

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.570 of 2015

Arising Out of PS. Case No.-16 Year-2012 Thana- MOUZAHDIPUR District- Bhagalpur

Ranjeet Tanti son of Binod Tanti resident of Mohalla - Maruf Chak, P.S.
Habibpur, District - Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 553 of 2015

Arising Out of PS. Case No.-16 Year-2012 Thana- MOUZAHDIPUR District- Bhagalpur

Ashok Choudhry S/o Umesh Prasad Choudhary Resident of Village
Ambabagh, P.S. Habibpur, District Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 558 of 2015

Arising Out of PS. Case No.-16 Year-2012 Thana- MOUZAHDIPUR District- Bhagalpur

Ajay Tanti Son of Late Mannu Tanti, resident of Ambai Maroofchak, P.S.-
Habibpur, District- Bhagalpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 570 of 2015)

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.
Ms. Vaishnavi Singh, Adv.
Mr. Ritwik Thakur, Adv.

For the Respondent/s : Ms. S.B.Verma, APP

(In CRIMINAL APPEAL (DB) No. 553 of 2015)

For the Appellant/s : Mr. Subodh Prasad, Adv.
For the Respondent/s : Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 558 of 2015)

For the Appellant/s : Mr. Vikramdeo Singh, Adv.
Mr. Najmul Hoda, Adv.
Mr. Shashi Shekhar Singh, Adv.
For the Respondent/s : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)



Date : 19-06-2023

We have heard Mr. Ajay Kumar Thakur, Mr. Vikramdeo Singh and Mr. Subodh Prasad learned advocates for the appellants in Cr. APP (DB) Nos. 570, 558 and 553 of 2015 respectively. The State has been represented by Ms. Shashi Bala Verma, learned Additional Public Prosecutor in all the appeals.

2. All the appellants have been convicted under Sections 302/120B of the I.P.C. and have been sentenced to undergo rigorous imprisonment for life, fine of Rs. 1,00,000/- each and in default of payment of fine, to further suffer rigorous imprisonment for three years by judgment of conviction dated 22.05.2015 and order of sentence dated 27.05.2015 passed by the learned 6th Additional Sessions Judge, Bhagalpur in Sessions Trial No. 88 of 2013 arising out of Mojahidpur P.S. Case No 16 of 2012 corresponding to G.R. Case No. 328 of 2012.

3. Four persons have been killed in the occurrence namely, Indrakant Mishra, his wife Veena Devi, their son



Amarkant Mishra and his wife namely Pooja Mishra. Their dead bodies were found in the house of the deceased Indrakant Mishra. Some villagers informed a local Ward Member namely, Rajiv Ranjan Kumar (P.W.1) that from the house of the deceased persons, blood spots were visible from outside and that something untowards had happened. P.W.1 in his capacity as Ward Member, informed the local police and also visited the house of the deceased persons along with police party, only to find the four dead bodies in the house. The deceased persons were having many incised wounds on their person. It further appears from the records and the deposition of witnesses that one of the members of the police party informed Priyanka Devi and her husband Saurav Kumar who have been examined as P.W.6 and P.W.3 respectively that four persons in the house have been killed. On such information, Priyanka and Saurav informed Kumkum Devi and Pankaj Jalan (P.W.5 and P.W.2 respectively) about the occurrence.



4. Be it noted that Priyanka Devi is the younger daughter of deceased Indrakant Mishra who is wedded to Saurav Kumar. Kumkum Devi is the elder daughter of the deceased Indrakant Mishra who is married to Pankaj Jalan. The P.W.1 had received such information on 06.02.2012 when the daughters and son-in-laws, referred to above, were also informed, but both of them arrived only on 07.02.2012 and came straightway to the postmortem house where the postmortem of the deceased persons was being done. Thereafter, the dead bodies were handed over to the family members viz. the daughters and the son-in-laws, who got the last rites performed and one of the daughters viz. Kumkum Devi lodged the First Information Report.

5. The police after investigation sent up the appellants for trial. One of the other accused persons viz. Lallan Thakur was found to be juvenile at the time of the occurrence and hence his case was sent to the Juvenile Board for determination.



6. The trial court, after having examined seven witnesses on behalf of the prosecution including the Investigating Officer and the Doctor and four witnesses on behalf of the defence, convicted and sentenced the appellants as aforesaid.

7. The learned advocates appearing for the appellants have, in unison, submitted that the trial court has thrown to the winds the accepted canons of appreciating evidence and has completely misdirected himself in convicting the appellants only on the basis of so-called confession of Lallan Thakur whose case was sent to the Juvenile Court and of the two appellants viz. Ranjeet Tanti and Ajay Tanti. It has further been urged on behalf of the appellants that neither is there any eyewitness to the occurrence nor any evidence worth its name to bring home the charge of conspiracy against all the appellants. In fact it has been argued that the police could get no clue in the matter and all the while it was only darting in dark with result that few confessions were extracted and



weapon of assault viz. Dabiya was recovered from a pond on the pointing of the juvenile/Lallan Thakur and recovery of blood stained clothes from the houses of appellants Ranjeet Tanti and Ajay Tanti. Even those recoveries were inadmissible, it has been argued, for the reason that there recoveries could not have been qualified as discoveries in the context of the offence as ordained in Section 27 of the Evidence Act. Even the statements of the accused persons, pursuant to which recoveries were made, were not proved by the police officers who had recorded the confession. It is also necessary to note that the Investigating Officer (P.W.7) did not arrest anyone of the appellants nor did he record the confession of anyone of the appellants. Those who had scribed the confession pursuant to which the so-called recoveries were made and which alone appears to be the basis of conviction and sentence of appellants, have not been examined at the trial. Thus the refrain of the learned advocates representing the appellants is that a short-cut approach



has been adopted by the trial court in concluding the case by relying on such confession and recoveries which were not at all any admissible pieces of evidence.

8. The investigation of the case, it has been urged, is also absolutely perfunctory which does not throw any light on many important facets of the case which could have otherwise unravelled the mystery behind the killing of the four persons in the house in one go, specially when nothing appears to have been pilfered or purloined from the house. In fact, the records reveal that huge amount of cash, silver articles and approximately 75 Kgs. of coins were recovered from the house by the police party.

9. Mr. Thakur, learned advocate, while leading the arguments, has further asserted that before the FIR could be registered, the dead bodies were sent for postmortem and only after the postmortem report, the statement of Kumkum Devi (P.W.6) was registered as F.I.R. He has also pointed out that the police first came to learn about the occurrence in which four persons had lost their lives, on



the telephonic call of one Rajiv Ranjan Kumar (P.W.1), a Ward Counsellor. A station diary entry appears to have been recorded which has not seen the light of the day. That would have been the first information to the police to kick-start the investigation.

10. Mr. Vikramdeo Singh and Mr. Subodh Prasad, learned advocates for two of the other appellants, have also submitted that the forensic team was also present at the place of occurrence which took the blood samples from the scene of occurrence and sent it directly to the laboratory without being endorsed by the investigating agency. Probably because by that time the FIR had not been registered. They have further urged that the blood stained clothes which were recovered from the houses of the appellants Ranjeet Tanti and Ajay Tanti, though were sent to the forensic laboratory for confirmation which confirmed that those clothes had stains of human blood but there was no evidence as to whose blood was it. The reports are absolutely silent. There could not have been



any blood stain on the weapon of assault viz. Dabiya which was recovered from a water body by divers employed by the police party. Thus, there is no evidence which could be brought to the ken of the court for affirming the judgment and order of conviction which needs to be set aside forthwith.

11. Kumkum Devi (P.W.6) got her statement recorded on 07.02.2012 at 2:30 in the day at J.L.N.M.C., Naulakha, Bhagalpur in which she has alleged that her parents resided at Bhagalpur along with their son and wife. She and Priyanka were the two sisters, both of whom were married. The house of the deceased was purchased by her father in the year 2005 from one Raju Sah. After the marriage of the two sisters, the brother of P.W.1 was married to Pooja Mishra who is the daughter of appellant Ashok Choudhary. The relationship between the brother of the Informant (Amarkant Mishra) and his wife was not cordial and therefore a *Panchayati* was held whereafter the couple started living in the house peacefully. However



P.W.1 has asserted that father of Pooja Mishra viz. the appellant/Ashok Choudhary always pressurized her father to bequeath his entire property in favour of Pooja Mishra which was never done. On an earlier occasion, her brother who ran errands in the area was assaulted by Ashok Choudhary and his cabal. She was informed about the occurrence by her younger sister/Priyanka (P.W.5). On such information, she reached Bhagalpur and saw the dead bodies kept in the police vehicle. She has also provided another information that Amarkant Mishra and Pooja did not beget any child. The first child born to them had actually died whereafter Pooja did not give birth to any other child. The P.W.1 therefore concluded that for appropriating the property of her father and brother, a conspiracy was hatched by Ashok Choudhary and all the four of the house were killed.

12. On the basis of the aforementioned Fardbayan statement which was signed by P.Ws. 2, 3 and 5, Mojahidpur P.S. Case No. 16 of 2012 dated 07.02.2012



was registered to investigation under Sections 302/34/120B I.P.C.

13. As noted above, after investigation, charge-sheet was submitted against the appellants whereafter cognizance was taken and the case committed to court of Sessions for trial.

14. Though P.W.6 has supported the prosecution case at the trial but has left many open-ended questions which desperately beg for an answer. She has ratified that after the postmortem examination of the bodies, the last rites were performed whereafter she came to Mojahidpur Police Station where her statement was recorded which was the FIR of the case. She had not visited the house of her parents after her marriage and before their death. She had no clue as to from where cash had come to her parents which was seized by the police during investigation. She was also not aware of the source of funding to her father who is only a priest but, several bank accounts were recovered from the house during



investigation. She has not admitted of having been given the cash and the valuables seized by the police on her *Jimmanama*. On a suggestion having been put to her as to who would inherit the property in the event of death of her parents and brother and his wife, she admitted that she and her sister would be the next in line of the heirs to get that property. However she categorically refuted the suggestion that she, her sister and both their husbands were behind the murder so as to inherit the property in their names. She has also supported the fact that a *Panchayati* recently convened for restoring good relation between his brother and his wife. Her evidence does not disclose whether the deceased were ever threatened by Ashok Choudhary of dire consequences and if at all appellant/Ashok Choudhary wanted the property to be transferred in the name of his daughter Pooja Mishra, why on earth would Pooja Mishra also be killed. Without Pooja Mishra, Ashok Choudhary would not have had any say in the family of the deceased persons. She has also not



disclosed that there were other relatives of the deceased persons and whether they were also informed about the occurrence. Who cremated the dead bodies has also not been stated by her.

15. It would be profitable to refer to the deposition of the Investigating Officer (P.W.7) in this context who has testified to the fact that he was handed over the investigation of the case on 07.02.2012 at the instance of the then Officer-in-charge of the concerned police station viz. Vinod Kumar Gupta. Immediately after taking over of the dead bodies and sending those for postmortem, he recorded the statement of one Dipak Kumar Sah who has not been examined and Rajiv Ranjan Kumar (P.W.1). During investigation, he found that there was an iron gate in the house, on the sheet of which there were blood spots. It appeared to him that a pointed weapon was used to drill a hole in the iron gate. There were blood spots on the Verandah, bathroom and the dining hall. He had seized the bank and the post office



accounts and had made the seizure list which was signed by P.Ws. 2 and 3 also.

16. A special team was constituted by the Senior Superintendent of Police, Bhagalpur, which had recovered an amount of Rs. 1,65,500/- and whole lot of silver utensils and ornaments and coins (Exhibit-1/4). All the seized articles were directed to be given to the Office in-charge of the police station and such directions were followed. Rest of the items were brought to the police *Malkhana*. During his deposition before the court, he has referred to the confessional statements of Lallan Thakur, Ajay Tanti and Ranjeet Tanti. On the basis of confession made by Lallan Thakur (Juvenile), a police team, including him, got recovered a sharp pointed weapon called Dabiya from Ambey pond with the help of professional Divers.

17. In his examination-in-chief, he has identified the material exhibits which were sent for forensic examination but, those articles were not sent by him to the laboratory. Neither were there any record in his



investigation papers regarding such seizure and those being forwarded to the forensic laboratory for the needful. None of the seized articles, specially of the blood spots, were taken in his presence. He has further claimed that cash and some of the articles were given to Kumkum Devi (P.W.6) on her *Jimmanama* but he did not procure any court order for such entrustment. P.W.6 has also not asked for those articles to be given to her. The call details of mobile phones were also not sent by him for any verification. In fact, he candidly expressed that he did not even find out the location of Pankaj Jalan (P.W.2) and Saurav Kumar (P.W.3) regarding their whereabouts at the time of the occurrence. He could render no explanation as to why FIR was not lodged on 06.02.2012 when the police party had arrived at the scene of occurrence on the information provided by P.W.1. Though P.W.6 has denied the suggestion that the FIR was post dated but, has admitted that no investigation was made by him with respect to the source of funding and about other relatives



of the deceased or even the neighbors of the deceased. In his presence, Priyanka Devi (P.W.5) had not spoken about an earlier occurrence of assault on Amarkant Mishra by the appellants or that Ashok Choudhary had been pressurizing for transferring the property in the name of his daughter (Pooja Mishra). He had handed over the investigation on the direction of S.S.P. Bhagalpur on 20.02.2012 to Inspector of Police-cum- Officer-in-charge of Mojahidpur police station Sanjiv Kumar who has not been examined.

18. Thus, for all practical purposes, the P.W.7 conducted the investigation only for about two weeks. Even with respect to the whereabouts of the accused persons at the time of the occurrence, P.W.7 had no clue. From his evidence, therefore, it becomes very obvious that the investigation was conducted in a very slipshod manner and even the basics in any criminal investigation was not followed, which is the reason for absolutely half baked materials, before the court to decide about the culpability of the appellants.



19. Pankaj Jalan, Saurav Kumar and Priyanka Devi who have been examined as P.Ws. 2, 3 & 5 respectively, have only reiterated before the court that the first information about the death was received by Priyanka and Saurav from the police station whereafter Pankaj along with his wife arrived on the next day.

20. Though all three of them have talked about the strained relationship between Amarkant Mishra and his wife Pooja Mishra and the insistence of Ashok Choudhary for transferring the property in the name of Pooja Mishra but, they have not taken the narrative to any definite conclusion.

21. No effort was made by them to enquire as to what had happened to intimate the other family members of the deceased persons or to give any further information to the police for the investigation to be proceeded on the right lines.

22. The postmortem was performed on the dead bodies by Dr. Atul Kumar Mallik (P.W.4) on 07.02.2012,



who found several incised wounds on the person of all the four deceased.

23. The injuries were found to be ante-mortem, caused by sharp weapon and those injuries were grievous in nature.

24. From the examination of the dead bodies, P.W.4 could place the time of death within 18 to 36 hours of the postmortem examination.

25. There is no statement of P.W.4 with regard to any rigor mortis either having been present or disappeared from the dead bodies. Since the month of the occurrence was February, it appears that the rigor mortis had not yet set in which therefore makes the time of the occurrence sometimes in the wee hours of 5th of February, 2012.

26. This therefore takes us to the most metier issue as to who killed the deceased and when.

27. But before that, it would be necessary to first examine whether the recovery of the weapon of assault or the blood stained clothes from the houses of two of the



appellants (Ranjeet Tanti and Ajay Tanti) were admissible in evidence.

28. Any confession by an accused while in custody of the police is not required to be proved (Section 25 of the Indian Evidence Act). However, an exception to this Rule is provided in Section 27 of the Evidence Act which provides that when any fact is discovered to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

29. An accused, if in custody of the police and on his own free will and volition, makes a statement that he would lead to the place where he had hidden the weapon of offence or his own blood stained clothes, then such statement is required to be recorded in front of the witnesses and ultimately proved by the person who records such statement.



30. In ***Ramanand @ Nandlal Bharti Vs. State of Uttar Pradesh, 2022 SCC OnLine SC 1396***, the Supreme Court has adumbrated that under such situation, the first thing that the Investigating Officer should do is to call for two independent witnesses at the police station and in their presence, the accused be asked to make an appropriate statement pointing out the place where he is said to have hidden the weapon of offence. If such statement is made before the independent persons, the exact statements are required to be incorporated/recorded. Once this is done, the Investigating Officer with the police party could proceed to the particular place as may be led by the accused and, from there, if any thing like the weapon of offence or blood stained clothes or any other article is discovered, then that process also is to be recorded.

31. The Supreme Court therefore has opined in the aforementioned case that this is how the law expects the Investigating Officer to draw the discovery *Panchanama* as contemplated under Section 27 of the Evidence Act.



32. The further requirement of law is that before accepting the evidence of discovery, it must be proved and the Investigating Officer in his deposition is obliged under law to prove the contents of such *Panchnama* and only when it is proved successfully, the prosecution would be in a position and would have the justification for relying upon such evidence and the trial court may also accept such evidence.

33. The locus classicus on the scope and ambit of Section 27 of the Evidence Act is the judgment of the Privy Council in ***Pulukuri Kottaya & Ors. Vs. Emperor, AIR 1947 PC 67*** in which a distinction has been drawn between “a fact discovered” within the Section 27 as equivalent to an object produced. The fact discovered only establishes the place from which the object is produced and the knowledge of the accused as to what but the information given must relate distinctly to that this fact only.



34. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered.

35. Mere recovery of a Dabia from a waterbody is no discovery of fact that it was thrown in the pond for concealing the same after having been used in the offence.

36. Whether there is an authorship of the concealment or not can only be determined if the exact words of the accused is recorded and is proved by the person recording the same.

37. Mere discovery cannot be interpreted as being sufficient to infer authorship of concealment at whose instance the weapon was discovered as such information could be derived from various other sources.

38. Thus, in the present case, we do not know whether the person making such statement had concealed it or had used it. The statement which is admissible under Section 27 of the Evidence Act is the one which is the information leading to discovery. Thus what is admissible



being the information, the same has to be proved and not the opinion formed on it by the police officer.

39. The exact information given by the accused while in custody leading to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and the prosecution that the information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence.

40. The basic idea embedded in Section 27 of the Indian Evidence Act is the Doctrine of confirmation by subsequent events. This Doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature but, if it results in discovery of a fact, it becomes a reliable information.



(Refer to ***Bodh Raj @ Bodha & Ors. Vs. State of Jammu and Kashmir, 2002 (8) SCC 45***)

41. Thus, the Dabia (weapon of assault) having been recovered from a water-body only indicates the place from which such object was produced or may be the knowledge of the accused as to it but, the information given which led to the discovery does not distinctly relate to that effect. Who used that weapon had to be proved. Whether it contained blood stains or the finger prints of the accused or the blood stains on the clothes matched the blood of the deceased persons was required to be proved for the investigation to proceed further in that direction. No doubt, a caution has been sounded in ***State of Maharashtra Vs. Damu, AIR (2000) 6 SC 269*** that information permitted to be admitted in evidence is though confined to the portion of the information which distinctly relates to the fact thereby discovered but, for its admissibility, it ought not be so truncated as to make it insensible or incomprehensible.



42. Even by applying the aforesaid test, the discovery of Dabia in the present instance cannot be equalled to a discovery of fact for the Investigating Officer to proceed any further.

43. As already noted above, we have no idea whether the weapon in question had the finger prints of the accused persons or the blood stains on the clothes matched with the blood of the deceased.

44. The Investigating Officer never forwarded those blood stains procured by the forensic team to the Forensic Science Laboratory. It appears from the records that the same was sent to the Forensic Laboratory directly by the forensic team and the report only indicates that the blood was of human.

45. Does it take us anywhere?

46. The answer has to be in negative.

47. Anybody's blood on any piece of wearing apparel even if found in the house of the accused would be



of no consequence in the event of trial for murder of particular person whose blood has not been matched.

48. Thus, in the present case, we find the naivete of the Investigating Agency to be absolutely ridiculous. Even at the cost of repetition, we need say that in the absence of any proof of such information having been procured from the accused persons leading to recovery, it would be difficult to lend any admissibility to such information. Sans the aforementioned information, which in our estimation has wrongly been admitted, there does not remain any other evidence worth its name to proceed further towards prosecuting the appellants.

49. Let it be tested now from another angle. Consistently, the prosecution has weaved a story that Ashok Choudhary wanted the entire property of the deceased priest to be transferred in the name of his daughter and the same person conspires to kill her daughter also along with others. To what avail? The property otherwise would not go to Ashok Choudhary or



his cohorts as a better line of heirship is available with the two daughters and the two son-in-laws of the family.

50. There is nothing on record to indicate any case having been filed against Ashok Choudhary by the son-in-law (one of the slain persons) when he was assaulted at a shop and also at his residence at the instance of Ashok Choudhary. But for few sporadic evidence of there being a Panchayati for restoration of good and harmonious relationship between the daughter of Ashok Choudhary and her husband, there is no evidence of any discord.

51. A question kept haunting us as to who would be interested in killing the deceased for any pecuniary advantage. It does not appear to be a case of burglary or house trespass as the cash and the silver ornaments were found intact in the house. The iron collapsible gate was found to be locked from inside when the police party had first arrived on 06.02.2012. Only after scaling the gate, a bunch of keys was found lying inside the gate with which



the lock was opened. Who had come inside to commit this act remains a mystery. If somebody had concealed himself inside the house, executed the murder and absquatulated, where is the explanation for the gate remaining locked from inside with the keys lying on the ground. What could be the reason for blood spots not only on the Verandah where one of the dead bodies was found but also on the dining table, a bed in the neighboring room and on top of it blood spots on the gate in front of the house. No evidence of any struggle gets depicted from the crime-scene.

52. We are conscious of the fact that the motive may not always assume importance in a murder case specially like this where four persons are hacked to death with no benefit to the murderer. Was it the work of a maniac who just killed for removing his fatigue; or was the plan to execute the other three of the family baring Pooja Mishra went against the plan? Much was needed for the investigating agency to fill up such gaps which unfortunately has been left completely open.



53. The two daughters of the family also do not appear to have kept close contact with the deceased as both of them did not know the source of money. In fact, both the daughters appear to have married outside the kindred. Did good relation exist between the daughters and the parents? Though, a flying suggestion was given to the Informant/Kumkum/P.W.6 that for apportioning the property after killing everybody, such a plan was set up to which she has vehemently denied. But there is no other evidence then to pick up any thread in that direction.

54. After all, the endeavour of this Court is not to find who committed the murders but, whether the appellants were responsible. Testing the case from the point of view of the appellants, the disclosure leading to the recovery of the weapon of assault and the recovery of blood stained clothes from the houses of two of the appellants would not even qualify as a good piece of evidence under Section 8 of the Indian Evidence Act.



55. The conduct of the accused is relevant but only if such conduct influences or is influenced by any fact in issue or the relevant fact.

56. The evidence of the circumstance simplicitor leading to the recovery as aforementioned might be admissible as conduct under Section 8 but, that by itself would be no ground or provide any justification for holding them guilty and that too for a serious offence of killing four persons simultaneously. None of the evidence projected before the trial court would even qualify to be called circumstantial evidence.

57. That the appellant/Ashok Choudhry had earlier in point of time pressurized the deceased priest to transfer the property in the name of his daughter; that relationship between the son and daughter-in-law was far from cordial and therefore a *Panchayati* was convened; that appellant/Ashok Choudhary was not to be found after the occurrence (though he has taken an alibi of having visited his village home to attend a thread ceremony); that



the two other appellants viz. Ranji Tanti and Ajay Tanti being neighbors of the deceased persons having been contacted by appellant/Ashok Choudhary to execute the killings and their confession leading to recovery of their own clothes drenched with human blood kept concealed somewhere, are some of the circumstances on which the police proceeded during the investigation but, those circumstances do not at all form a chain so complete so as to be relied upon them to hold the appellants guilty.

58. The most fundamental and basic decision of the Supreme Court with respect to circumstantial evidence is to be found in the case of ***Hanumant Vs. The State of Madhya Pradesh, (1952) 2 SCC 71*** which has been uniformly followed and applied by the Supreme Court in many later decisions [refer to ***Tufail (alias) Simmi Vs. State of Uttar Pradesh, 1969 (3) SCC 198; Ram Gopal Vs. State of Maharashtra, 1972 (4) SCC 625***]. All these cases were taken into account in ***Sharad Birdhichand Sarda Vs. State of Maharashtra 1984 (4) SCC 116*** in which the five golden



principles were formulated which is often referred to as *Panchsheel* of the proof of a case based on circumstantial evidence.

59. The first of the principles is that the accused "must be" and not merely "may be" guilty before a court can convict him as the distance between "may be" and "must be" is too long and divides vague conjectures from sure conclusions.

60. The fact so established should be consistent only with the hypothesis of the guilt of the accused. Such circumstances should be of a conclusive nature and tendency. The circumstances must exclude every possible hypothesis except the one to be proved and that there must be a chain of evidence, so complete as not leave any reasonable doubt for the conclusion which is consistent with the innocence of the accused.

61. In all human probabilities, it should be inferable from such circumstances that the act was committed by the accused only and by no other.



62. This case provides the scenario which is far distanced from the above principles.

63. The police has acted on presumptions and the trial court, unfortunately, has rendered the presumptive judgment.

64. To tie the strings together, we have found from the perusal of the materials on record and the deposition of witnesses that a unique procedure was adopted by the police in acting on an information after recording a station diary entry, sending the dead bodies for postmortem and recording the F.I.R. only a day later. The station diary entry based on the telephonic information provided by P.W.1 has not been exhibited nor has it been anywhere discussed in the deposition of witnesses specially P.W.7 (I.O.).

65. The source of the police in locating the telephone number of one of the daughters who was provided the information of the death of four in a family remains unknown. That daughter of the family was not



residing in the same house but, was married even earlier to her elder sister and had been staying separately. That sister provides this information viz. the murder of four persons to another sister who becomes the Informant of this case. The last rites are performed by the daughters and their husbands but, no effort is made to contact the other family members such as brothers and sisters of the the priest if they ever existed or the relatives of the wife of the priest.

66. Few cell-phones were also recovered and seized by the police which were never forensically examined nor the callers were identified. That was necessary to know whether there was any proximate conversation on any one of the telephones or to know about the location of the persons calling him for the last time. The cash and silver ornaments which were recovered were, on the sweet will of the police authorities, handed over on *Jimmanama* to the Informant about which nothing has been stated further in the entire records. Even that



statement appears to be doubtful as the Informant who is said to have been entrusted with the property so seized from the house, does not state in her evidence that she was given possession of those articles. Were the two sisters and the police were unison? Was there any unholy alliance between them? We are constrained to put these questions to us for in a criminal case, nothing can be disbelieved, more so, when they are the only person the family who would stand benefited.

67. We rest it here only for the paucity of any evidence in that regard.

68. There has been a total failure of the investigating agency in procuring reliable evidence. A juvenile was made to render his confession leading to a recovery and not discovery of a weapon which purportedly was used in the commission of the offence. As noted above, we have no idea whether it could be admissible for the reason that such information though admissible under Section 27, was never proved. The blood stains on the



wearing apparel of the accused which was found in their houses do not lead to any pathway. All these failings of the investigation was further confounded by perfunctory questions put to the appellants under Section 313 of the Code of Criminal Procedure. No circumstance has been placed before them to effectively state their position which is a clear breach of the mandate of Section 313 of Code of Criminal Procedure.

69. We deprecate such a naive approach of the Trial court in the dealing with a matter so serious where four persons have been killed and there is no clue as to who did it and for what purpose.

70. Thus, we find that the conviction of the appellants to be highly unsustainable in the eyes of law.

71. For the aforementioned reasons, we set aside the judgment and order of conviction.

72. We have been informed that the appellant Ashok Choudhry [in Cr. Appeal (DB) No. 553 of 2015] is on bail.



73. His liabilities under the bail bonds is cancelled.

74. Appellants Ranjeet Tanti [Cr. Appeal (DB) No. 570 of 2015] and Ajay Tanti [Cr. Appeal (DB) No. 558 of 2015] are in jail. They are directed to be released forthwith from custody, if not required in any other case.

75. A copy of the judgment be transmitted immediately to the Superintendent of the concerned Jail for record and compliance.

76. The records of these cases be also returned to the trial court forthwith.

77. All the appeals stand allowed.

(Ashutosh Kumar, J)

(Shailendra Singh, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.06.2023
Transmission Date	22.06.2023

