

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.887 of 2016

Arising Out of PS. Case No.-192 Year-2013 Thana- SARAI RANJAN District- Samastipur

1. Suraj Ram, S/o Ram Umeed Ram
2. Ram Bharosh Sada; S/o Bahadur Sada;
Both 1 & 2 resident of Village Bhojpur Purnahiya; P.S. Sarairanjan; District Samastipur.
3. Basant Sahani; S/o Late Yadu Sahani;
Resident of Village Harpur Barheta; P.S. Sarairanjan; District- Samastipur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Hari Kishor Thakur, Advocate Mr. Amit Kumar, Advocate Mr. Ajay Kumar Singh, Advocate
For the State	:	Mr. Sujeet Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 21-09-2023

The present appeal has been directed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as the 'Code') against impugned judgment of conviction dated 14.07.2016 and order of sentence dated 19.07.2016 passed by learned Special Judge SC/ST Act, Samastipur in S.Tr. No. 573 of 2013 arising out of Sarairanjan P.S. Case No. 192 of 2013 dated 22.07.2013, whereby the Trial Court has convicted all the



appellants/accused for the offences punishable under Sections 120B, 302, 201/34 of the I.P.C. and further appellant Basant Sahani has also been convicted for offence under Sections 3(2)(v), 3(2)(vi) of the SC/ST Act and sentence was awarded for life imprisonment and fine of Rs. 5,000/- each under Section 302 of the I.P.C., 7 years rigorous imprisonment under Section 201/34 of the I.P.C. and sentence of life imprisonment and fine of Rs. 5,000/- under Section 3(v) of the SC/ST Act was also awarded to accused Basant Sahani. In default of payment of fine, additional sentence of simple imprisonment for 3 months was awarded and further it has been directed that the entire sentence shall run concurrently.

2. The prosecution story, in brief, is as under:-

"The brother of the informant namely deceased Manoj Ram aged about 34 years was engaged in agriculture work. On 20.07.2013, he was present at his house. At about 09:30 P.M. in the night, Suraj Ram, Ram Bharosh Sada and Basant Sahani came at house and called him and took him away from the house. The informant and other family members slept in her house in the night after taking meal but in the morning, it was learnt that the brother of the informant did not return house in the night. Then he went to the house of Suraj Ram and inquired about his brother, then he disclosed that his brother had gone Kali Mandir of the village along with Ram Barosh Sada and Basant Sahani. Thereafter, the informant approached to Ram Barosh Sada and inquired about his brother but he flatly denied to have any knowledge about



the brother of the informant. Thereafter, the informant was searching his brother. Then in the evening of 07:30 p.m., the villager Ashoka Ram informed the informant that a dead body is lying in the Well located besides the house of Santlal Ram. Then the informant went towards the Well and saw that one dead body was floating in the water of the Well, then the body was taken out with the help of bamboo and rope. Such dead body was of the Manoj Ram. There was injury on his head and blood was oozing from the head. Both hand was tied with the thin cloth. There was scratch mark on his face. The prosecution has further attributed the enmity against the Suraj Ram and his father Ram Umed Ram arises out of making pressure for purchasing of the land of the informant located in the side of the house of the informant by accused Suraj Ram and his father which was refused by him to sell to accused Suraj Ram and his father. It was also attributed that both Suraj Ram and his father threatened to teach a lesson for such refusal of transferring land. It has also been attributed that Suraj Ram forcibly took signature of his father on plain paper and threatened to get transferred such land on the basis of force, therefore, prosecution claimed that accused persons have committed such murder and threw dead body in the well."

3. After registration of the F.I.R, the Investigating Officer carried out the investigation, and during the course of investigation, recorded the statement of the witnesses and also collected the relevant materials. Thereafter, the Investigating Officer filed the charge-sheet against the appellants/accused and



another accused before the concerned Magistrate Court. However, this case was exclusively triable by the Court of Sessions. The Learned Magistrate committed the same to the Sessions Court where the same was registered under S.Tr. No. 573 of 2013.

4. During the course of the trial, the prosecution had examined 9 witnesses and also produced the documentary evidence. Thereafter, further statement of the accused under Section 313 of the Code came to be recorded. After conclusion of the trial, the Trial Court passed the impugned order as observed hereinabove. The appellants have been convicted whereas co-accused namely Ram Umed Ram came to be acquitted. The appellants are also acquitted for the offence punishable under Section 302/120B/201 read with Section 34 of the I.P.C. and Basant Sahani is also convicted for the charge of offence of Section 3(2)(v) of the SC/ST Act, but he is acquitted from charge of offence under Section 3(2)(vi) of the SC/ST Act.

5. Against the impugned order passed by the Trial Court, the appellants/accused have preferred the present appeal.

6. Heard learned Advocate Mr. Hari Kishor Thakur assisted by Mr. Ajay Kumar Singh and Mr. Amar Kumar for the appellants and Mr. Sujeet Kumar Singh, learned APP for the Respondent-State.



6.1 It is pertinent to note that one of the appellant/accused has been convicted for the offences punishable under the Atrocities Act and two other have been acquitted under the same Act and, therefore, the presence of the Informant is required. This Court, therefore, issued the notice to the Informant which is duly served and received by the Informant. The same is placed on record by the Learned APP. However, none appears on behalf of the Informant.

7. Learned Advocate for the appellants has referred the deposition of the prosecution witnesses and pointed out that PW-1 to PW-3 have not supported the case of the prosecution and they have turned hostile, whereas PW-4 to PW-8 are near relatives of the deceased. However, the said witnesses are also not eye-witnesses to the incident or the occurrence in question. It is submitted that the case of the prosecution rests on the circumstantial evidence and the prosecution has failed to complete the chain/link of circumstances from which it can be said that the appellants have committed the alleged offences. It is also pointed out by the learned counsel for the appellants that the prosecution had not examined the Investigating Officer. From perusal of the deposition of the Doctor, it appears that the death of the deceased was caused within 36 hours from the date of conducting the *post*



mortem of the dead body of the deceased. It is contended that as per the case of the prosecution, the deceased was last seen in company of the appellants/accused at about 09:30 p.m. on 20.07.2013 and the *post mortem* of the dead body was conducted on 11:05 a.m. on 22.07.2013 and thereby, the prosecution has failed to point out that during the period between 09:30 p.m. of 20.07.2013 to 11:30 p.m. of 20.07.2013 whether the deceased was in company with the appellant or not. It is also submitted that the injuries as stated by the prosecution witnesses were not found by the Doctor while conducting the *post mortem* of the dead body of the deceased. It is, therefore, urged by the learned counsel for the appellants that when the prosecution has failed to prove the case against the appellants/accused beyond reasonable doubt, the Trial Court has committed a grave error while recording the order of conviction against the appellants. Learned Advocate, therefore, urged that this appeal be allowed and thereby the impugned order passed by the Trial Court be quashed and set aside.

8. Learned counsel for the appellants has placed reliance upon the following decisions rendered by the Hon'ble Supreme Court in the case of *Sharad Birdhichand Sarda Vs. State of Maharashtra*, reported in (1984) 4 SCC 116, *Anjan Kumar Sarma & Ors. Vs. State of Assam*, reported in (2017) 14 SCC 359,



Ravi & Anr. Vs. State of Karnataka, reported in (2018) 16 SCC 102, *Reena Hazarika Vs. State of Assam*, reported in (2019) 3 SCC 289 and *Jabir & Ors. Vs. The State of Uttarakhand*, reported in 2023 SCC OnLine SC 32 (Criminal Appeal No. 972 of 2013).

9. On the other hand, learned APP has vehemently opposed this appeal. Learned APP has also referred the deposition of the prosecution witnesses and also referred the *post mortem* report of the dead body of the deceased. It is submitted that the prosecution has proved that the present appellants came at the house of the deceased and the deceased had gone along with the present appellants during the night hours on the date of occurrence and thereafter, the deceased was missing. The dead body of the deceased was found on the next day i.e. on 21.07.2013 at about 07:30 p.m. from the Well. It is further submitted that from the *post mortem* report given by the PW-8 Doctor (who had conducted the *post mortem* of the dead body of the deceased), it is revealed that the death of the deceased was homicidal and the cause of death is asphyxia produced by cloth like substance. It is contended that the appellants/accused have failed to discharge the burden under Section 106 of the Evidence Act and, therefore, the Trial Court has rightly passed an order of conviction against the



appellants/accused. Learned APP, therefore, urged that no interference is required in the present appeal.

10. We have considered the submissions canvassed by the learned counsels appearing for the parties. We have also perused the entire evidence produced by the prosecution before the Trial Court. From the evidence, it would emerge that during the course of the trial, the prosecution had examined 9 witnesses. It is pertinent to note that PW-1, PW-2 and PW-3 have not supported the case of the prosecution. These are the independent witnesses who have turned hostile and thereby, not supported the case of the prosecution. Therefore, the prosecution has placed reliance upon the depositions of PW-4 to PW-9 who are the near relatives of the deceased. It is also reflected from the record that the prosecution had not examined the Investigating Officer for the reasons best known to them.

11. PW-4 Rampreet Ram is the father of the deceased. The said witness has stated during the course of the examination-in-chief that the occurrence took place on 20.07.2013 at about 09:30 p.m. At that time, he was present in his house along with his family members. At that time, all the appellants came to their house and told his son to accompany them for conversation on some fact. Then his son went along with them but did not return



during night hours. In the morning, all the family members inquired about Manoj Ram. At that time, accused Suraj Ram told them that he had gone along with the appellants. During the day hours, they searched Manoj Ram. However, at about 07:30 p.m., one Ashok Ram came and told that a dead body was floating in the Well located near the house of Sant Lal Ram. Thereafter, the said witness along with the other villagers proceeded towards the said place and the dead body of his son was seen in the Well. The dead body was taken out from the Well. They noticed that both the hands of Manoj were tied and there was strangulation by cloth. The said witness further stated that there was an injury on the head and blood was oozing out. The said witness further stated about the motive that is the land dispute with one of the accused, on the part of the accused for commission of the alleged offences.

11.1 During cross-examination of the said witness, he had stated that his house is situated at the distance of 25-30 *lagga* from the Well of Sant Lal Ram. The said witness further stated that when he came to know that his son is missing, he did not inform *Mukhiya-Sarpanch* of the village about the fact that his son went along with the appellants during night hours and thereafter, he is missing. The said witness further stated that after the dead body was recovered from the Well, the dead body of his son was



brought to their house. At that time, *Darogaji* came and the dead body was taken for *post mortem*. The said witness denied the suggestion that on 21.07.2013, he had given the statement before *Darogaji*, wherein, he did not disclose the name of any of the appellants. The said witness also denied the suggestion that his son was consuming liquor or *ganja*.

12. PW-5 Gayatri Devi is the wife of the deceased. The said witness has also narrated the same story which is stated by PW-4 Rampreet Ram. However, the said witness in her examination-in-chief stated that the dead body of Manoj was found from the Well which is situated near the house of Manti Devi. The said witness has also stated that certain injuries were found on the forehead of the deceased and blood was oozing out of the same. During cross-examination, the said witness has admitted that the accused and her husband were friends and the accused was regularly coming to their house.

13. PW-6 Rajmanni Devi is the mother of the deceased. The said witness has also narrated the same story which is narrated by PW-4. However, during cross-examination of the said witness, she has stated that the Well from which the dead body of her son was found is at a distance of 4 *lagga* from the house of the said witness, and the same is situated near the house of Manti Devi.



14. PW-7 Manti Devi is the wife of the Informant and the sister-in-law of the deceased. The said witness has also narrated the same story which is narrated by PW-4 in her examination-in-chief. The said witness has stated during cross-examination that the blood was oozing out of the head and was having scratches all over the face. The said witness has stated that they were residing separately from the house of the deceased. However, their house is adjacent to the house of the deceased.

15. PW-8 Vinod Ram is the Informant and the brother of the deceased. The said witness has also stated in his examination-in-chief that the accused came at their house during night hours and along with the accused, his brother went, and thereafter, he was missing. The dead body was found on the next day at about 07:30 p.m. The said witness has also stated about the motive on the part of the accused to kill the deceased by stating that there was a land dispute between the parties.

15.1 During cross-examination, the said witness had stated that after Manoj Ram left his house, his dead body was found after 24 hours from the Well. The Well is situated near the house of Sant Lal Ram and he has further stated that he did not inform anybody in the village that his brother is missing. The said witness further stated that his brother was not having friendship



with the accused Basant Sahani. He further stated that his brother was selling *toddy*. The said shop was situated at a distance of 10 *lagga* from his house. He used to close the shop at about 08:30 - 09:00 p.m.

16. PW-9 Dr. Bibhan Ranjan is the Doctor who had conducted the *post mortem* of the dead body of the deceased. The said witness has narrated the external injuries in his deposition which is held as under:-

"1. On dated 22.07.13, I was posted as M.O. in Casualty Medical Officer Sadar Hospital, Samastipur. On the scheduled date and time, a dead body was brought to the mortuary. As per protocol, myself and my Assistant Dr. J.A. Choudhary did the post mortem examination on the dead body and found the following facts.

2. Lying flat.

Rigor Mortis present.

Eye - Conjuncted.

Eyeball - Protruded.

3. Mouth - Closed.

External Examination

Bruise surrounding neck extends laterally on both side of neck from midline. Size 3"x8" approx.

4. Face cyanosed on desepation.

All neck muscle were conjuncted.

Trachea - Conjuncted.

Mucus Membrane - Conjuncted.

Contains froath.

All abdominal Viscera was conjuncted.



Time elapsed since death less than 36 hours.”

During cross-examination, the said witness has stated that asphyxia may have been caused by drowning.

17. From the aforesaid evidence produced by the prosecution, it would emerge that the independent witnesses namely PW-1 to PW-3 have not supported the case of the prosecution and they have turned hostile, whereas PW-4 to PW-8 are near relatives of the deceased Manoj Ram. It is not in dispute that there is no eye-witness to the occurrence in question and, therefore, the case of the prosecution is based upon circumstantial evidence. From the deposition of PW-4 to PW-8, the prosecution has tried to establish that all the appellants/accused came at the house of the deceased during night hours at about 09:30 p.m. on 20.07.2013, and thereafter, the deceased went along with the accused during that night hours, and after about 24 hours on the evening of next day, the dead body of the deceased was found in the Well. Thus, by alleging that when the deceased was lastly found in the company of the appellants/accused, and thereafter, the dead body of the deceased was found from the Well, only the appellants/accused could have killed the deceased.

18. From the deposition given by the prosecution witnesses, it transpires that though the deceased went along with the appellants/accused at about 09:30 p.m. during night hours, all



the relatives did not tried to find out the deceased. However, on the next morning, they had searched for him. It is further revealed that the F.I.R. was lodged only after the dead body was recovered and during this period of about more than 22 hours, the relatives of the deceased did not inform anybody about the story of the deceased having gone along with the accused during night hours. It is further revealed from the *post mortem* report that the Doctor did not find any external injury on the head, forehead or on the face of the deceased. There was bruise surrounding the neck and the cause of death is asphyxia produced by strangulation and that too by a cloth like substance. At this juncture, if the deposition of the prosecution witnesses are carefully examined, it is revealed that it is the specific case of the prosecution witnesses that blood was oozing from the head and forehead of the deceased when the dead body was taken out from the Well. It is further pertinent to note that PW-9 Dr. Bibhan Ranjan, who had conducted the *post mortem* of the dead body of the deceased, has specifically stated that the time elapsed since death is less than 36 hours. If the *post mortem* report is carefully examined, it is revealed that the *post mortem* was conducted at about 11:05 a.m. on 22.07.2013, whereas the deceased Manoj Ram went along with the accused at about 09:30



p.m. on 20.07.2013, as per the prosecution witnesses. Thus, the prosecution has failed to point out about the time gap of two hours.

19. At this stage, we would like to refer the decisions upon which the reliance is placed by the learned counsels appearing for the appellants.

20. In the case of ***Sharad Birdhichand Sarda Vs. State of Maharashtra (supra)***, the Hon'ble Supreme Court has observed in **Para-153 to Para-160** as under:-

153. *A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:*

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may



be' and 'must be' is long and divides vague conjectures from sure conclusions."

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

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

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

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

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

155. *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 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."

156. Lord Goddard slightly modified the expression "morally certain" by "such circumstances as render the commission of the crime certain".

157. 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 case [1952 NZLR 111] was approved by this Court in Anant Chintaman Lagu v. State of Bombay [AIR 1960 SC 500 : (1960) 2 SCR 460 : 1960 Cri LJ 682] . Lagu case [AIR 1960 SC 500 : (1960) 2 SCR 460 : 1960 Cri LJ 682] as also the principles enunciated by this Court in Hanumant case [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] 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 : 1970 SCC (Cri) 55] , Ramgopal case [(1972) 4 SCC 625 : AIR 1972 SC 656] , Chandrakant Nyalchand Seth v. State of Bombay [Criminal Appeal No 120 of 1957, decided on February 19, 1958] , Dharambir Singh v. State of Punjab [Criminal Appeal No 98 of 1958,



decided on November 4, 1958 printed on green papers in bound volumes] . There are a number of other cases where although Hanumant case [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] has not been expressly noticed but the same principles have been expounded and reiterated, as in Naseem Ahmed v. Delhi Administration [(1974) 3 SCC 668, 670 : 1974 SCC (Cri) 198, 200 : (1974) 2 SCR 694, 696] , Mohan Lal Pangasa v. State of U.P. [(1974) 4 SCC 607, 609 : 1974 SCC (Cri) 643, 645 : AIR 1974 SC 1144, 1146] , Shankarlal Gyarsilal Dixit v. State of Maharashtra [(1981) 2 SCC 35, 39 : 1981 SCC (Cri) 315, 318-19 : (1981) 2 SCR 384, 390 : 1981 Cri LJ 325] and M.G. Agarwal v. State of Maharashtra [AIR 1963 SC 200 : (1963) 2 SCR 405, 419 : (1963) 1 Cri LJ 235] — a five-Judge Bench decision.

158. *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 [AIR 1955 SC 801 : (1955) 2 SCR 570, 582 : 1955 Cri LJ 1647] 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."

159. *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 points to the guilt of the accused with reasonable definiteness, and

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

160. *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 case [(1981) 2 SCC 35, 39 : 1981 SCC (Cri) 315, 318-19 : (1981) 2 SCR 384, 390 : 1981 Cri LJ 325] where this Court observed thus: [SCC para 30, p. 43: SCC (Cri) p. 322]

"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 circumstances, if other circumstances point unflinchingly to the guilt of the accused."

21. In the case of **Anjan Kumar Sarma & Ors. Vs. State of Assam (supra)**, the Hon'ble Supreme Court has observed in **Para-13, 16 and Para- 21** as under:-

"13. *Jit Kakati was acquitted for committing an offence under Section 366-A IPC and his acquittal was confirmed by the High Court. Jit Kakati died during the pendency of the criminal appeal before this Court and the appeal filed by him abated. The acquittal of the appellants under Section 376(2)(g) was confirmed by the High Court which remains unchallenged. The point that falls for our consideration is whether the conviction of the appellants by the High Court under Sections 302, 201 read with Section 34 IPC is justified. The High Court was conscious of the fact that interference with the judgment of an acquittal by the trial court is unwarranted except when it suffers from the vice of perversity (see Brahm Swaroop v. State of U.P. [Brahm Swaroop v. State of U.P., (2011) 6 SCC 288 : (2011) 2 SCC (Cri) 923] , SCC para 38). There is neither a discussion nor finding recorded by the High Court about any perversity in the judgment of the trial court. The only ground on which the High Court reversed the judgment of the trial court is that the prosecution proved that the accused and the deceased were last*



seen together and there was no explanation which led to the presumption of guilt of the accused.

16. *It is no more res integra that suspicion cannot take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and the legal proof. At times it can be a case of "may be true". But there is a long mental distance between "may be true" and "must be true" and the same divides conjectures from sure conclusions. (See Jaharlal Das v. State of Orissa [Jaharlal Das v. State of Orissa, (1991) 3 SCC 27 : 1991 SCC (Cri) 527] , SCC p. 37, para 11.)*

21. *This Court in Bharat v. State of M.P. [Bharat v. State of M.P., (2003) 3 SCC 106 : 2003 SCC (Cri) 738] held that the failure of the accused to offer any explanation in his statement under Section 313 CrPC alone was not sufficient to establish the charge against the accused. In the facts of the present case, the High Court committed an error in holding that in the absence of any satisfactory explanation by the accused the presumption of guilt of the accused stood unrebutted and thus the appellants were liable to be convicted."*

22. In the case of ***Ravi and Another Vs. State of Karnataka (supra)***, the Hon'ble Supreme Court has observed in **Para- 3 and Para-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)"

23. In the case of **Reena Hazarika Vs. State of Assam**

(supra), the Hon'ble Supreme Court has observed in **Para-9** as under:-

"9. *The essentials of circumstantial evidence stand well established by precedents and we do not consider it necessary to reiterate the same and burden the order unnecessarily. Suffice it to observe that in a case of circumstantial evidence the prosecution is required to establish the continuity in the links of the chain of circumstances, so as to lead to the only and inescapable conclusion of the accused being the assailant, inconsistent*



or incompatible with the possibility of any other hypothesis compatible with the innocence of the accused. Mere invocation of the last-seen theory, sans the facts and evidence in a case, will not suffice to shift the onus upon the accused under Section 106 of the Evidence Act, 1872 unless the prosecution first establishes a prima facie case. If the links in the chain of circumstances itself are not complete, and the prosecution is unable to establish a prima facie case, leaving open the possibility that the occurrence may have taken place in some other manner, the onus will not shift to the accused, and the benefit of doubt will have to be given."

24. In the case of ***Jabir & Ors. Vs. The State of Uttarakhand (supra)***, the Hon'ble Supreme Court has observed in **Para-24** and **Para-25** as under:-

"24. *Recently, in Rambraksh vs. State of Chhattisgarh,*⁷ *this court after reviewing previous decisions, stated as follows:*

"10. It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused.



11. In a similar fact situation this Court in the case of Krishnan v. State of Tamil (2014) 12 SCC 279, held as follows:

21. The conviction cannot be based only on circumstance of last seen together with the deceased. In Arjun Marik v. State of Bihar (1994) Supp (2) SCC 372)

"31. Thus the evidence that the Appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the Appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded."

22. This Court in Bodhraj v. State of (2002) 8 SCC 45) held that:

"31. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible." It will be hazardous to come to a conclusion of guilt in cases where there is no other positive evidence to conclude that the accused and the deceased were last seen together.

23. There is unexplained delay of six days in lodging the FIR. As per prosecution story the deceased Manikandan was last seen on 4-4-2004 at Vadakkumelur Village during Panguni Uthiram Festival at Mariyamman Temple. The body of the deceased was taken from the borewell by the fire service personnel after more than seven days. There is no other positive material on record to show that the deceased was last seen



together with the accused and in the intervening period of seven days there was nobody in contact with the deceased.

24. In Jaswant Gir v. State of Punjab (2005) 12 SCC 438, this Court held that in the absence of any other links in the chain of circumstantial evidence, the Appellant cannot be convicted solely on the basis of "last seen together" even if version of the prosecution witness in this regard is believed." Again, in Nizam & Ors. v State of Rajasthan,⁸ it was held as follows:

"Courts below convicted the Appellants on the evidence of PWs 1 and 2 that deceased was last seen alive with the Appellants on 23.01.2001. Undoubtedly, "last seen theory" is an important link in the chain of circumstances that would point towards the guilt of the accused with some certainty. The "last seen theory" holds the courts to shift the burden of proof to the accused and the accused to offer a reasonable explanation as to the cause of death of the deceased. It is well-settled by this Court that it is not prudent to base the conviction solely on "last seen theory". "Last seen theory" should be applied taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen."

25. *In the present case, save the "last seen" theory, there is no other circumstance or evidence. Importantly, the time gap between when the deceased was seen in the company of the accused on 09-10-1999 and the probable time of his death, based on the post mortem report, which was conducted two days later, but was silent about the probable time of death, though it stated that death occurred approximately two days before the post mortem, is not narrow. Given this fact, and the serious inconsistencies in the depositions of the witnesses, as well as the fact that the FIR was lodged almost 6 weeks after the incident, the sole*



reliance on the "last seen" circumstance (even if it were to be assumed to have been proved) to convict the accused-appellants is not justified."

25. From the aforesaid decisions rendered by the Hon'ble Supreme Court, it can be said that in the case of circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'maybe' established. Further, the fact 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. The circumstances should be of a conclusive nature and tendency, and there must be a chain/link 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. The inferences drawn by the Court have to be on the basis of the established facts and not on conjectures.

25.1. It is further revealed from the aforesaid decisions rendered by the Hon'ble Supreme Court that in a case of circumstantial evidence, the prosecution is required to establish the continuity in the links of the chain of circumstances, so as to lead to the only an inescapable conclusion of the accused being the assailant, inconsistent or incompatible with the possibility of any



other hypothesis compatible with the innocence of the accused. Mere invocation of the last seen theory, *sans* the facts and evidence in a case will not shift the onus upon the accused under Section 106 of the Evidence Act, unless the prosecution first establishes a *prima facie* case. If the links in the chain of the circumstances itself are not complete, and the prosecution is unable to establish a *prima facie* case, leaving open the possibility that the occurrence may have taken place in somewhat other manner, the onus will not shift to the accused and the benefit of doubt will have to be given.

26. Keeping in view the aforesaid observations made by the Hon'ble Supreme Court, if the facts of the present case as discussed hereinabove are carefully examined, we are of the view that merely because the deceased was lastly seen in company with the appellants/accused at about 09:30 p.m. on 20.07.2013 and thereafter, the dead body of the deceased was found at about 07:30 p.m. on 21.07.2013 i.e. after almost 22 hours, it cannot be said that the present appellants and the appellants only have killed the deceased in absence of any other material. The chain/link is missing. The prosecution has tried to prove the motive on the part of one of the appellants/accused by contending that one of the accused was having land dispute with the family of the deceased



and, therefore, he has been killed. However, we are of the view that when the prosecution has failed to prove the case against the appellants/accused beyond reasonable doubt, the Trial Court has committed grave error while recording the order of conviction against the appellants/accused and, therefore, the impugned order is required to be quashed and set aside.

27. The impugned judgment of conviction dated 14.07.2016 and order of sentence dated 19.07.2016 passed by learned Special Judge SC/ST Act, Samastipur in S.Tr. No. 573 of 2013 arising out of Sarairanjan P.S. Case No. 192 of 2013 is quashed and set aside. The appellants, namely, Suraj Ram, Ram Bharosh Sada and Basant Sahani are acquitted of the charges levelled against them by the learned Trial Court. They are directed to be released forthwith, if their presence is not required in any other case.

28. Accordingly, this appeal is allowed.

(Vipul M. Pancholi, J)

(Chandra Shekhar Jha, J)

Sachin/-

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