

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.446 of 2015

Arising Out of PS. Case No.-20 Year-1993 Thana- BHAGWANPUR District- Begusarai

Ashok Kumar Singh @ Ashok Chaudhary son of Sri Chandradeo Chaudhary
resident of village - Teyai, P.S. - Bhagwanpur, District - Begusarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ramakant Sharma, Sr. Advocate Mr. Sabal Kumar Jha, Advocate Mr. Rakesh Kumar Sharma, Advocate
For the State	:	Mr. Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 04-09-2023

This appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as ‘The Code’) against the impugned judgment of conviction dated 09.04.2015 and order of sentence dated 16.04.2015 passed by learned *Ad-hoc* Additional Sessions Judge-II, Begusarai in Sessions Trial No. 395 of 1993 arising out of Bhagwanpur P.S. Case No. 20 of 1993, whereby the appellant has been convicted for the offences punishable under Sections 364, 302 and 34 of the Indian Penal Code.



2. He has been sentenced to undergo imprisonment for life and fine of Rs. 10,000/- for the offence punishable under Sections 302/34 of the I.P.C. and R.I. for 10 years and fine of Rs. 10,000/- for the offence punishable under Section 364 of the I.P.C. Both the sentences have been ordered to run concurrently.

3. The prosecution story in a nutshell is as under:-

“On 03.02.1993, at about 05:00 p.m., Prashant Kumar, son of the Informant went to the house of Gabbar for bringing flowers. Prashant did not return to the house till 06:00 p.m. On that day, the Informant and her daughter Dipi Kumari proceeded to the house of Gabbar Singh but he was not found there but his mother told that Gabbar had taken Prashant Kumar by holding his fingers. During search, the villagers disclosed that they saw Prashant Kumar going with Gabbar Singh, but he was not traced. It was further revealed during the search that Gabbar Singh with his gang had kidnapped Prashant Kumar for ransom and it was heard that he would be killed if ransom not brought.”

4. After the registration of F.I.R., the Investigating Officer started investigation and during the course of the investigation, he had recorded the statement of the witnesses and also collected the material, prepared the seizure *panchnama*. The dead body of the deceased was sent to the Doctor for the *post mortem*. After the investigation was over, the Investigating Officer filed the charge-sheet against the concerned accused, including the appellant before the concerned Magistrate Court. However, the



case was exclusively triable by the Court of Sessions and, therefore, the concerned Magistrate committed the same to the learned *Ad-hoc* Additional Sessions Judge-II, Begusarai where the same was registered as Sessions Trial No. 395 of 1993, arising out of Bhagwanpur P.S. Case No. 20 of 1993.

5. During the course of the trial, the prosecution examined nine witnesses and also produced the documentary evidence. Thereafter, statement of the accused under Section 313 of the Code was recorded and after conclusion of the trial, the Trial Court passed the impugned order, as observed hereinabove. Against the said order, the appellant has preferred this appeal.

6. Heard Learned Senior Advocate Mr. Ramakant Sharma assisted by Mr. Sabal Kumar Jha and Mr. Rakesh Kumar Sharma for the appellant/accused and Mr. Ajay Mishra, learned A.P.P. for the Respondent-State.

7. Learned Senior Advocate for the appellant has mainly submitted that the case of the prosecution rests on circumstantial evidence and, admittedly, there is no eye-witness to the incident in question. It is submitted that, as per the case of the prosecution, the sister of the deceased boy had seen the accused Gabbar Singh along with the deceased. Gabbar Singh stopped at the residence of the present appellant and the brother of the said witness was



standing outside the house of the appellant. However, thereafter the brother of the said witness did not return to the house and his dead body was found after a period of six days from the registration of the F.I.R. It is submitted that initially, one Gabbar Singh was arrested by the Police on 09.02.1993 and, thereafter, on the basis of the confessional statement of the co-accused, the dead body of the victim was recovered. On the basis of the confessional statement before the Police, the appellant was arrested on 24.02.1993 and thereafter, by way of the confessions made by the appellant, it is alleged that the clothes of the victim boy were recovered from the agricultural field and *panchnama* of the same was prepared. Thus, it is the case of the prosecution that the clothes of the deceased were seized at the instance of the appellant herein. Learned Senior Advocate, therefore, urged that there is no evidence which is collected by the prosecution against the appellant except the confessional statement and the recovery of the clothes. At this stage, it is pointed out by the learned counsel for the appellant on the basis of the evidence led by the prosecution and mainly after referring to the cross-examination of the Investigating Officer PW-9 that even the clothes which were allegedly recovered from the agricultural field at the instance of the appellant, were not shown to the mother of the deceased, nor



the same were sent to C.J.M., nor the same were produced before the Court during the course of the trial. The said clothes were not sent even to the F.S.L. Thus, even assuming, without admitting, that certain clothes were recovered at the instance of the appellant from the agricultural field, the prosecution has even failed to prove that the said clothes were of the deceased.

8. Learned Senior Advocate would, thereafter, contend that in the present case, the prosecution has even failed to prove the motive on the part of the accused to commit the alleged offence. It is submitted that in the case of circumstantial evidence, motive assumes importance. It is also submitted that in the present case, which is a case of circumstantial evidence, the prosecution has not proved the complete chain and, therefore, the appellant is required to be acquitted and the present appeal be allowed.

9. Learned Senior Advocate has placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of **Sharad Birdhi Chand Sarda Vs. State of Maharashtra** reported in **AIR 1984 SC 1622**. Learned Senior Advocate has thereafter placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of **Anjan Kumar Sarma & Ors. Vs. State of Assam** reported in **(2017) 14 SCC 359** and **Ravi & Anr. Vs. State of Karnataka** reported in **(2018) 16 SCC 102**. Lastly,



learned Senior Advocate has also placed reliance upon the recent decision rendered by the Hon'ble Supreme Court in the case of **Ravinder Singh @ Kaku Vs. State of Punjab** reported in (2022) 7 SCC 581.

10. On the other hand, Learned A.P.P. has vehemently opposed this appeal. Learned A.P.P. has pointed out that PW-4 who is the sister of the victim/deceased had seen her brother going with accused Gabbar Singh and thereafter, the victim was missing. It is submitted that Gabbar Singh was arrested on 09.02.1993 and on the basis of the confessional statement of the said co-accused, the dead body of the victim was recovered. In the confessional statement of Gabbar, the said co-accused named the present appellant. The appellant was thereafter arrested on 24.02.1993 and immediately on the basis of his confessional statement, the clothes of the deceased were recovered from the agricultural field. The Investigating Officer prepared the *panchnama* under Section 27 of the Evidence Act. It is thus contended that when the clothes of the deceased were recovered at the instance of the appellant, it can be said that the appellant with co-accused Gabbar Singh and other accused had killed the deceased and, therefore, the Trial Court has rightly convicted the appellant for the alleged offences punishable under Sections 302, 364 and 34 of the I.P.C. and thereby, no error



is committed by the learned Trial Court while passing the impugned judgment and order of conviction. Learned A.P.P., therefore, urged that this appeal be dismissed.

11. We have considered the submissions canvassed by the learned counsel appearing for the parties. We have also perused the prosecution evidence and the materials placed on record. It would emerge from the record that during the course of the trial, the prosecution had examined total nine witnesses and also produced documentary evidence.

12. PW-1 Ram Vilas Chaudhary is the witness who has deposed during his examination-in-chief that when he was returning from his agricultural field, he had seen one Gabbar Singh, the present appellant and Munshi Chaudhary with the boy aged about 7-8 years. On the next day, he came to know that son of brother-in-law of Meena Devi (PW-8) has been killed by someone and he also came to know that the said boy was killed by Gabbar Singh, Ashok Kumar Singh and Munshi Chaudhary. He had identified the accused who were present in the Court. During cross-examination, it is stated that he is residing in the land of Ram Vilas Chaudhary which he has taken in exchange of the land of Ashok Kumar Singh.



13. PW-2 Ram Pratap Singh is the witness of seizure of the clothes of the victim/deceased. The said witness in his examination-in-chief stated that on 24.02.1993, Sub Inspector came with Police party in jeep. At that time, the accused Ashok Kumar Singh was also in the jeep. The said witness had gone with the said Police Officers and the appellant in the agricultural field of Hari Kant Chaudhary, from which the Sub Inspector had seized one pant and one shirt. The said witness has signed in the seizure *panchnama*. During cross-examination of the said witness, he has stated that one Suit No. 77/81 is pending before the concerned Court and in the said proceeding, he had given deposition in favour of Savitri Devi. He knows Chandradeo Chaudhary who is the father of the accused Ashok Kumar Singh and he had given deposition in the said proceedings against Chandradeo Chaudhary. He had also stated that the seized pant was of black colour and it was a check shirt.

14. PW-3 Rajendra Mahto is a witness who came to know that Prashant was taken by Gabbar Singh. The said information was given to him by witness Meena Devi i.e. the mother of the victim and Dipi Kumari who is the sister of the victim. Thus, the aforesaid witness is a hearsay witness.



15. PW-4 Dipi Kumari, who is aged about 12 years, is the sister of the deceased boy. The said witness in her examination-in-chief deposed that the incident took place at 03.02.1993 at about 05:00 p.m. She has further stated that her brother asked her that he is going with Gabbar Singh for taking Marigold flower. Thereafter, she had gone after her brother. At that time, Gabbar Singh was coming from the other side on his bicycle. Gabbar stopped near the house of Ashok Kumar Singh i.e. the present appellant and asked Prashant (brother of the witness) that he will come after meeting Ashok Kumar Singh and thereafter, he had gone in the house of Ashok Kumar Singh. It is further stated that Prashant did not return up to 6-7 p.m. and thereafter, she informed her mother that Prashant had gone with Gabbar. It is further stated that after some days, the dead body of Prashant was found out. The said witness has identified Gabbar Singh who was present in the Courtroom. During cross-examination, the said witness has stated that her aunt told that Ashok Kumar Singh and Gabbar Singh were giving threats to her. It is further stated that on the day of incident, at 05:00 p.m., she had seen that Gabbar Singh was coming on the bicycle. At that time, nobody else was present. Thereafter, Gabbar Singh went to the house of Ashok Kumar Singh. She informed the Sub Inspector that she went after Prashant



with sweater. She had further stated that she did not inform Sub Inspector that Gabbar Singh and Ashok Kumar Singh were giving threats.

16. PW-5 Tara Devi stated in her deposition that at the time of the occurrence, she was at Patna where she was informed that Prashant was kidnapped by Gabbar Singh for enticement of giving flowers/Marigold. After the information, she came to her house and thereafter, she was informed that he was killed after kidnapping. The said witness had further stated that she had adopted Prashant as her son. She has identified a letter of her husband which is marked 'X'. She further stated that Ashok Kumar Singh demanded Rs. 2 lakhs along with Gabbar Singh and also intimidated her. However, during cross-examination, the said witness had specifically admitted that she had never informed the Police earlier that Ashok Kumar Singh demanded Rs. 2 lakhs.

17. PW-6 Ramanuj Chaudhary is also a witness of seizure *panchnama*. It is stated that on 24.02.1993, the clothes i.e. pant and shirt were seized from the field of Millets and the place was guarded by Ashok Kumar Singh. During cross-examination, the said witness has admitted that the said clothes were recovered after about 20 days of the occurrence. He had further stated that the land from which the clothes were recovered belong to Harikant



Chaudhary. The pant was of black colour and the shirt was checked.

18. PW-7 Dr. P.N. Singh who had conducted the *post mortem* of the dead body of the deceased has stated in his deposition that the deceased sustained following injuries:-

(I) Blackening of skin, neck. Size-3 and $\frac{1}{2}$ inch X 2 inch on left side of neck.

(II) Blackening of the Skin. Size- 1 and $\frac{1}{2}$ inch on the right side of the neck at level of cricoid Cartilages.

(III) Swelling of Size. Size- 2 inch X 1 inch on left parietal region.

(IV) Multiple abrasions on the left upper arm.

(V) Multiple abrasions on the left side of the chest upto knee joint.

(VI) Time elapsed since death- Within 24 hours.

(VII) Cause of Death- Due to injury No. 1 and 2.

(VIII) Asphyxia & Shock- Due to throttling by hand.

19. PW-8 Meena Devi is the mother of the deceased Prashant. The said witness has stated in her examination-in-chief that her son Prashant was fond of flowers/Marigold and on the day of incident, he had gone to the house of Gabbar Singh. Her daughter Dipi Kumari refused to go with the said person to the house of the Gabbar Singh. However, thereafter, her son Prashant did not return to the house and, therefore, he was searched. Thereafter, *fardbeyan* was given and the F.I.R. was registered.



After 3-4 days from the date of registration of F.I.R., she came to know that the dead body of Prashant was found. Prashant had worn ready-made shirt and on the said shirt "Prashant" was written.

20. PW-9 Ramshobit Mochi is the Investigating Officer, who had carried out the investigation. The said witness has narrated the manner in which he had conducted the investigation. He recorded statement of the witnesses and the informant and investigated the P.O. He further inspected the hut of accused Gabbar Singh and his gang. He further said that he arrested the accused Gabbar Singh and recorded confessional statement and on this basis, the dead body of the deceased was recovered from the Millet field and the inquest report was prepared in presence of independent witnesses whereupon, the signatures of the witnesses were obtained which is Exhibit-3. Confessional statement of the present accused was recorded and seizure list of the recovered articles was prepared upon which the signatures of the witnesses Ramanuj Chaudhary and Rampratap were done and this was identified by the present PW which is Exhibit-4. He has further inspected the third place of occurrence from where the clothe of the victim boy was recovered which is the Millet field belonging to Harekant Chaudhary. In his cross-examination, the clothe of the



victim boy was taken out from the ditch in land. During cross-examination, he has denied that he recorded confessional statement of the accused Ashok Singh after using 3rd degree method.

21. We have re-appreciated the entire evidence of the prosecution led before the concerned Trial Court. It would emerge from the record that the case of the prosecution rests on circumstantial evidence and there is no eye-witness to the incident in question. If the evidence of PW-4 Dipi Kumari is carefully seen in her examination-in-chief itself, she has stated that the incident took place on 03.02.1993 at about 05:00 p.m. She has further stated that her brother asked her that he is going with Gabbar Singh for taking Marigold flower. Thereafter, she had gone after her brother. At that time, Gabbar Singh was coming from the other side on his bicycle. Gabbar stopped near the house of Ashok Kumar Singh i.e. the present appellant and asked Prashant (brother of the witness) that he will come after meeting Ashok Kumar Singh and thereafter, he had gone in the house of Ashok Kumar Singh. It is further stated that Prashant did not return up to 6-7 p.m. and thereafter, she informed her mother that Prashant had gone with Gabbar. It is further stated that after some days, the dead body of Prashant was found out. The said witness has identified



Gabbar Singh who was present in the Courtroom. During cross-examination, the said witness has stated that her aunt told that Ashok Kumar Singh and Gabbar Singh were giving threats to her. It is further stated that on the day of incident, at 05:00 p.m., she had seen that Gabbar Singh was coming on the bicycle. At that time, nobody else was present. Thereafter, Gabbar Singh went to the house of Ashok Kumar Singh. She informed the Sub Inspector that she went after Prashant with sweater. She had further stated that she did not inform Sub Inspector that Gabbar Singh and Ashok Kumar Singh were giving threats.

22. Thus, from the aforesaid evidence, it is revealed that Gabbar Singh had not kidnapped the victim Prashant. On the contrary, Prashant himself has left his house with a view to meet Gabbar Singh. It is further revealed that the appellant herein has been implicated on the basis of the confessional statement of the co-accused Gabbar Singh and it is the case of the prosecution that when the appellant was arrested, his confessional statement was also recorded, and thereafter, he had shown his willingness to show the place where he had hidden the clothes. Thereafter, a seizure *panchnama* was prepared and the alleged clothes of the deceased Prashant was recovered from the agricultural field. It is pertinent to note that the Investigating Officer has specifically



stated in Para-12 of his cross-examination that the clothes which were recovered from the agricultural field at the instance of the appellant herein were not shown to the family members of the deceased, nor the same was produced before C.J.M., Begusarai, nor the said clothes were produced before the Trial Court.

23. Thus, in absence of the aforesaid, the prosecution has failed to prove that the clothes which were discovered at the instance of the appellant were those of the deceased. However, from the deposition of PW-1, it is revealed that the said witness had seen the boy aged about 7-8 years going with Gabbar Singh, Ashok Kumar Singh (appellant) and one Munshi Chaudhary. However, he had not given the name of the said boy.

24. At this stage, we would like to refer to the decision rendered by the Hon'ble Supreme Court in the case of **Sharad Birdhi Chand Sarda (supra)** wherein the Hon'ble Supreme Court has observed in **Para-150 to Para-160** as under:-

"150. 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 or supplied by a false defence or a plea which is not accepted by a court.

151. 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 1952 SCR 1091 : (AIR 1952 SC 343) . 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 v. State of Uttar Pradesh, (1969) 3 SCC 198 and Ramgopal v. State of Maharashtra, AIR 1972 SC 656. It may be useful to extract what Mahajan, J. has laid down in Hanumant's case (at pp. 345-46 of AIR) (supra):

"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."

152. 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 v. State of Maharashtra, (1973) 2 SCC 793 : (AIR 1973 SC 2622) where the 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.



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

154. *It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in The King v. Horry, (1952) NZLR 111, thus:*

"Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for."

155. *Lord Goddard slightly modified the expression 'morally certain' by 'such circumstances as render the commission of the crime certain'.*

156. *This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. Horry's case (supra) was approved by this Court in Anant Chintaman Lagu v. State of Bombay, (1960) 2 SCR 460 : (AIR 1960 SC 500). Lagu's case as also the principles enunciated by this Court in Hanumant's case (supra) have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases — Tufail case (1969) 3 SCC 198 (supra), Ramgopal's case (AIR 1972 SC 656) (supra), Chandrakant Nyalchand Seth v. State of Bombay (Criminal*



Appeal No 120 of 1957 decided on 19-2-1958), Dharambir Singh v. State of Punjab (Criminal Appeal No 98 of 1958 decided on 4-11-1958). There are a number of other cases where although Hanumant's case has not been expressly noticed but the same principles have been expounded and reiterated, as in Naseem Ahmed v. Delhi Administration, (1974) 2 SCR 694 (696) : (AIR 1974 SC 691 at p. 693), Mohan Lal Pangasa v. State of U.P., AIR 1974 SC 1144 (1146), Shankarlal Gyarasilal Dixit v. State of Maharashtra, (1981) 2 SCR 384 (390) : (AIR 1981 SC 765 at p. 767) and M.G. Agarwal v. State of Maharashtra, (1963) 2 SCR 405 (419) : (AIR 1963 SC 200 at p. 206) a five-Judge Bench decision.

157. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor-General relying on a decision of this Court in Deonandan Mishra v. State of Bihar, (1955) 2 SCR 570 (582) : (AIR 1955 SC 801 at p. 806), to supplement his argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor General we are unable to agree with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus:

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



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

(1) various links in the chain of evidence led by the prosecution have been satisfactorily proved,

(2) the said circumstance point to the guilt of the accused with reasonable definiteness, and

(3) the circumstance is in proximity to the time and situation.

159. If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was examined in Shankarlal's case (AIR 1981 SC 765) (supra) where this Court observed thus:

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

160. This Court, therefore, has in no way departed from the five conditions laid down in Hanumant's case (AIR 1952 SC 343) (supra). Unfortunately, however, the high Court also seems to have misconstrued this decision and used the so-called false defence put up by the appellant as



one of the additional circumstances connected with the chain. There is a vital difference between an incomplete chain of circumstances and a circumstance which, after the chain is complete, is added to it merely to reinforce the conclusion of the Court. When the prosecution is unable to prove any of the essential principles laid down in Hanumant's case, the High Court cannot supply the weakness or the lacuna by taking aid of or recourse to a false defence or a false plea. We are, therefore, unable to accept the argument of the Additional Solicitor-General.

25. At this stage, we would like to refer and rely upon the decision rendered by the Hon'ble Supreme Court in the case of **Anjan Kumar Sarma Vs. State of Assam (supra)** wherein the Hon'ble Supreme Court has observed in **Paragraphs 14, 17 and 23** as under:

"14. Admittedly, this is a case of circumstantial evidence. Factors to be taken into account in adjudication of cases of circumstantial evidence laid down by this Court are:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may be" established;

(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. (See Sharad Birdhichand Sarda v. State of Maharashtra, SCC p. 185, para 153; M.G. Agarwal v. State of Maharashtra, AIR SC para 18.)

xxx

xxx

xxx

17. It is settled law that inferences drawn by the court have to be on the basis of established facts and not on conjectures. (See Sujit Biswas v. State of Assam [Sujit Biswas v. State of Assam, (2013) 12 SCC 406 : (2014) 1 SCC (Cri) 677] , SCC paras 13-18.) The inference that was drawn by the High Court that the death was caused on 28-12-1992 within the time of 48 hours as mentioned in the post-mortem report is not correct. The post-mortem examination was conducted on 30-12-1992 at 12.00 noon and it was opined by PW 11 that the death occurred 24 to 48 hours prior to the time of post-mortem examination. Even if the time is stretched to the maximum of 48 hours, the death was after 12.00 noon on 28-12-1992. The deceased was in the company of the accused till 9.00 p.m. on 27-12-1992. The inference drawn by the High Court that the accused had killed the deceased on 28-12-1992 in the night-time and thrown the body on the railway track is not on the basis of any proved facts. The trial court is right in holding that there is no evidence on record to show that the deceased was with the accused after 12.00 noon on 28-12-1992.

xxx

xxx

xxx

23. It is clear from the above that in a case where the other links have been satisfactorily made out and the circumstances point to the guilt of the accused, the circumstance of last seen together and absence of explanation would provide an additional link which completes the chain. In the absence of proof



of other circumstances, the only circumstance of last seen together and absence of satisfactory explanation cannot be made the basis of conviction. The other judgments on this point that are cited by Mr Venkataramani do not take a different view and, thus, need not be adverted to. He also relied upon the judgment of this Court in State of Goa v. Sanjay Thakran in support of his submission that the circumstance of last seen together would be a relevant circumstance in a case where there was no possibility of any other persons meeting or approaching the deceased at the place of incident or before the commission of crime in the intervening period. It was held in the above judgment as under: (SCC p. 776, para 34)".

26. We would also like to refer and rely upon the decision rendered by the Hon'ble Supreme Court in the case of **Ravi Vs. State of Karnataka (supra)** wherein the Hon'ble Supreme Court has observed in **Paragraphs 3 and 5** as under:

"3. The appellant-accused and the deceased along with Suma (PW 1) and Rama Nayak (PW 2) were together on 26-12-2004, the precise time being around 1.30 p.m. The dead body was recovered after a gap of four (4) days i.e. on 30-12-2004. The post-mortem report indicated that the death had occurred 30 hours prior to the time of post-mortem examination. The medical evidence, therefore, would be suggestive of the fact that the dead body was recovered after about two (2) days from 1.30 p.m. of 26-12-2004.

5. "Last seen together" is certainly a strong piece of circumstantial evidence against an accused. However, as it has been held in numerous pronouncements



of this Court, the time-lag between the occurrence of the death and when the accused was last seen in the company of the deceased has to be reasonably close to permit an inference of guilt to be drawn. When the time-lag is considerably large, as in the present case, it would be safer for the court to look for corroboration. In the present case, no corroboration is forthcoming. In the absence of any other circumstances which could connect the appellant-accused with the crime alleged except as indicated above and in the absence of any corroboration of the circumstance of "last seen together" we are of the view that a reasonable doubt can be entertained with regard to the involvement of the appellant-accused in the crime alleged against them. The burden under Section 106 of the Evidence Act, 1872 would not shift in the aforesaid fact situation, a position which has been dealt with by this Court in Malleshappa v. State of Karnataka [Malleshappa v. State of Karnataka, (2007) 13 SCC 399 : (2009) 2 SCC (Cri) 394] wherein the earlier view of this Court in Mohibur Rahman v. State of Assam [Mohibur Rahman v. State of Assam, (2002) 6 SCC 715 : 2002 SCC (Cri) 1496] has been extracted. The said view in Mohibur Rahman [Mohibur Rahman v. State of Assam, (2002) 6 SCC 715 : 2002 SCC (Cri) 1496] may be profitably extracted below: (Malleshappa case [Malleshappa v. State of Karnataka, (2007) 13 SCC 399 : (2009) 2 SCC (Cri) 394] , SCC p. 408, para 23)

"23. ... '10. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing



connectivity between the accused and the crime. There may be cases where, on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide. In the present case there is no such proximity of time and place. As already noted the dead body has been recovered about 14 days after the date on which the deceased was last seen in the company of the accused. The distance between the two places is about 30-40 km. The event of the two accused persons having departed with the deceased and thus last seen together (by Lilima Rajbongshi, PW 6) does not bear such close proximity with the death of the victim by reference to time or place. According to Dr Ratan Ch. Das the death occurred 5 to 10 days before 9-2-1991. The medical evidence does not establish, and there is no other evidence available to hold, that the deceased had died on 24-1-1991 or soon thereafter. So far as the accused Mohibur Rahman is concerned this is the singular piece of circumstantial evidence available against him. We have already discussed the evidence as to



recovery and held that he cannot be connected with any recovery. Merely because he was last seen with the deceased a few unascertainable number of days before his death, he cannot be held liable for the offence of having caused the death of the deceased. So far as the offence under Section 201 IPC is concerned there is no evidence worth the name available against him. He is entitled to an acquittal.’ (Mohibur Rahman [Mohibur Rahman v. State of Assam, (2002) 6 SCC 715 : 2002 SCC (Cri) 1496], SCC pp. 720-21, para 10)”.

27. In the case of **Ravinder Singh @ Kaku** (**supra**), the Hon’ble Supreme Court has observed in **Paragraph 11 to 13 and Paragraph-20** as under:-

"11. *Upon thorough application of the above-settled law on the facts of the present case, we hold that the circumstantial evidence against the present appellant i.e. A-2 does not conclusively establish the guilt of A-2 in committing the murder of the deceased children. The last seen theory, the arrest of the accused, the recovery of material objects and the call details produced, do not conclusively complete the chain of evidence and do not establish the fact that A-2 committed the murder of the children of PW 5. Additionally, the argument of the respondent that the call details produced relating to the phone used by A-1 and A-2 have established that they shared an intimate relationship and that this relationship became the root cause of offence is also unworthy of acceptance.*

12. *The High Court fell in grave error when it fallaciously drew*



dubious inferences from the details of the call records of A-1 and A-2 that were produced before them. The High Court inferred from the call details of A-2 and A-1 that they shared an abnormally close intimate relation. The Court further inferred from this, that unless they had been madly in love with each other, such chatting for hours would not have taken place. The High Court eventually observed that : (Anita case [State of Punjab v. Anita, 2011 SCC OnLine P&H 17671] , SCC OnLine P&H para 8)

"8. ... We have to infer that the unusual attraction of A-2 towards A-1 had completely blinded his senses, which ultimately caused the death of minor children. It is quite probable that A-2 would have thought that the minor children had been a hurdle for his close proximity with A-1."

(emphasis supplied)

The above inferences were drawn by the High Court through erroneous extrapolation of the facts, and in our considered opinion, such conjectures could not have been the ground for conviction of A-2. Moreover, the High Court itself observed that "there is no direct evidence to establish that A-1 and A-2 had developed illicit intimacy" and in spite of this observation, the Court erroneously inferred that the murder was caused as an outcome of this alleged illicit intimacy between A-1 and A-2.

13. *When a conviction is based solely on circumstantial evidence, such evidence and the chain of circumstances must be conclusive enough to sustain a conviction. In the present case, the learned counsel of the appellant has argued that conviction of A-2 could not just be upheld solely on the ground that the prosecution has established a motive via the call records. However, we hold that not only is such conviction not possible on the present scattered and incoherent pieces of evidence, but that the prosecution has*



not even established the motive of the crime beyond reasonable doubt.

20.*The last piece of evidence against A-2 remains the alleged recovery of the school bag at the instance of the disclosure statement given by A-2. However, similar to the other evidence against A-2, this also suffers from the same inconsistencies and incoherence that makes it difficult for such evidence to support the conviction of A-2. In this context, it is imperative to understand that there were two bags involved in the entire offence, which belonged to the two deceased children. The learned counsel for the respondent has contended that the recovery of one of such bags was at the instance of the disclosure statement given by A-2. The High Court also has supported its conviction of A-2 on this piece of evidence. However, where the High Court has erred is that it analysed this evidence in isolation with the other testimonies. However, when the claim of the prosecution is examined in the entire context of the other testimonies and evidence, it becomes apparent that even this evidence of recovery is not free from contradictions and inconsistencies."*

28. In the case of **Shailendra Rajdev Pasvan & Ors. Vs. State of Gujarat & Ors**, reported in (2020) 14 SCC 750, wherein the Hon'ble Supreme Court has observed in **Paragraph-17** as under:

"17. It is well settled by now that in a case based on circumstantial evidence the courts ought to have a conscientious approach and conviction ought to be recorded only in case all the links of the chain are complete pointing to the guilt of the accused. Each link unless connected together to form a chain may



suggest suspicion but the same in itself cannot take place of proof and will not be sufficient to convict the accused."

29. Thus, it has been observed by the Hon'ble Supreme Court that each link, unless connected together to form a chain, may suggest suspicion but the same in itself cannot take place of proof and will not be sufficient to convict the accused. It is further revealed from the observations made by the Hon'ble Supreme Court in the aforesaid decisions that the circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who had committed the crime. 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. The prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence.

30. Keeping in view the aforesaid decisions rendered by the Hon'ble Supreme Court, if the evidence of the prosecution as discussed hereinabove is examined, it is revealed that the prosecution has failed to prove the chain



from which it can be established that the present appellant/accused only committed the alleged offense and none else.

31. The impugned judgment of conviction dated 09.04.2015 and order of sentence dated 16.04.2015 passed by learned *Ad-hoc* Additional Sessions Judge-II, Begusarai in Sessions Trial No. 395 of 1993 arising out of Bhagwanpur P.S. Case No. 20 of 1993 is quashed and set aside. The appellant, namely, Ashok Kumar Singh @ Ashok Chaudhary is acquitted of the charges levelled against him by the learned trial court. He is directed to be released from jail forthwith, if his presence is not required in any other case.

32. The appeal is accordingly allowed.

(Vipul M. Pancholi, J)

(Chandra Shekhar Jha, J)

Sachin/-

AFR/NAFR	
CAV DATE	
Uploading Date	11.09.2023
Transmission Date	11.09.2023

