to Suiya Police Station as to



lodge the case, where mobile number of his father i.e. 9931150303 was given to SHO and thereafter they returned home. It was deposed that when he returned to home, the brother-in-law of his brother Riyasat, namely, Akhtar Ansari asked about his missing father where he said that the persons who earlier fired bullet on their father killed him and on said reply, it was said by Akhtar Ansari that while he was going to market he saw his father having bag in his hand and when he asked him to accompanied with, he denied and as he moved ahead he found Ahsan Mian, Kamruddin Mian and Alauddin Mian sitting beside road in a ditch and also found Nehali Mian accused-appellant and Jareena Khatoon W/o Ketki, were also there in a road side dig. It was deposed that police informed him that they got trace of mobile and on such information his elder brother Khurshid Ansari went to Police Station along with one Ekranul and Jakir Mukhiya and Kaijam Mukhiya. It was deposed that from where they went together to Majhlatila, where it came to their knowledge that mobile is at the residence of Mousim, which was identified by his younger brother Abid Ansari and he took it in his custody. It was deposed that one lady said that why you are searching here and there, you might get it in river side and on said information, they proceeded



towards river side, where they found dogs were digging soil. They went together along with 25-30 persons and found blood-stained sand over there and on digging sand, the dead body was found, mark of bullet was there, head of his father could not traced. They identified his father out of black spot which was just below the knee. It was deposed by him that the sniffer dogs firstly brought to the place where hands and legs were recovered and thereafter dogs were sat on the Darwaja (outhouse) of Mousim, Nehali Mian and Rewa Mian. He identified accused Mousim, Nehali and Kamruddin including appellant-accused Nehali Mian before the learned trial court.

22.1. On cross examination, it was deposed by him that his father was '*Ameen*' (A person doing land measurement). It was stated that he usually remains outside home in his professional capacity. It was stated that since last ten years he had litigating terms with Ahsan and Kamruddin which was lodged by his father. It was stated that he has five brothers, namely, Mubarak (PW-9), Adalat (PW-11), Riyasat (not examined), Sharafat Ansari (PW-6) and Abid Ansari (PW-1). It was stated that he was examined by police on 24.01.2015 and at that time all five brothers were there. It was stated by him that they came to the conclusion out of suspicion that persons who



attempted earlier to kill his father committed his murder. It was stated that dogs were came on 26.01.2015 and he also followed said sniffer dogs along with several peoples. He denied to depose falsely. It was stated by him that he was not given statement before the police rather it was given by his elder brother.

23. PW-7 is Manjoor Ansari, who is also one of the witness of digging process of the dead body of the father of the informant, where he deposed that he came to know from Mubarak Ansari (PW-9) that same is of his father, save and except this, he has no knowledge regarding the occurrence.

24. PW-8 is Dr.Mukesh Kumar who deposed that while he was posted at Sadar Hospital, Banka on 26.01.2015 he was conducted the post-mortem examination of Tauhid Ansari and during the said examination he found that skull was missing from the body of the deceased. Thereafter, he found the following antemortem as under:

- (i) Skull missing from level of C/3 vertebra.
- (ii) Incised wound about 12 cm at the level of C/3 vertebra.

He deposed that both hands were separated from the body at the elbow joint. Both legs were separated from the body,



right leg separated from right knee and left leg separated from 3 cm. below the knee. Abrasion right side chest size 3" x 2" approximately. On dissection, the doctor found fracture of right 4th, 5th, and 6th rib, distended abdomen, liver, spleen, kidney failed. Heart both chambers were empty, large gutt stoop, urinary bladder empty, small gutt gas. The doctor deposed that the time since death was 30-48 hours. This witness further stated that the cause of death is due to shock and haemorrhage caused by above noted injuries by sharp cut weapon. He further stated that the post-mortem report is in his pen and bears his signature.

24.1. On cross examination, Dr.Mukesh Kumar (PW-8) deposed that time since death as noted is approx. 30-48 hours, but it is not definite. Particular weapon is not mentioned in post-mortem report. It was sharp cut weapon. He deposed that no colour of injury is mentioned in P.M. report. He stated that he had not mentioned about poisoning etc. in P.M. report. All injuries are of sharp cut weapon. The dead body was brought by chowkidar of Suiya O.P. for *post-mortem* but P.S. Case Number was not mentioned. He lastly submitted that this is not true that this post-mortem report is not as per medical jurisprudence.

25. PW-9 is Mubarak Ansari, who is the informant of this case. The said witness deposed before the learned trial court



that the occurrence is of 21.01.2015, when his father proceeded for Banka at about 6:00 AM but did not return home till late evening and on so he called over his mobile phone, but same was found switched off. It was deposed that thereafter he along with family members tried to trace out his father but did not find any clue about his whereabouts and thereafter they thought that people, who in the year 2004 fired upon his father might had killed him this time. On 22.01.2015, he came to Banka and contacted his lawyer, to whom his father usually visit, but it was said that his father did not come to visit the said advocate and, therefore, on next day i.e. 23.01.2015, he went to Suiya Police Station (OP) at about 9:00 AM and lodged Sanha regarding missing of his father, where it was stated that Ahsan Ansari, Alauddin Ansari and Kamruddin Ansari killed his father. It was asked him by police that how he came to know about the accused persons, he replied, as cases are pending between them. It was deposed that thereafter police officer asked him to provide the mobile number of his father. But he said to supply it by 4:00 PM. He returned back to his home from police station somewhere between 10:00 to 11:00 AM. Thereafter, the brother-in-law of his brother, namely, Akhtar Ansari came to him to ask whereabouts of his missing father, where he replied that up-till



now there is no clue, then, Akhtar Ansari said that on same day near Katoriya while he was going, he found his father was also going by foot dressing in *Kurta-Payejama*, having one bag in his hand and when he asked him to accompanied him, he denied. When he moved further he found three persons were sitting together namely, Alauddin, Kamruddin and Ahsan. After moving some distance further he found Nehali Mian (accused appellant) and wife of one Kerki namely, Jareena Bibi together. When he asked them that what they are doing here, they replied him to go as they are doing their own work. It was deposed that in evening at about 4:00 PM he was informed by Police Inspector that he traced out the mobile number. At about 4:00 PM Police Inspector called one Dr. Khurshid of his village over mobile phone as to bring Mubarak (self) along with him as given mobile number was traced out. Thereafter, they went together at Police Station, where phone numbers were given to Khurshid by police and asked him to dial. On dial, phone was picked up by Jareena Bibi and replied that mother of Samima is talking and also replied that she is the wife of Kerki. Thereafter, it was told by Police Inspector to call her to police station. The second call was picked up somewhere in Majhalatila and the person who picked up said phone replied that he is Mousim.



When it was asked by Police Inspector that who is the holder of said mobile, it was replied that same belongs to one Nehali Mian (accused appellant). It was deposed that on the said information, they proceeded for traced mobile holder and when they reached there, one child ran away with said mobile number from the house of Mousim, who was caught hold by the younger brother after chasing for a short distance and snatched mobile from his hand and same was handed-over to the Police Inspector. The SIM of mobile was removed. Dr. Khurshid again dialled on said mobile number but it was found switched off and thereafter it was opened and found that it was without any SIM card. Subsequently, the SIM was also handed over to Police, It was deposed that from the house of Mausim they came to the house of Jareena Bibi, where Police Inspector discussed about the said occurrence for about one hour with Jareena Bibi and said that he will arrest her after availability of lady constable. It was deposed that before arrival of lady police Jareena Bibi ran away from there. It was deposed that after two days they went to Dhanaghat in search of dead body and found that dogs were digging sand in river bed and found blood was spread over there. They also start digging the sand and found chopped hands, they also found on further digging near to first place,



chopped legs and headless body of his father. They found mark of bullet injury on chest of his father. Thereafter, police taken the dead body parts for post-mortem and on next day i.e. on 26th January, 2015 sniffer dogs were brought at the place of recovery of the dead body. Dogs also went up to the place from where the knife was recovered. He deposed to lodge the present case and identified his signature over *fardbeyan* which was exhibited as Exhibit-1/1, before the learned trial court. He also identified accused persons including the appellant-accused before the learned trial court.

25.1. On cross examination, it was stated that phone was dialled to Mohjim. He is not stated to be an eye witness of the occurrence. Mobile set was of Nehali Mian (appellant-accused). It was stated that in support of ownership of mobile, no paper was produced by him to police. It was stated that the mobile which was seized by police was witnessed by his younger brother. It was stated that his father was professional *Ameen* and he has no idea about his professional engagement. It was stated specifically by him that from 20.01.2015 to 28th January 2015, his father went for Banka and Bhagalpur for measurement of land. It was stated by him that he named Ahsan and Kamruddin in his *Sanha* as to commit murder of his father,



where dead body of his father was recovered on 25.01.2015. He stated to give his statement before police on 25.01.2015. It was stated that police came at the place of recovery, when he along with other villagers already recovered the dead body parts of his father. It was also stated by him that head of his father could not recovered up-till now. There was no any tattoo on recovered legs and hands but he stated that there was a black mark in left leg. It was stated that at the first instance body was dig out and thereafter hands and legs were found. It was stated that Khurshid accompanied him while going to police station and he dialled mobile from there which was supplied to him by SHO. Phone number was traced on 23.01.2015. It was denied by him to depose falsely against accused persons including appellant-accused out of previous enmities which is continued since 1986.

26. PW-10 is Umashankar Kamat, who is first Investigating Officer of this case and deposed to register Suiya P.S. Case No. 20 of 2015 and also to record *fardbeyan* at the place of occurrence itself which was sent by him to Katoriya Police Station for its registration. He took charge of investigation on his own and thereafter inspected the place of occurrence. He described the place of occurrence as bed of Barua river near to village Chandipira falls under Anandpur



Police Station, District – Banka. He deposed to recover a headless dead body along with chopped hands and legs and prepared *panchnama*. He also deposed to recover an iron made knife, prepared seizure list accordingly and said recovered dead body parts were sent for post-mortem examination to Banka and recorded statement of witnesses. He also recorded re-statement of informant (PW-9) and arranged sniffer dogs for investigation, but could not trace out head of the deceased. He also stated to lodge a Sanha in this connection on 23.01.2015, where mobile number of deceased was given to him, during investigation named accused persons were contacted over phone and to seize said SIM card, a raid was conducted. It was stated by him that mobile handset of deceased was recovered from the house of Mousim Ansari. Thereafter, he was transferred and handed over further investigation to then Incharge OP, namely, Raj Kapoor Kushwaha. He identified forwarding note over *fardbeyan* which was in his handwriting bearing his signature and the same was exhibited before learned trial court as Exhibit-4. He also identified the signature of SHO Katoriya namely, Surendra Kumar as to lodge formal FIR which on his identification exhibited as Exhibit-4/1. He also identified his signature and handwriting of seizure list, which on his identification, exhibited



as Exhibit- 5 and 5/1, before the learned trial court. He also identified his handwriting and signature over inquest report, which, on identification, exhibited as Exhibit-6, before the learned trial court.

26.1. On cross examination, it was stated by him that informant is not an eye witness of the occurrence. It was further stated that no witnesses are eye witness of the occurrence and he could not trace out the head of the deceased during investigation. It was also stated that no DNA test was conducted by him and also the blood-stained knife was not sent for forensic examination as to match the recovered knife with the dead body of the alleged deceased. Recovered knife was not produced before the court. It was stated that informant supported the pending litigation between the accused persons during the investigation. He was again recalled as witness on 11.05.2022, where he stated that mobile no. 9931150303 belonged to deceased. It was stated by him that mobile no. 8969578043 belonged to Jareena Bibi where Call Details Report (in short 'CDR') support the conversation between these two mobiles. It was stated that between 19.01.2015 to 21.01.2015 altogether 18 times conversation were made between these two mobiles. It was stated that the SIM bearing No. 7759986379



was inserted in mobile set of the deceased and also during investigation it was found that said handset was in house of Mousim Ansari of village Asorha which fall under police station Chandan. These handset along with SIM 7759986379 were seized on 29.01.2015 which is on the record. It was stated that mobile no. 9931150303 belongs to deceased whereas 7759986379 belongs to Nehali Ansari(appellant-accused). It is stated that it is thus clear that after kidnapping and committing murder the mobile set of deceased came to Nehali Ansari (appellant-accused) from where it was seized. It was stated that mobile no. 9973905224 belongs to Md. Ahsan Ansari. It was stated that mobile no. 8969578043 and CDR of mobile nos. 8969578043 and 9973905224 were also obtained from M/s Bharti Airtel which is computer generated. The said CDR is in 22 pages, which was exhibited as Exhibit – ‘P-7’/PW-10.

26.2. On cross examination regarding above aspect, it was stated that when he deposed earlier on 19th June, 2018 in the present case, at that point of time also, CDR was available, but no question was asked on that day on this point. He denied to conceal the aforesaid fact in earlier deposition. It is stated by him that the entire conversation is prior to lodging of FIR. It was also stated that two mobile handset were seized which is



not presently before him. It was also stated that SIM in issue is also not before him. It was further stated that no separate seizure list was drawn by him for seized SIMs. He categorically stated that recording of voice conversation with mobile number of the deceased bearing No. 9931150303 is not available. It was stated that except certificate, entire CDR was collected by him during investigation, where now certificate is available on record as collected by another investigating officer. He denied to depose falsely.

27. PW-11 is Md. Adalat Ansari, who deposed before the court that the occurrence is of 21st January 2015 when he came to know from his elder brother Mubarak Ansari (PW-9) who told him that please come home as their father was killed. On the said information, he reached at his house on 22nd January 2015 and started to trace the dead body where on 25.01.2015 the dead body was found in bed of Barua river, where before recovery of dead body a knife was also recovered. It was deposed by him that the headless body was recovered from one site whereas hands and legs were recovered from another site. Head was not traced out. After giving said information, police came over there and seized the body parts of the dead body. He deposed that it was the dead body of his father where he found a



mark of bullet injury in his chest. He also noticed black mark in leg which developed during course of time, out of offering prayer during Namaz and on the said basis the dead body was identified. He failed to disclose that how present occurrence took place but deposed that he came to know from his brother Mubarak Ansari (PW-9) that there was a land dispute between his father and cousin brother. He identified accused persons including the appellant-accused before the learned trial court.

27.1. On cross examination, it was stated by him that he was working as '*Imam*' in Sahebganj Masjid of Bhagalpur where he went on last occasion before 15-20 days of the alleged occurrence and returned back on the next day of occurrence. It was stated by him that he has no any clue regarding as to who committed murder of his father, rather same is in knowledge of his brother Mubarak (PW-9). It was stated by him that his father and father of Ahsan are own brother where his father was working as '*Ameen*'. It was stated by him that his father also remained in judicial custody in connection with other case. It was also stated by him that upon due deliberation, the present case was lodged. He denied suggestion of learned counsel that out of pending land dispute accused persons were named in the present occurrence.



28. PW-12 is Raj Kapoor Kushwaha, who deposed that on 20.08.2015 he was posted as SHO of Suiya Police Station and received charge of investigation of Suiya P.S. Case No. 20/2015 from its earlier Investigating Officer, ASI Umashankar Kamat and after receiving charge of investigation on 09.12.2015, he had gone through the case diary and thereafter he came to know that Mousim Ansari, who is not named with the occurrence, was arrested on 29.1.2015, who enlarged on bail by court on 31.03.2015. He also came to know that on 15.09.2015, Kamruddin Ansari along with Nehali Mian (appellant-accused) and on 20.11.2015 Ahsan Ansari surrendered before the court. He submitted charge-sheet after completing investigation through charge-sheet No. 54/2015 on 09.12.2015 under section 364, 302, 201, 120-B/34 of the IPC by opening supplementary investigation against Jareena Bibi, Alauddin Ansari and suspect Taiba Mian.

28.1. On cross examination, it was stated by him that on the basis of earlier investigation he submitted charge-sheet and he has no any personal knowledge about the alleged occurrence.

29. At this stage, it would be apposite to take a guiding note from the legal report of Hon'ble Supreme Court as



reported through *Sharad Birdhi Chand Sarda (supra)*, where the principles of “Panchsheel” was laid down, regarding a case rest on circumstantial evidence, which must required to be established in such case (relevant paragraphs 152 to 154), which are as under:-

152. "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 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.



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

30. From the above noted discussion of evidence as surfaced during trial, it can be said without hesitation that the present case is rest upon circumstantial evidence. None of the prosecution witnesses including informant (PW-9) namely, Mubarak Ansari are claiming to be an eye witness of the occurrence and they are not so. We are alive with position of law that motive in circumstantial case is an important aspect though not conclusive. In the present case, PW-1, who is Abid Ansari is son of deceased Tauhid Ansari. PW-6 namely, Sharafat Ansari is also son of the deceased. PW-9 (informant) and PW-11, who are also son of the deceased, deposed before the trial court that they are in inimical terms out of land dispute with the accused persons namely, Ahsan Ansari, Kamruddin Ansari, who are their cousin brothers. None of the witnesses supported that appellant-accused, namely, Nehali Ansari was also in inimical terms with the deceased father of the informant and, as such, it can be said safely that prosecution has failed to established motive for crime in question against the appellant-accused.

31. It appears from the deposition of witnesses



including the informant (PW-9) that deceased left his house at about 6:30 AM on 21.01.2015 and when he did not return back till evening, a self-search was made by his sons and relatives i.e. PW-11, PW-6 & PW-9, *sanha* of the said effect was given after two days of missing i.e. on 23.01.2015 to the Station House Officer of Suiya Police Station at about 9:00 AM and on the same day mobile number of deceased i.e. 9931150303, was also given to police which was put on surveillance, where during the course of investigation, it appears that mobile set of deceased was used with SIM bearing No. 7759986379, which was issued in favour of appellant-accused namely, Nehali Ansari. It appears from deposition of the informant/PW-9 and also from PW-1 that said mobile was recovered from the house of one Mohsim from where it was taken by a child which was snatched by younger brother of PW-9 and after snatching the mobile set from the said unknown child it was handed over to *Bara Babu* (Police Inspector). From the deposition of informant (PW-9), it appears that mobile phone was recovered somewhere on late evening of 23.01.2015. From deposition of doctor who conducted post-mortem i.e. PW-8, it appears that death might cause before 30-48 hours from the time of conducting post-mortem which was conducted on 26.01.2015 at about 1:10 AM. If the same be



taken into consideration then the alleged murder likely to committed somewhere after midnight of 24.01.2015 and if the same be taken into consideration then it appears that by that time when recovery of mobile was made deceased might alive.

32. Akhtar Ansari, who had lastly seen the deceased on 21.01.2015 on way of Katoriya and also noticed appellant/accused waiting ahead with co-accused at isolated place, on same way, was not examined before the learned trial court. PW-1 and PW-9 claimed to remain together with the police but as per deposition of PW-1, it appears that SHO provided mobile numbers to one Dr. Khurshid (not examined before the trial court) at Ladania Chowk and asked to dial, whereas, as per informant (PW-9), it appears that he went to police station along with Dr. Khurshid of his village then it was asked by SHO to dial said number from police station itself which appears to give a doubtful impression regarding recovery of mobile and SIM of appellant/accused.

33. The proper identification of deceased also appears doubtful in want of head of deceased. PW-1, PW-6, PW-9 and PW-11 are sons of deceased and were present at place of recovery of dead body and its part. PW-9, claimed to identify dead body of his father by taking notice of mark of bullet injury



on his chest, whereas PW-11 identified dead body and its part from black mark near to knee. Furthermore, PW-2, who was also present there did not named any person, who identified dead body, rather it was deposed that people present over there identified dead body.

34. PW-1 stated in his cross-examination that he came to know regarding murder of his father first of all by Akhtar Ansari who is none but the brother-in-law of his brother Riyasat Ansari (both not examined before the court). Whereas informant (PW-9) deposed in his cross-examination that as one attempt for murder was made in the year 2004 on his father, he thought that accused persons of the said case might have killed his father and on the basis of said suspicion he named appellant-accused and other accused persons in the present case. From the deposition of PW-10, who is the investigating officer of this case, it appears that mobile number 7759986379 was used from handset of deceased which belongs to appellant-accused. It also appears that said mobile with SIM was seized on 29.01.2015 as per deposition of PW-10, but from deposition of PW-9 it appears that the said mobile was recovered from the house of Mousim on 23.01.2015, somewhere in late evening. It appears from Exhibit marked as Exhibit 'X/1' that mobile no.



7759986379 was inserted with handset having IMEI No. 3536650568444590 which was of deceased mobile, on 22.01.2015 at about 12:14 PM. If this aspect be taken into consideration then certainly the murder of father of the informant was committed before 12:14 PM on 22.01.2015, which also not appearing convincing in terms of time of death as suggested by PW-8 namely, Dr. Mukesh Kumar.

35. It is also appearing from the deposition of PW-9 that from 20.01.2015 to 28.01.2015 his father visited Banka and Bhagalpur and did not went anywhere in connection of land measurement. He specifically stated this part in paragraph '11' of his cross-examination and if this aspect be taken into consideration then the entire prosecution story fails which suggests that deceased father of the informant left his house on 21st January 2015. PW-2, PW-3 and PW-4 are appearing seizure list witnesses and appears to be present on the site from where the dead parts of the body of father of the informant were recovered, except that, they specifically stated before the trial court that they had no knowledge about the occurrence. Same is the position of PW-4 Rustam Ansari, PW-5 Taslim Ansari and PW-7 Manjoor Ansari also.

36. Hence, from aforesaid facts, it appears even



accused appellant was not found 'last seen' with the deceased, motive of previous enmity also not established against this appellant accused namely, Nehali Mian and further those accused persons against whom previous enmity was deposed before the court were already acquitted by the learned trial court by disbelieving the version of prosecution. It appears that the only incriminating circumstance which appears against this appellant accused that his mobile SIM having No. 7759986379 was used once in handset of deceased which appears to be used on 22.01.2015 as per record. Having only circumstance, the conviction as recorded by learned trial court is not appearing convincing on its face. It is an admitted position that knife and body parts were recovered by self-efforts made by the informant and his relatives and same were not appearing recovered on instance of appellant-accused. Even seized handset in which SIM number of appellant-accused was found to be used recovered from the house of one Mousim. Admittedly, in view of deposition of PW-10, knife, which was recovered from place of occurrence, and dead body, were not sent for DNA test or forensic examination.

37. Hence, in view of the above factual discussion and legal ratio as discussed above in the matter of **Sharad**



Birdhi Chand Sarda (supra) it cannot be said that non else than the appellant/accused Nehali Mian had committed murder of the father of informant.

38. Hence, the appeal stands allowed.

39. The impugned judgment of conviction dated 28.02.2023 and the consequent order for sentence dated 02.03.2023 passed by learned 1st Additional District & Sessions Judge, Banka in Sessions Trial No. 642/2016 arising out Katoriya Suiya P.S. Case No. 20 of 2015 are set-aside. The accused/appellant is acquitted of the charges levelled against him. He is directed to be set at liberty forthwith unless his detention is required in any other case.

40. Lower Court Records, if any, be sent back to learned trial court along with the copy of this judgment. Fine, if any, paid by accused/appellant in furtherance of order of sentence, be refunded to him immediately.

(Vipul M. Pancholi, J.)

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	NA
CAV DATE	NA
Uploading Date	18.10.2023
Transmission Date	18.10.2023

