

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.609 of 2015

Arising Out of PS. Case No.-44 Year-2013 Thana- ADHAOURA District- Kaimur (Bhabua)

Maksud Khan @ Manu Son of Sagir Khan, resident of village- Adhaura, P.S.-
Adhaura, District- Kaimuar (Bhabhua)

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 540 of 2015

Arising Out of PS. Case No.-44 Year-2013 Thana- ADHAOURA District- Kaimur (Bhabua)

Rajesh Uraon Son of Man Bahal Uraon, Resident of Village Baluaahi, P.S
Rohtas, District Rohtas

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 618 of 2015

Arising Out of PS. Case No.-44 Year-2013 Thana- ADHAOURA District- Kaimur (Bhabua)

Rashid Ansari Son of Salim Ansari, resident of village - Marpa, P.S. -
Adhaura, District - Kaimur (Bhabua)

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 766 of 2015

Arising Out of PS. Case No.-44 Year-2013 Thana- ADHAOURA District- Kaimur (Bhabua)

1. Md. Shakeel @ Md. Shakeel Ahmad son of Amaluddin
2. Taiyab Shah @ Pintu Son of Yaqoob Sah, Both resident of village - Babhni
Nala, Police Station - Aghaura, District - Kaimur

... .. Appellants



Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 609 of 2015)

For the Appellant : Mr. N.K. Agrawal, Sr. Advocate
Mr. Prabhakar Singh, Advocate
Mr. Ranjay Kumar, Advocate

For the Respondent : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 540 of 2015)

For the Appellant : Mr. Ashok Kumar Mishra, Advocate
Mr. Harsha Shashwat, Advocate
Ms. Mukul Kumari, Advocate
Ms. Geeta Kumari, Advocate

For the Respondent : Mr. Bipin Kumar, APP

(In CRIMINAL APPEAL (DB) No. 618 of 2015)

For the Appellant : Mr. Rashid Ansari, Advocate
Mr. Prabhakar Singh, Advocate
Mr. Ranjay Kumar, Advocate

For the Respondent : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 766 of 2015)

For the Appellants : Mr. Manoj Kumar, Advocate
Mr. Dharmendra Kumar Singh, Advocate

For the Respondent : Mr. Bipin Kumar, APP

(In all the aforesaid appeals)

For the informant : Mr. Tribhuwan Narain, Advocate

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

C.A. V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 13-10-2023

The criminal appeals arise out of common judgment of
conviction dated 27.05.2015 and the order of sentence dated



04.06.2015, hence they have been heard together and are being disposed of by this common judgment.

2. These criminal appeals have been preferred against the judgment of conviction dated 27.05.2015 and the order of sentence dated 04.06.2015, passed by Shri Ashok Kumar, Additional Sessions Judge 2nd, Bhabua, in connection with Sessions Trial No.97 of 2014 and Trial No.127 of 2014, arising out of Adhaura P.S. case No.44 of 2013, whereby and whereunder the appellants have been convicted under Sections 364, 302/34, 201, 120B of the Indian Penal Code (referred to 'I.P.C.') and Section 27 of the Arms Act. The appellants have been sentenced to undergo life imprisonment with fine of Rs.20,000/- each for the offence under Sections 364, 302/34 and 120B of the I.P.C., and in default of payment of fine, further to undergo rigorous imprisonment for five years each. The Trial Court has observed that life imprisonment will not less than 30 years. The appellants have further been sentenced to undergo rigorous imprisonment for seven years each with fine of Rs.10,000/- each for the offence under Section 201 of the I.P.C. and in default of payment of fine, further undergo rigorous imprisonment for one year each. The appellants have further been sentenced to undergo rigorous imprisonment for seven years each with fine of Rs.10,000/- each for the offence



under Section 27 of the Arms Act and in default of payment of fine, further undergo rigorous imprisonment for one year each. All the sentences so imposed on the appellants shall run concurrently.

3. The prosecution case, in brief, is that on 12.12.2013 at 12 0' clock the informant went to Adhaura by Marshal jeep. It is further stated that the informant's son, namely, Amir Suhel (deceased) and nephew, namely, Siraj Ansari (deceased) both had gone to Adhaura by the informant's TVS star city motorcycle bearing No. BR45B-9809 and both the deceased met with Azad Ansari (deceased) at Adhaura. All three deceased persons went to Mandapa village from Adhaura at 5:00 p.m. They all reached at Balihawani Kala at 6 p.m. where they stay at Basant Hotel and also took tea and thereafter all the three deceased persons went to village at once. The informant further stated that his nephew was having one mobile bearing No.9431437337, which was switched off on that very day. The informant and the villagers tried to search the deceased persons but they were not able to find them, during the search, the informant found that motorcycle in the jungle. The informant has further alleged that he is fully convinced that some unknown persons have kidnapped and conspired to kill them.



4. On the basis of fardbeyan of the informant, Adhaura P.S. case No.44 of 2013 was registered. After completion of investigation, the Investigating Officer submitted charge sheet under Sections 302/34 of the I.P.C. and thereafter cognizance was taken by the Jurisdictional Magistrate and thereafter the case was committed to the court of Sessions. Charges were framed against the appellants to which the appellants pleaded not guilty and claimed to be tried.

5. During trial, the prosecution examined altogether nine witnesses, namely, Rajesh Kumar Sah @ Rajesh Kumar (PW 1), Nathuni Sah (PW 2), Rajendra Sao (PW 3), Amrawati Devi @ Umrawati Devi (PW 4), Vikesh Kumar @ Vikash-informant (PW 5), Dr. K.D. Pujan (PW 6), Rajindar Yadav (PW 7), Ajit Choudhary (PW 8) and Bam Bahadur Choudhary (PW 9). In support of its case, the prosecution has also produced exhibits as Ext.1 (signature of Rajesh Kumar on the written report), Ext.2 (written report), Ext.3 (postmortem report), Ext.4 (formal F.I.R.), Ext.5 (seizure list) and Ext.6 (inquest report). In support of its case, the defence has produced one exhibit, viz., Ext.A (c.c. of final form/report of Karakat P.S. case No.148/2009). After conclusion of the trial, the learned Trial Court convicted and sentenced the appellants in the manner as indicated above.



6. The learned counsel for the appellants has submitted that the trial suffers from several infirmities that were overlooked by the learned trial court. Therefore, the impugned judgement is not sustainable in the eyes of law. It has been argued that there is no direct evidence to the alleged occurrence and the prosecution's case relies mainly on call detail records (CDR) and tower location charts which were not exhibited, moreover, these call detail records cannot be taken into consideration as the requirement under Section 65B(4) of the Evidence Act has not been complied by the prosecution. It has been further stated that apart from CDR, the only evidence that has been brought on record by the prosecution is the recovery of pair of slippers, firearms, cartridges and dead bodies of the person upon the confession of the appellants in police custody, but such recovery cannot prove that the appellants had committed the offence. Learned Counsel for the appellants further pointed out that it is a settled principle that suspicion howsoever strong cannot be the basis of conviction of the accused and in the case at hand the learned trial Court has relied on the suspicion that it were the appellants who have committed the alleged crime. It has been pointed out that after minute appreciation of the entire evidence, there is no revelation that could connect the appellants with the alleged offence.



Therefore, it has been argued that the circumstances relied by the prosecution do not unerringly point towards the guilt of the appellants. Hence, the findings of the learned trial Court are bad in law, wrong on facts, bereft of legal reasoning, devoid of merit and the judgment of conviction is fit to be set aside.

7. The learned A.P.P. for the State and the counsel for the informant, on the other hand, have submitted that the common judgment of conviction and order of sentence under challenge in all these four appeals require no interference, as the prosecution has been able to prove the case beyond all reasonable doubts. It was pointed out by them that the name of the appellants were transpired from the call detail record and, in addition to this the recovery of the weapons and dead bodies of deceased persons was made as per the confession of the appellants, proves the chain of circumstances that it were the appellants who conspired to commit the abduction cum murder of the deceased persons. Thus, the guilt of the appellants has been satisfactorily proved by the evidence adduced during the course of trial and there is no infirmity in the judgement of conviction of the learned trial Court.

8. After hearing the arguments advanced by the learned counsels appearing for the parties and upon thorough examination



of the entire material available on the record, the following issues arise for consideration in the present appeal:

(I) Whether the non production of call detail record, tower location chart and certificate as required under Section 65B (4) of the Indian Evidence Act has caused serious infirmity to the prosecution case?

(II) Whether sufficient evidence has been adduced by the prosecution to prove the involvement of the appellants in the commission of offence under Section 364 IPC?

(III) Whether mere recovery of weapons i.e. pistols & cartridges, made on the basis of confession of accused appellants to police officer, in absence of the opinion of a ballistic expert is sufficient to prove the charge under Section 27 of the Arms Act?

(IV) Whether the recovery of the dead body of the deceased persons upon the confession of accused appellants to police officer, is itself sufficient to establish their guilt with respect to the alleged offences?

9. With reference to issue no. (I), it is found upon thorough examination of the material available on record that CDR and tower location chart are the main thread that could facilitate the chain of circumstances relating to the conspiracy between the appellants with respect to the alleged offence. In the case at hand, no such CDR and tower location chart was exhibited by the prosecution. Moreover, no certificate as required under Section



65B (4) of the Indian Evidence Act has been produced by the prosecution. At this juncture, this Court has taken note that before relying on any electronic evidence, the Court has to scrutinize whether such electronic evidence is admissible in accordance with Section 65A and Section 65B of the Indian Evidence Act, 1872. It is pertinent to note that the Evidence Act does not permit the electronic record evidence if the requirements under Section 65B (4) are not complied with. When an electronic record such as a computer printout, CD, VCD, pen drive, etc. is sought to be offered in evidence, it must be accompanied by a certificate. Such a certificate is intended to guarantee the authenticity and genuineness of the source of the electronic evidence. In this context, it is relevant to refer the case of **Anvar P.V. versus P.K. Basheer** reported in **(2014) 10 SCC 473**, wherein three judge bench of the Hon'ble Supreme Court has observed that:

“22. The evidence relating to electronic record, as noted hereinbefore, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65-A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary



evidence by way of electronic record; the same is wholly governed by Sections 65-A and 65-B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this Court in Navjot Sandhu case [State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715] , does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65-B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65-B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.”

Also, in the case of **Arjun Panditrao Khotkar versus Kailash Kushanrao Gorantyal** reported in **(2020) 7 SCC 1**, wherein three judge bench of the Hon’ble Supreme Court has observed that:

“84. But Section 65-B(1) starts with a non obstante clause excluding the application of the other provisions and it makes the certification, a precondition for admissibility. While doing so, it does not talk about relevancy. In a way, Sections 65-A and 65-B, if read together, mix up both proof and admissibility, but not talk about relevancy. Section 65-A refers to the procedure prescribed in Section 65-B, for the purpose of proving the



contents of electronic records, but Section 65-B speaks entirely about the preconditions for admissibility. As a result, Section 65-B places admissibility as the first or the outermost checkpoint, capable of turning away even at the border, any electronic evidence, without any enquiry, if the conditions stated identification parade held therein are not fulfilled.”

Additionally, in the case of ***Ravinder Singh versus State of Punjab*** reported in **(2022) 7 SCC 581**, the Hon’ble Supreme Court has observed that:

“21. Lastly, this appeal also raised an important substantive question of law that whether the call records produced by the prosecution would be admissible under Sections 65-A and 65-B of the Evidence Act, given the fact that the requirement of certification of electronic evidence has not been complied with as contemplated under the Act. The uncertainty of whether Anvar P.V. v. P.K. Basheer [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473] occupies the field in this area of law or whether Shafhi Mohammad v. State of H.P. [Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801] lays down the correct law in this regard has now been conclusively settled by this Court by a judgment dated 14-7-2020 in Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal [Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1 : (2020) 4 SCC (Civ) 1 : (2020) 3 SCC (Cri) 1 : (2020) 2



SCC (L&S) 587] wherein the Court has held that : (Arjun Panditrao Khotkar [Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1 : (2020) 4 SCC (Civ) 1 : (2020) 3 SCC (Cri) 1 : (2020) 2 SCC (L&S) 587] , SCC pp. 56 & 62, paras 61 & 73)

“61. We may reiterate, therefore, that the certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] , and incorrectly “clarified” in Shafhi Mohammad [Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865] . Oral evidence in the place of such certificate cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in Taylor v. Taylor [Taylor v. Taylor, (1875) LR 1 Ch D 426] , which has been followed in a number of the judgments of this Court, can also be applied. Section 65-B(4) of the Evidence Act clearly states that secondary evidence is admissible only if lead in the manner stated and not otherwise. To hold



otherwise would render Section 65-B(4) otiose.

73.1. Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] , as clarified by us hereinabove, is the law declared by this Court on Section 65-B of the Evidence Act. The judgment in Tomaso Bruno [Tomaso Bruno v. State of U.P., (2015) 7 SCC 178 : (2015) 3 SCC (Cri) 54] , being per incuriam, does not lay down the law correctly. Also, the judgment in Shafhi Mohammad [Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865] and the judgment dated 3-4-2018 reported as Shafhi Mohammad v. State of H.P. [Shafhi Mohammad v. State of H.P., (2018) 5 SCC 311 : (2018) 2 SCC (Cri) 704] , do not lay down the law correctly and are therefore overruled.

73.2. The clarification referred to above is that the required certificate under Section 65-B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and



proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. In cases where the “computer” happens to be a part of a “computer system” or “computer network” and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4).

22. In light of the above, the electronic evidence produced before the High Court should have been in accordance with the statute and should have complied with the certification requirement, for it to be admissible in the court of law. As rightly stated above, oral evidence in the place of such a certificate, as is the case in the present matter, cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law.”

Thus, in light of the above discussions and upon thorough application of the above-settled law on the facts of the present case, it is quite clear that the call details of the appellants cannot be admitted in evidence as the same has neither been exhibited nor it has been accompanied by the certificate in terms of Section 65B (4) of the Indian Evidence Act.



Accordingly, issue no. (I) is decided in the *affirmative*.

10. With reference to issue no. (II), it is found that the F.I.R was lodged against the unknown persons and the name of the appellants have been transpired from the CDR and thereafter from the confession of appellants before the police officer. It is quite apparent from the preceding issue that the CDR cannot be admitted as evidence in the present case and even the confession made to the police officer is not admissible by virtue of Sections 25 and 26 of the Indian Evidence Act. It is further found that a different version was brought by the informant (PW 9) in his deposition, which was not stated by him in the F.I.R. that an altercation had taken place between the deceased persons and the appellants, whereby the accused-appellants had threatened to kill them. Moreover, nothing has been reported by the informant against the appellants with respect to threatening and altercation.

Before looking into the legal aspect, we may notice the definition of kidnapping and abduction, as provided under Sections 359 and 362 of the Indian Penal Code, which are in the following terms:

“359. Kidnapping.—Kidnapping is of two kinds : kidnapping from India, and kidnapping from lawful guardianship.



362. Abduction.—Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.”

We may also notice Section 364 of the Penal Code which reads as under:

“364. Kidnapping or abducting in order to murder.—Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.”

It would be relevant to refer to the case of ***Badshah versus State of U.P.*** reported in ***(2008) 3 SCC 681***, wherein the Hon’ble Supreme Court has considered the ingredients for commission of an offence under Section 364 of IPC and observed that:

“Ingredients of the said offence are (1) kidnapping by the accused must be proved; (2) it must also be proved that he was kidnapped in order to; (a) that such person may be murdered; or (b) that such person might be disposed of as to be put in danger of being murdered. ..”

In light of the factual matrix of this case and considering the established legal position as discussed above, the prosecution has utterly failed to establish any circumstances in order to reach to a definite conclusion that it were the appellants herein, who have



committed the said offence. Thus, there is no question of a complete chain of circumstances being formed that could point towards the guilt of the accused.

Accordingly, issue no. (II) is decided in the ***negative***.

11. With reference to issue no. (III), it is found upon thorough examination of the material available on record that the present case is completely based on circumstantial evidence as there is no direct evidence to connect the appellants with the alleged offence. Upon the perusal of the deposition of the Investigating Officer (PW 10), it is found that one country made sixer gun, one 315 bore country made pistol, one 12 bore country made pistol, four 315 bore live cartridges and one empty bullet shell have been recovered upon the confession of appellant, Rajesh Uraon, and the same has been seized but none of these were sent for examination by ballistic experts. It would be relevant to take note of the decision of the Hon'ble Supreme Court in the case of ***Dudh Nath Pandey versus State of U.P.*** reported in ***(1981) 2 SCC 166***, wherein it has been observed that:

".. Evidence of recovery of the pistol at the instance of the appellant cannot by itself prove that he who pointed out the weapon wielded it in offence. The statement accompanying the discovery is woefully vague to identify the authorship of concealment, with



the result that the pointing out of the weapon may at best prove the appellant's knowledge as to where the weapon was kept. The evidence of the ballistic expert carries the proof of the charge a significant step ahead, but not near enough, because at the highest, it shows that the shot which killed Pappoo was fired from the pistol which was pointed out by the appellant. ...”

In light of the discussions made above, we are of the considered opinion that the recovery of weapons is not sufficient to prove the guilt of the appellants regarding the commission of the alleged offence. Moreover, there was no attempt made by the prosecution to obtain the opinion of a ballistic expert to ascertain whether the bullet could have been fired from the recovered weapon. Also, in this context, it becomes imperative to refer to the Hon'ble Supreme Court decision in the case of ***Pritinder Singh versus State of Punjab*** reported in ***(2023) 7 SCC 727***, wherein it has been observed that in view of the circumstances, non-examination by ballistic expert has created a significant doubt to the case of the prosecution. Thus, in the absence of a ballistic report, it is not possible for the Court to ascertain whether the recovered weapon has been used by the appellants in the commission of the present offence and thereby, such failure on the part of prosecution has caused serious infirmity to the case. Therefore, in light of the above discussions and upon thorough



application of the above-settled law on the facts of the present case no inference can be drawn that it were the appellants who had fired or used the recovered weapons which has resulted into the death of the deceased persons.

Accordingly, the issue no. (III) is decided in the ***negative***.

12. With reference to issue no. (IV), it is found upon perusal of the material available on record that at best, the only possible circumstance that is relied by the prosecution regarding the involvement of the appellants in the case at hand is the recovery of the dead bodies of the deceased persons on the basis of the confession of the appellants-accused. At this juncture, it is pertinent to note that the fact discovered in consequence of information given by the accused in the custody of a police officer, is a relevant fact by virtue of Section 27 of the Indian Evidence Act and at the same time, it is important to take into account that the information that would go in evidence under Section 27 will only be limited to the fact discovered and the rest of the information supplied by the accused will not be admissible. In the case at hand, It would be relevant to take note of the case of ***Aghnoo Nagesia versus State of Bihar*** reported in ***(1966) 1 SCR 134***, wherein the three judge bench of the Hon'ble Supreme Court has observed that:



“21. ...The entire evidence against the appellant then consists of the fact that the appellant gave information as to the place where the dead bodies were lying and as to the place where he concealed the tangi, the discovery of the dead bodies and the tangi in consequence of the information, the discovery of a blood-stained chadar from the appellant's house and the fact that he had gone to Dungi Jharan Hills on the morning of August 11, 1963. This evidence is not sufficient to convict the appellant of the offences under Section 302 of the Indian Penal Code.”

Also, in the case of ***Uppala Bixam versus State of A.P.*** reported in ***(2019) 13 SCC 802***, the Hon'ble Supreme Court has observed that:

“9. The only other circumstance relied upon by the prosecution is the recovery of the dead body of the deceased Ramesh on the basis of the confession of the appellant-accused. In our considered view this only circumstance by itself may not be sufficient to establish the guilt of the accused. It was also submitted on behalf of the appellant-accused that in his questioning under Section 313 CrPC the appellant-accused has denied making of any confessional statement and recovery of dead body of the deceased Ramesh at his behest. It was further argued that recovery of the dead body of the deceased Ramesh after two days of the occurrence also raises doubt about the prosecution case.



10. The circumstance of recovery of the dead body on the basis of confession may indicate that the accused might have been involved in the incident. However, as held in Raj Kumar Singh v. State of Rajasthan [Raj Kumar Singh v. State of Rajasthan, (2013) 5 SCC 722 : (2013) 4 SCC (Cri) 812] that suspicion however grave but cannot take the place of the proof. There is a wide gap between “may be” and “must be”. In the present case, the circumstance of recovery of the dead body allegedly based on the alleged confessional statement may raise a suspicion against the appellant-accused that he might be involved in the incident but mere suspicion itself cannot take itself the evidence of proof. In our view conviction under Sections 302/201 IPC cannot be sustained, more so, when the motive attributed for the murder has been theft of the sheep, and the accused-appellant has been acquitted of the charge of theft.”

Thus, in the present case the entire evidence against the appellants then consists of the fact that the appellants gave information as to the place from where the dead bodies, weapons and cartridges were found. Therefore, in light of the factual matrix of this case and considering the established legal position as discussed above, this Court is of the view that such evidence is not sufficient to convict the appellants coupled with the fact that the appellants when questioned under Section 313 CrPC, have denied



the allegation that dead bodies were recovered upon their confession.

Accordingly, issue no. (IV) is decided in the *negative*.

13. It is needless to emphasize that no one can be held guilty of committing an offence unless such participation and allegation are proved up to the hilt by cogent evidence. It is the duty of the prosecution to prove the case beyond reasonable doubts by establishing that the chain of evidence are unerringly pointing towards the guilt of the accused persons and no other hypothesis is possible. And, in the present case, on the basis of the discussions made above, we are unable to hold that the prosecution has successfully established its case beyond all reasonable doubt, resultantly, we believe that it is appropriate to give the appellants the benefit of the doubt.

14. Therefore, all the criminal appeals stand allowed and the judgment of conviction dated 27.05.2015 and the order of sentence dated 04.06.2015, passed by Shri Ashok Kumar, Additional Sessions Judge 2nd, Bhabua in connection with Sessions Trial No.97 of 2014, Trial No.127 of 2014 arising out of Adhaura P.S. case No.44 of 2013, are set aside.

15. Since the appellant Maksud Khan @ Manu of Criminal Appeal (DB) No.609 of 2015, appellant Rajesh Uraon of Criminal



Appeal (DB) No.540 of 2015 and appellants Md. Shakeel @ Md. Shakeel Ahmad and Taiyab Shah @ Pintu of Criminal Appeal (DB) No.766 of 2015, are in jail custody, they are directed to be released from custody forthwith, if not wanted in any other case.

16. The appellant Rashid Ansari of Criminal Appeal (DB) No.618 of 2015 is on bail, he is discharged from the liability of his bail bonds.

17. Pending application (s), if any, stand disposed of.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Narendra/-

AFR/NAFR	AFR
CAV DATE	03.10.2023
Uploading Date	13.10.2023
Transmission Date	13.10.2023

