

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.160 of 2017

Arising Out of PS. Case No.-162 Year-2014 Thana- BANMANKHI District- Purnia

Raj Kumar Paswan son of Late Bilat Paswan, resident of Village Bishanpur
Datt, P.S.- Banmankhi, District- Purnea. Appellant

Versus

The State of Bihar Respondent

with

CRIMINAL APPEAL (DB) No. 175 of 2017

Arising Out of PS. Case No.-162 Year-2014 Thana- BANMANKHI District- Purnia

Ranjan Kumar son of Rudal Paswan resident of village Bishanpur Datt, P.S.
Banmankhi, District Purnea. Appellant

Versus

The State of Bihar Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 160 of 2017)

For the Appellant/s : Mr. Baxi SRP Sinha, Sr. Advocate
Mr. Anil Singh, Advocate
Ms. Babita Kumari, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP

(In CRIMINAL APPEAL (DB) No. 175 of 2017)

For the Appellant/s : Mr. Anil Singh, Advocate
Mr. Ravi Ranjan, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 20-04-2024

These two appeals are arising out of the judgment of conviction dated 10.01.2017 and the order of sentence dated 16.01.2017 passed by learned 1st Additional Sessions Judge, Purnea (hereinafter referred to as the 'learned trial court') in Sessions Trial No. 1227/2014/Trial No. 03/2015/ CIS No. 791 of 2014. By the judgment under appeal (hereinafter also referred



to as the 'impugned judgment'), the learned trial court has convicted the appellants for the offences under Sections 302/34 and 201/34 of the Indian Penal Code (hereinafter referred to as the 'IPC') and by the order under appeal (in short 'the impugned order'), both the appellants have been sentenced to undergo rigorous life imprisonment and pay a fine of Rs. 7,000/- each for the offence under Section 302/34 IPC and they have been further ordered to suffer seven years imprisonment for the offence under Section 201/34 IPC and pay a fine of Rs. 3,000/- each.

Prosecution Case

2. The prosecution case, as disclosed in the written report dated 27.06.2014 (Exhibit '6') submitted by father of the deceased (PW-7) disclosed that his son Brajesh Kumar was in his mother's parental house (*nanihal*). On 19.06.2014 at 11 o'clock, Sonu Kumar, son of Mithilesh Yadav, Ranjit Kumar, son of Dilip Prasad Yadav and Bipin Kumar, son of Birendra Prasad Yadav, all were sitting together with his son Brajesh Kumar (the deceased). At the said time, Brajesh Kumar got a phone call of a girl on his mobile number 9801166509 who called him to come to Banmankhi immediately. It is stated that when all the boys asked Brajesh as to who was calling, Brajesh



told them that the phone was of one Neetu, daughter of Rudal Paswan and her house is situated near petrol pump on the Dhamdaha Road ahead of Banmankhi Sugar Mill. He disclosed that she had called him at Banmankhi and he was going there. After saying so, Brajesh Kumar (the deceased) left for Banmankhi.

In the second part of his written report, the informant claimed that on the same day at 4:30 pm, a call was received from mobile number 8677977369 and it was told that 4-5 persons were beating Brajesh at Collegiate School, Banmankhi. The informant approached his relatives near the school telephonically and sent them near the school but nothing could be found there. Since Brajesh did not return till night on 19.06.2014, the informant had gone to the place of his *samdhi* on 20.06.2014 to trace the boy but no information regarding Brajesh could be gathered. The informant alleged that he had apprehension that either the parents of the girl have got the marriage of the boy solemnized forcibly or have concealed him or he has been killed and his dead body has been hidden.

In the last part of the written report, the informant stated that after hectic search, they submitted an application to the Banmankhi Police Station In-charge but he refused to receive



the same saying that the matter relates to Maranga Police Station and the application should be submitted in Maranga Police Station. It is the case of the informant that when he went to Maranga Police Station, the Maranga Police Station In-Charge refused to receive the application saying that the matter relates to Banmankhi Police Station. In the circumstances, the application was submitted to the Superintendent of Police, Purnea and the same was registered as Banmankhi P.S. Case No. 62 of 2014 dated 26.06.2014 for the offences under Sections 364/365/368/34 IPC.

3. In course of investigation, the Investigating Officer (I.O.) recovered the dead body from a latrine tank (hereinafter referred to as 'tank') situated in the premises of Vimal Hriday School at Gangeli More. The recovery was made on 01.07.2014 at 1:00 pm and it is the prosecution case that the dead body was recovered on the basis of the disclosures made by the appellant Ranjan Kumar before Police on 01.07.2014.

4. After completion of investigation, Police submitted charge-sheet against three accused persons on 22.09.2014. On the basis of the charge-sheet, the learned Magistrate took cognizance of the offences and upon finding that the offences are sessions triable, the learned Magistrate committed the



records to the court of sessions.

5. In the trial court, charges were explained to the accused who pleaded not guilty and claimed to be tried, accordingly charges were framed against the accused, namely (i) Ranjan Kumar (ii) Raj Kumar Paswan and (iii) Pankaj Kumar Yadav for the offences punishable under Sections 364, 365, 368, 302 and 201/34 IPC.

6. On behalf of the prosecution, altogether 12 witnesses were examined who are as under:-

(i) Rani Devi (PW-1) – a witness to the seizure of *dabiya*;

(ii) Binod Sharma (PW-2) – another witness to the seizure of *dabiya*;

(iii) Hardeo Yadav (PW-3) – a hostile witness;

(iv) Manoj Kumar Yadav (PW-4) – a related witness, who is brother-in-law of the informant (PW-7) and scribe to the written report submitted to Superintendent of Police, Purnea by PW-7.

(v) Rupesh Kumar Yadav (PW-5) – an independent witness;

(vi) Amarendra Kumar Amar (PW-6) – the third Investigating Officer who filed the charge-sheet;



(vii) Ratan Prasad Yadav (PW-7) – father of the deceased and informant of the case;

(viii) Umesh Kumar Yadav (PW-8) – a related witness to the inquest report;

(ix) Dharmendra Kumar Yadav (PW-9) – another related witness to the inquest report;

(x) Nagina Kumar (PW-10) is the first Investigating Officer of the case;

(xi) Subodh Singh (PW-11) an Advocate Clerk who has approved the medical report of the Doctor. The Doctor has not been examined.

(xii) Ram Daresh Choudhury (PW-12) is the main I.O. of the case who recorded confessional statement of accused Ranjan Kumar, seized ‘dabiya’ and recovered the dead body of Brajesh Kumar.

7. On behalf of the prosecution, the following documents were marked Exhibits:-

“प्रदर्श – 1 साक्षी रूपेश कुमार यादव का धारा 164 द0 प्र0 सं0 अन्तर्गत बयान पर हस्ताक्षर,

प्रदर्श – 1/1 मृतक ब्रजेश कुमार के मृत्यु समीक्षा रिपोर्ट पर साक्षी उमेश प्रसाद यादव का हस्ताक्षर,

प्रदर्श – 1/2 मृत्यु समीक्षा रिपोर्ट पर साक्षी धर्मेन्द्र कुमार का हस्ताक्षर,

प्रदर्श – 2 बनमनखी थाना कांड सं0— 162/14 की औपचारिक प्राथमिकी,

प्रदर्श – 3 प्राथमिकी पर पृष्ठांकन,



प्रदर्श – 4 अभियुक्त रंजन कुमार का दोष स्वीकारोक्ति बयान,
प्रदर्श – 5 हत्या में प्रयुक्त दबिया का जप्ति सूची,
प्रदर्श – 6 सूचक का लिखित आवेदन,
प्रदर्श – 7 डा0 संदीप लाल एसीस्टेंट प्रोफेसर फॉरेंसिक
मेडीसीन एवं टेक्सालॉजी जवाहर लाल नेहरू मेडिकल कॉलेज
भागलपुर का मृतक के शव का जाँच प्रतिवदेन
प्रदर्श – 8 निदेशक विधि विज्ञान प्रयोगशाला पटना का जाँच
प्रतिवदेन पहचान चिन्ह “एक्स””

8. After the prosecution evidences were laid, the statement of the accused persons were recorded under Section 313 Code of Criminal Procedure (in short ‘CrPC’) in which they pleaded innocence. On behalf of defence, one Chandrakala Devi has been produced as defence witness. The signature of Chandrakala Devi on a Complaint Case No. 3296 of 2013 and protest petition have been marked as Exhibit ‘A to A/11’.

Findings of the learned Trial Court

9. The learned trial court examined the evidences on the record and held that the dead body which was recovered from the tank within the premises of the school on the disclosure made by the appellant Ranjan Kumar is that of the son of the informant. The learned trial court reached to a conclusion that the deceased wanted to establish illegal forcible relationship with the elder sister of the appellant Ranjan Kumar and for this reason, the two accused, namely Ranjan Kumar and Rajkumar Paswan had with pre-concert of mind and conspiracy, assaulted Brajesh Kumar, injured him by *dabiya* and after



killing him, with an intention to conceal the evidence, they threw the *dabiya* in the bush and the dead body was concealed in the shaft of the latrine tank. Having recorded the said finding, the learned trial court convicted the appellants and sentenced them as stated at the top of this judgment.

Submissions on behalf of the appellants

10. Mr. Anil Singh, learned counsel for the appellants, has assailed the impugned judgment on various grounds. It is submitted that (PW-7) had submitted a written report to the Superintendent of Police, Madhubani after about a week from the date of occurrence but in his written report (Exhibit '6'), while claiming that he had received information on the same day at 4:30 pm that 4-5 persons were assaulting Brajesh Kumar, the informant had not disclosed as to who gave him the call and who were those 4-5 persons. It is submitted that non-disclosure of the name of these 4-5 persons even after seven days of the occurrence would create a doubt with respect to the information first received by the informant with regard to the assault being committed upon the deceased.

11. Learned counsel submitted that in his written report, (Exhibit '6'), PW-7 has stated that after receipt of the phone, he had sent his relatives to the school but again the name



of the said relative had not been disclosed. Scribe of the report is PW-4 who is brother-in-law of PW-7.

12. Learned counsel further submits that it is stated in Exhibit '6' that when the phone call was received by the deceased at about 11:00 am on 19.06.2014, he was sitting with Sonu Kumar, Ranjit Kumar and Bipin Kumar but these persons who could have been material witnesses to prove this fact were not named as charge-sheet witnesses in this case and they have not been examined in course of trial.

13. Learned counsel submits that the written report has been scribed by Manoj Kumar (PW-4), who is the brother-in-law of the informant. The case of the defence is that there was a dispute between Manoj Kumar (PW-4) and father of Neetu Kumari and it was Manoj who had written the complaint submitted to the Superintendent of Police, Purnea. Pointing out to the complete inconsistencies in the statement of PW-4 and PW-7, learned counsel submits that PW-7 has stated in his examination-in-chief that on 19.06.2014 at about 5:00 pm, his brother-in-law Manoj Kumar Yadav (PW-4) had given him a telephonic call and informed that 4-5 persons were assaulting Brajesh in the premises of Collegiate School. When PW-7 asked PW-4 as to how he got information then PW-4 is said to have



stated that he was told about this by Rupesh Kumar (PW-5). Learned counsel submits that contrary to this claim of PW-7, PW-4 has stated in his examination-in-chief that on 19.06.2014 at about 4:30 pm, he was informed by Sonu (not examined) over telephone that 4-5 boys namely Ranjan Kumar, Raj Kumar and Pankaj Kumar were assaulting Brajesh in the premises of Collegiate School. PW-4 has not taken name of Rupesh (PW-5), Sonu has not been examined and he was not even made a charge-sheet witness. Despite being aware of the names of the accused in Exhibit '6' the names were not disclosed.

14. Learned counsel further submits that PW-4 while narrating about his visit near the house of Rudal Paswan in the night of 19.06.2014 itself has stated that he found the door of the house of Rudal Paswan locked and he had got awaken his neighbours who told him that he was not aware as to where Rudal Paswan had gone. PW-4 claimed that he went to Banmankhi Police Station but did not meet the 'Bara Babu' and he was told that 'Bara Babu' had gone in the night patrolling. At this stage, learned counsel points out that in the written report submitted to Superintendent of Police (Exhibit '6'), the informant claimed that the Officer-in-Charge of the Banmankhi Police Station had refused to receive the complaint which is a



false statement. It is submitted that on the next day, once again PW-4 claims to have gone to the Police Station at Banmankhi where he was told to submit his application in Maranga Police Station but when he went there then he was told there that Bara Babu was on leave, therefore, he should come after two days and after two days he was told that this case would fall within the jurisdiction of Banmankhi Police Station. It is submitted that this explanation of PW-4 is not consistent with the explanation furnished in the written report (Exhibit '6') by the informant and it is not acceptable at first instance and the I.O. (PW-12) who happened to be the Station House Officer of Banmankhi Police Station has not supported this version of PW-4.

15. Learned counsel further submits that in this case FIR was lodged on 26.06.2014 and Ranjan Paswan is said to have been arrested in the night of 29.06.2014/ 30.06.2014 (00:30 hours) but no arrest memo showing arrest of Ranjan Paswan on 30.06.2014 has been proved. It is submitted that Ranjan Paswan is said to have confessed his guilt on 01.07.2014 at 10:30 am and on his disclosure the '*dabiya*' which was used as a weapon of crime as well as the dead body have been recovered but it would appear from a careful scrutiny of the evidences on the record it would appear that Police had first



recovered the *dabiya* and then dead body and thereafter arrested Ranjan Paswan and recorded statement of PW-4 for the first time whereafter a case was concocted that the recoveries have been shown on the disclosure of Ranjan Paswan. On the strength of Section 164 CrPC statement of PW-5 recorded at a much belated stage on 09.07.2014 it has been claimed that Ranjan Paswan was seen assaulting Brajesh (deceased) on 19.06.2014 near Collegiate School.

16. Learned counsel further points out from the evidence of PW-4 that he got information about the murder of Brajesh on 1st July, 2014 and arrest of Ranjan Paswan. He reached Banmankhi Police Station from where he was taken to the house of Ranjan by Police and recovered a blood-stained *dabiya* from the southern side of the house of Rudal Paswan, then Police went to the Vimal Hriday Mission School and recovered the dead body from the latrine tank. It is submitted that the evidences would show that witnesses were not examined immediately. PW-4 did not record his statement before I.O. prior to 01.07.2014. He went to Police Station on 01.07.2014 after hearing about the murder of Brajesh and arrest of Ranjan Kumar. Similarly Section 164 CrPC statement of PW-5 has been recorded on 09.07.2014. From evidence of PW-4 it



would appear that he reached Police Station after the dead body had already been found and Ranjan had been arrested but the memo of arrest of Ranjan would show that PW-4 is a witness on the memo of arrest, therefore the fact is that Ranjan has been arrested after arrival of PW-4.

17. The Investigating Officer (PW-10) has stated in his examination-in-chief that on 29.06.2014, on the basis of the CDR, he got to know that Ranjan Kumar was in Ara district with his father Rudal Paswan, he went there and with the help of Officer-in-Charge of the said place, he brought Ranjan Kumar to Police Station at Banmankhi for interrogation. He has stated that on 01.07.2014, he had handed over the charge of investigation of this case to Sub-Inspector of Police Ram Daresh Chaudhary, (PW-12). Learned counsel submits that PW-10 has not stated that he had arrested Ranjan but the I.O. (PW-12) who took charge from PW-10 has stated in his examination-in-chief, that he took charge of investigation on 01.07.2014 and recorded the confessional statement of Ranjan Kumar, who had been arrested by earlier I.O. It is submitted that PW-12 is making a false statement regarding arrest of Ranjan Kumar by earlier I.O. PW-12 states that on the basis of the disclosure made by Ranjan Kumar in his confessional statement, he had recovered the



dabiya from the bush and prepared the seizure list and then recovered the dead body from the tank of the school and prepared the inquest report. Umesh Kumar (PW-8) and Dharmendra Kumar (PW-9) had identified the dead body but the ordersheets of the court would show that the *dabiya* and the seizure list of *dabiya* were produced in the court only on 11.07.2014.

18. Learned counsel submits that a conjoint reading of the evidence of PW-10 and PW-12 would show that PW-10 is said to have brought Ranjan from Ara for purpose of interrogation, no arrest was shown, therefore, no arrest memo of Ranjan was prepared by PW-10 and he was not produced before the learned jurisdictional Magistrate within 24 hours of his arrest. It is submitted that if Ranjan had already been arrested, as stated by PW-12, there was no reason for PW-12 to prepare arrest memo on 01.07.2014 at 10:30 am and produce him before the Magistrate on 02.07.2014. The prosecution story that the *dabiya* and dead body were recovered on the basis of the disclosures made by Ranjan Paswan on 01.07.2014 before PW-12 becomes highly doubtful. It is submitted that in his cross-examination on behalf of both the appellants, PW-10 has stated that he had recorded the statement of Raj Kumar and Ranjan



Kumar on 26.06.2014.

19. Learned counsel for the appellants has taken this Court through the evidence of Rani Devi (PW-1) and Binod Sharma (PW-2) who are witnesses to the seizure list of '*dabiya*'. It is pointed out that both the witnesses have stated in their cross-examination that when they put their signature it was a blank sheet of paper and nothing was written on that. PW-2 has further stated that he had no information about the case. It is, thus, submitted that PW-1 and PW-2 are not witnesses to the facts and circumstances of the case. It is submitted that the seizure list (Exhibit '5') is dated 01.07.2014 but neither the *dabiya* was produced in court on 02.07.2014 nor the seizure list was placed before the court.

20. Learned counsel further submits that Hardeo Yadav (PW-3) did not support the prosecution case. In his examination-in-chief, he has stated that he had not made any statement before Police in respect of this occurrence. This witness has been declared hostile by the prosecution. He has refused to identify the accused. His house is situated at a distance of half kilometer from the Collegiate School.

21. Learned counsel submits that from the evidence of the first I.O. (PW-10) it would appear that he had taken charge



of the investigation on 26.06.2014 and thereafter he had recorded restatement of the informant and visited the place of occurrence. It is pointed out that neither PW-4 nor PW-5 or PW-7 were investigated by PW-10 after taking charge of investigation. These three witnesses are now being cited as material witnesses on behalf of the prosecution but the fact remains that PW-3, about whom PW-10 states that he had recorded his statement, has clearly stated that he had not made any statement before Police.

22. Rupesh Yadav (PW-5), about whom it is stated that his statement was recorded by PW-10, has stated that on 19.06.2014 while he was walking in the field of the Collegiate School at about 4:30 pm, he heard the *hulla* of *bachao bachao* on which he went there to see that these appellants were assaulting one unknown boy and on asking he was told that it is a matter of love affair. This witness has claimed that he got the quarrel stopped and returned to his room. In his examination-in-chief, this witness has stated that he had given a call to one Vikesh of Marega and informed him about the beating being given to Brajesh. Learned counsel has pointed out that PW-5 has given a third name saying that he had informed one Vikesh of Marega but Vikesh of Marega has never been investigated. It is



evident from the deposition of PW-5 that he had not made any call to Manoj Kumar Yadav (PW-4) and even PW-4 does not claim so, therefore, the evidence of PW-7 that Manoj Kumar Yadav had told him that Rupesh Kumar (PW-5) had given a telephone call to him is wholly unbelievable and this would not carry any evidentiary value.

23. In his cross-examination, PW-5 has made a very important statement saying that prior to his court's statement, he had not made any other statement. Learned counsel, therefore, submits that the claim of the I.O. (PW-10) that in their statement before him, the witness Hardeo (PW-3) and Rupesh Yadav (PW-5) had taken the name of these appellants would not be wholly reliable.

24. Learned counsel submits that both the witnesses namely PW-3 and PW-5 have not made any statement that they were investigated by the I.O. PW-5 statement under Section 164 CrPC was recorded on 09.07.2014 only i.e. after 8 days of the recovery of the dead body. He has stated clearly that except his statement in the court, no other statement had been made by him. He has stated that in his information nobody else had seen Brajesh being assaulted.

25. Learned counsel has taken this Court through the



deposition of PW-10 in which he has stated that he had brought Ranjan Kumar to Police Station from Ara District on the basis of the CDR examination on 29.06.2014. Attention of this Court has been drawn towards the evidence of PW-12 who had taken charge of the investigation from PW-10. When PW-12 was called upon to say as to whether any written information was given by the informant to the Police Station, PW-12 has stated in paragraph '3' of his cross-examination that the informant had not submitted any application in the Police Station. PW-12 has stated that Ranjan Kumar was arrested by the earlier I.O. but in answer to another question, PW-12 states that Ranjan Kumar was arrested without any warrant of arrest issued by the court. He has also stated that in the case diary there is no entry that on which date and under whose order Ranjan Kumar was arrested. Further, PW-12 has stated that accused Ranjan Kumar was brought for interrogation from Ara District but there is nothing in the case diary to show that the permission of the Superintendent of Police, Ara was obtained for this purpose. The diary did not contain any entry that the earlier I.O. had produced Ranjan Kumar before any Magistrate at Ara. PW-12 has disclosed that the earlier I.O. (PW-10) had left Ara on 30.06.2014 at 12.30 (night hours) but by which vehicle or mode



of transportation Ranjan Kumar was brought from Ara has not been recorded in the case diary. The earlier I.O. had not recorded in the case diary that for arresting the accused Ranjan Kumar how he proceeded.

26. Learned counsel submits that from the evidence of PW-12 particularly the cross-examination it is evident that the story of the arrest of Ranjan Kumar by the earlier I.O. (PW-10) has been concocted only at a belated stage by PW-12 only in order to show that the confessional statement of the accused Ranjan Kumar was recorded in police custody which led to recovery of the '*dabiya*' and the 'dead body'. According to him, the fact is that Ranjan Kumar was never arrested, prior to the so-called *dabiya* was shown recovered and recovery of the dead body from the tank on some information received by the I.O.

27. Learned counsel submits that according to PW-12, the confessional statement of accused Ranjan Kumar was recorded on 01.07.2014 at 10.30 am (morning). He had not recorded the boundary of the bush from where the *dabiya* has been recovered. PW-12 had stated that on the seized *dabiya* no blood stain was found. This statement of PW-12 stands corroborated by the FSL report (Exhibit '7'), therefore, it is submitted that there is no evidence that the *dabiya* which has



been shown recovered from the bush is the weapon by which crime was committed.

28. Learned counsel submits that the I.O. (PW-12) who claims to have recorded the confessional statement of Ranjan Kumar leading to recovery of *dabiya* and the dead body has not at all narrated in course of his evidence as to what transpired in course of conversation between him and the accused.

29. Learned counsel has relied upon two recent judgments of the Hon'ble Supreme Court on this point. **Ravishankar Tandon vs. State of Chattisgarh** reported in **2024 INSC 299** and **Babu Sahebagouda Rudragoudar and Others** reported in **2024 INSC 320**. A copy of the judgment in case of **Babu Sahebagouda Rudragoudar** (*supra*) has been placed before this Court today.

30. Submission of learned counsel is that mere exhibiting of memorandum of confession prepared by the Investigating Officer during investigation cannot tantamount to proof of its contents. It is submitted that in view of the judgments of the Hon'ble Supreme Court, while testifying on oath, the Investigating Officer would be required to narrate the sequence of events which transpired leading to the recording of



the disclosure statement.

31. Learned counsel has pointed out that from the evidence of PW-4 it would appear that he had come to know about the name of those accused on the date of occurrence itself. Sonu had informed him over telephone and he had given the name of the accused. A question would arise that if PW-4 was aware of the name of the accused persons who were indulging in beating the son of the informant then when he informed the informant on the same day i.e. 19.06.2014 why did not he disclose the name of the accused persons to the informant. An another important fact is that the informant (PW-7) got his written report addressed to the Superintendent of Police, Purnea scribed through PW-4 on 26.06.2014 i.e. after about a week from the date of occurrence but even in this written report the name of the accused persons who were assaulting Brajesh Kumar near Collegiate School, Banmankhi were not disclosed. It is submitted that from the evidence of PW-4 and PW-5 it would appear that they were aware of the name of the accused but they did not disclose it to the informant and above all PW-4 who is the writer of the written report on behalf of the informant did not mention the name of the accused in the written report. This, according to learned counsel for the appellants the conduct



of these witnesses are sufficient to show that the name of these appellants had not transpired till 26.06.2014.

32. It is submitted that if the name of the appellants did not transpire in the written report of the informant on 26.06.2014 then the prosecution is required to show that when did the name of the appellants transpire in course of investigation and who has taken name of these appellants. In this regard, it is submitted that PW-12 has categorically stated that he recorded the statement of Manoj Kumar Yadav (PW-4) meaning thereby the statement of PW-4 was recorded only on 01.07.2014 after the dead body had already been recovered. The fact that PW-4 did not come forward to make his statement before the I.O. since 26.06.2014 and did not disclose the name of the accused persons to the informant would result in creating a huge doubt on the statement of Manoj Kumar Yadav (PW-4).

33. It is submitted that the evidence of the prosecution witnesses are materially different, inconsistent and contradicting each other. The evidences of PW-4, PW-5 and PW-7 are not reliable piece of evidence as regards the identification of the accused who were assaulting Brajesh near the Collegiate School on 19.06.2014. While PW-7 has stated about 4-5 persons, PW-4 has named only three persons but PW-5 has named only two



persons.

34. Learned counsel has relief upon the judgment of the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda versus State of Maharashtra** reported in (1984) 4 SCC 116 (paragraph nos. 153, 154, 160 and 180) to submit that the principle of *Panchsheel* must be applied in case of circumstantial evidence.

35. Learned counsel relies upon the judgment of the Hon'ble Supreme Court in the case of **Dilavar Hussain v. State of Gujarat** reported in (1991) 1 SCC 253 to submit that acquittal or conviction depends on proof of the criminological chain which invariably comprises of why, where, when, how and who. Each knot of the chain has to be proved, beyond shadow of doubt to bring home the guilt.

36. Learned counsel has submitted that in absence of eye-witness, the prosecution had to prove its case through circumstantial evidence. In order to constitute corroboration, each circumstance believed to exist has to be proved independently and the circumstances must lead to no other inference, than that of the guilt of the accused.

37. It is submitted that in the statement under Section 313 CrPC, there is a denial by the accused to the incriminating



circumstances put to the accused and it is stated that he has been falsely implicated. The circumstances relating to calling him to Banmankhi on mobile by Neetu and the reason for commission of crime has not been put to him. Even the allegation of his being last seen with the victim is not put to him.

38. Learned counsel has submitted that PW-12 Ram Daresh Chaudhary has stated that it was not possible to see the injury on the dead body since the body was highly decomposed but the medical report brought on record as Exhibit '7' indicated injury over medieval and mid part of right parietal bone. The Doctor who prepared the report has not been examined and the report has been proved by an Advocate Clerk. Such witness has been held not to be competent to prove government records and described as '*Sankat Mochan*' by Patna High Court in its judgment reported in **2014 4 PLJR 242 (Sukhi Yadav vs. State of Bihar)**. Regarding PW-12, learned counsel has gone on to the extent of submitting that he has clearly stated in his deposition that the witness were examined after 7 days of the occurrence. None of the witnesses had given any information about the occurrence earlier and the informant had not given any written application at the Police Station about the occurrence. It is thus submitted that the delay caused in lodging of the FIR has not



been well explained by the prosecution. The conduct of the family members after deceased was found missing was quite unnatural. On the strength of the judgment of the Hon'ble Supreme Court in the case of **Nizam vs. State of Rajasthan** reported in **(2016) 1 SCC 550**, it is submitted that when the time gap between last seen and recovery of body is long, it would be unsafe to base conviction on the last seen theory. Reliance has also been placed on the judgment of the Hon'ble Supreme Court in the case of **Kanhaiya Lal vs. State of Rajasthan** reported in **(2014) 4 SCC 715** for the proposition that the circumstance of last seen together does not by itself unnecessarily lead to the inference that it was accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation by accused by itself cannot lead to proof of guilt against the accused.

39. On behalf of the appellant Raj Kumar Paswan in Criminal Appeal (DB) No. 160 2017, Baxi S.R.P. Sinha, learned Senior counsel has submitted that in this case Sonu, Ranjit and Bipin have not been examined. According to him, Neetu should have been made accused. It is submitted that the prosecution has failed to establish any connection between the appellant and Neetu and this appellant has nothing to do with confession and



recovery.

40. It is submitted that the name of Raj Kumar Paswan has surfaced only at one stage i.e. at the time of *mar-peet* but the evidence is that *mar-peet* had stopped and people had gone to their respective place. It is his submission that the case of this appellant stands on better footing from that of Ranjan Kumar.

Submissions on behalf of the State

41. Mr. Ajay Mishra, learned Additional Public Prosecutor for the State, submits that the prosecution case is based on circumstantial evidence. Referring to the confessional statement of Ranjan Kumar, it is submitted that on the basis of his confession, the dead body of the deceased and the *dabia* (weapon) have been recovered. Learned counsel submits that while considering a confessional statement it is relevant to know as to whether a confessional statement of accused is voluntary or not. In this case, the appellant Ranjan Kumar was brought from Ara on 30.06.2014 during night hours at 12:30 am. On 01.07.2014 at 10:30 hours, confession of Ranjan Kumar was recorded, *dabiya* was recovered at 12:15 pm and the dead body was recovered at 1:00 pm whereafter inquest report was made. It is submitted that the attention of the accused was drawn



towards his confessional statement leading to recovery of dead body and *dabiya* at the time of recording of his statement under Section 313 CrPC but the appellant Ranjan Kumar simply said 'No'. No explanation has been furnished by Ranjan.

42. It is submitted that the defence has failed to impeach the credibility of PW-8 and PW-9. PW-8 has stated in paragraph '7' that at the instance of Ranjan Police went and recovered the dead body. PW-8 and PW-9 are the witnesses of the inquest report. It is thus submitted that the discovery of dead body was made only on the basis of the statement of the accused Ranjan Kumar which is corroborated by PW-8 and PW-9.

43. Learned counsel further submits that the defence has not given any reason of false implication and the prosecution has been able to prove that it was only Ranjan Kumar who was aware of these facts and it was on his statement that the dead body was recovered. Learned counsel relies upon the judgment of the Hon'ble Supreme Court in the case of **Perumal Raja @ Perumal vs. State represented by Inspector of Police** reported in **2024 (1) PLJR (SC) 227**, paragraphs '19' to '26', '32' and '37' have been referred to. It refers to the doctrine of confirmations of subsequent events. Learned counsel also relied on the judgments in the case of **Pulukuri Kottaya**



vs. King Emperor reported in **AIR 1947 PC 67**, **State (NCT of Delhi) vs. Navjot Sandhu alias Afsan Guru** reported in **(2005) 11 SCC 600**, **Mohmed Inayatullah vs. State of Maharashtra** reported in **(1976) 1 SCC 828** and **State of Maharashtra vs. Suresh** reported in **2000 (1) SCC 471**.

44. Learned Additional PP has further relied on the judgment of the Hon'ble Supreme Court in the case of **K. Chinnaswamy Reddy v. State of Andhra Pradesh and another** reported in **AIR 1962 SC 1788 (paragraph 10)** to submit that the statement under Section 27 of the Evidence Act would be wholly admissible. In the light of this judgment, it is submitted that the whole statement of the accused Ranjan that "after killing the deceased he had put the dead body in the tank" would be admissible in evidence. It is submitted that in a case based on circumstantial evidence, if motive has not been proved but other circumstances are duly proved, absence of motive would not prove fatal. Learned counsel relies on the judgment of the Hon'ble Supreme Court in case of **Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh** reported in **AIR 2022 SC 5273**. It is, thus, submitted that the prosecution has been able to prove the guilt of the appellants beyond all reasonable doubts.



Consideration

45. We have heard learned counsel for the appellants, learned Additional PP for the State and perused the records of the learned trial court.

46. From the materials available on the record, we find that the whole prosecution case depends upon circumstantial evidence. The first circumstance which was required to be proved by the prosecution is that on 19.06.2014, when Brajesh (hereinafter referred to as 'the deceased or the victim') was sitting with Sonu Kumar, Ranjit Kumar and Bipin Kumar at 11:00 am in his maternal uncle's village Maranga, he received a telephone call on his mobile number from a girl who asked him to come to Banmankhi. According to the prosecution, Brajesh left Maranga, telling those persons that it was a call from one Neetu whose father's name is Rudal Paswan and her house is situated at Banmankhi ahead of Sugar Mill on road going towards Dhamdaha, somewhere near petrol pump who had called him to Banmankhi. In course of investigation, neither the first I.O. (PW-10) nor the another I.O. (PW-12) verified the call records of Brajesh. Prosecution has not established that Brajesh had received a call from Neetu. PW-4 who is the maternal uncle of the deceased did not appear before the



Investigating Officer to make a statement immediately. His statement was recorded for the first time by PW-12 on 01.07.2014. The I.O. did not record the statement of Sonu Kumar, Ranjit Kumar and Bipin Kumar. Therefore, the very first circumstance has not been established by the prosecution.

47. This Court finds that in this case, the victim went missing on 19.06.2014. The maternal uncle of the deceased (PW-4) claimed in course of trial that at about 4:30 pm, he got information from Sonu over telephone that 4-5 boys namely Ranjan Kumar, Raj Kumar and Pankaj Kumar were assaulting the victim in the premises of Collegiate School. It is, therefore, evident that PW-4 had come to know the names of these appellants being involved in assaulting the victim on the same day at 4:30 pm but the informant (PW-7) has categorically stated in course of trial that when he got information from PW-4 over telephone that Brajesh was being assaulted by 4-5 persons, he asked as to who are those boys and how did he got this information, on this PW-4 told him that Rupesh Kumar (PW-5) had given him a telephonic call. It is important to note that the name of the boys who were assaulting the victim was not disclosed by PW-4 to PW-7 and to this Court it appears that the claim of PW-4 that he had received a telephone call from Sonu,



who had disclosed the name of Ranjan Kumar, Raj Kumar and Pankaj Kumar, is in complete conflict with the statement of PW-7 and this seems to be an improvement upon the earliest version of the PW-7 recorded in the written report submitted to the Superintendent of Police, Purnea. It must be remembered that the written report was prepared by PW-4 who would fall in the category of a related and interested witness. In the written report (Exhibit'6'), there is no whisper of the names of the boys who were allegedly assaulting the victim. The written report was submitted on 26.06.2014 i.e. after seven days of the date on which the victim had gone missing, therefore, this Court can well conclude that till 26.06.2014, neither PW-4 nor PW-7 was aware of the name of the boys who were assaulting the victim Brajesh.

48. PW-4 and PW-7 are not consistent with the source of information regarding the assault committed upon the victim in the Collegiate School premise. While PW-4 says that he had received information over telephone from Sonu (not examined), PW-7 has stated that PW-4 had informed him that one Rupesh (PW-5) had given him a telephone call and informed. At this stage, it is worth mentioning that Rupesh Kumar did not appear before Police for recording his statement immediately after the



occurrence or after lodging of the FIR. His submission was recorded for the first time under Section 164 CrPC on 09.07.2014. Rupesh deposed as PW-5 and in course of his deposition, he has stated to have seen Ranjan Kumar and Raj Kumar Paswan, whom he identified, were assaulting one unknown boy and on seeing, they told that it is a matter of love affair. PW-5 has further stated that he intervened and got them stopped quarreling and then went to his room. The victim boy had disclosed his name as Brajesh and *nanihal* at Marega whereafter PW-5 gave a telephone call to one Vikesh of Marega saying that one boy namely Brajesh is being assaulted. From the evidence of PW-5, it is clear that he had not given any telephone call to Manoj Kumar Yadav (PW-4) and had not disclosed the name of the accused persons. It is further evident from the statement of PW-5 that he had informed one Vikesh of Marega that Brajesh is being beaten by the boys. PW-5 has not stated that he had informed Vikesh that Ranjan and Raj Kumar Paswan were seen assaulting Brajesh. Vikesh has neither been investigated by the I.O. nor examined in course of trial. PW-5 has stated in his cross-examination that after he intervened, all the persons went away. Therefore, according to PW-5, the quarrel had stopped after his intervention and all the persons had



left the place. PW-5 has made statement that except him, nobody else had seen the assault being given to Brajesh. He has further stated that his no other statement was recorded except the statement made in the court. Therefore, it is further evident that PW-5 was not investigated by Police prior to recovery of the dead body of Brajesh and only 8 days after the recovery was made, Police got his statement recorded directly in the court under Section 164 CrPC.

49. From the prosecution evidence, it further appears that PW-4 had left for Banmankhi on the same day in search of Brajesh, he reached at the house of Rudal Paswan at 11:00 pm where he found that the doors were locked, he talked to the neighbours and went to Banmankhi Police Station where he could not meet the '*Barababu*' of Thana as he had gone in night patrolling. PW-4 again went to the Police Station next day in the morning and submitted a written report but Officer-in-Charge told him to go to Thana Marega. Prosecution has not proved the station diary entry showing that PW-4 had entered into the Police Station on 19.06.2014 and again on 20.06.2014. His statement that when he went to Police Station at Marega then he was told that '*Barababu*' was on leave so he should come after 2 days does not get corroborated from the statement of PW-7.



PW-12, who is the second I.O. of the case, has stated in his cross-examination that no information with regard to the murder was given to him earlier by any person. From the evidence of PW-10, it would appear that he had handed over the charge of investigation to PW-12 on 01.07.2014. He claims that he had recorded the statement of Hardev Yadav (PW-3) and Rupesh Yadav (PW-5) but while PW-3 has been declared hostile, PW-5 has categorically stated that except his statement in court, no statement was recorded earlier by anyone and anywhere. PW-12 has further stated in his cross-examination that the informant had not given any written application to him at the Police Station for lodging of a case. On the face of the evidence of PW-12, this Court finds that the prosecution is unable to explain the delay in lodging of the FIR, a delay of 7 days in submitting an application to the Superintendent of Police, Purnea and the fact that in the said application, the name of the accused who were assaulting Brajesh were not disclosed despite the knowledge of the same, as claimed by PW-4 in his deposition in course of trial, would make the prosecution case highly doubtful. This would lead to conclude that till 26.06.2014, neither PW-4 nor PW-7 had any information that Brajesh had been seen being assaulted by the appellants in the premises of Collegiate School



on 19.06.2014 at 4:30 pm and that Rupesh (PW-5) had given any information to any of these witnesses in this regard. Had the names of the accused been known to PW-4 or PW-7, the same would have been definitely disclosed in the written report (Exhibit '6') submitted to the Superintendent of Police.

50. Regarding the motive behind the occurrence, the I.O. (PW-12) has stated that in the case diary there is no mention about cause of the occurrence and PW-5 has also not disclosed the reason behind the occurrence in his statement under Section 164 CrPC. In course of his cross-examination, PW-12 was suggested that accused Ranjan had made his defence statement in which he had stated that his sister had lodged a case under the SC/ST Act and being prejudiced by the same, he had been falsely implicated in this case. PW-12 denied the suggestion saying that the defence statement of Ranjan Kumar had not been recorded but from the evidence of PW-10 it would appear that he has admitted to have recorded the statement of Raj Kumar and Ranjan Kumar on 26.06.2014, therefore, this Court finds that PW-12 is suppressing the defence statement of the accused Ranjan Kumar recorded by PW-10.

51. As regards the recovery of *dabiya* and dead body of the deceased on the basis of the disclosures made by Ranjan



Kumar in his confessional statement, learned counsel for both the parties has made submissions at length. This Court finds that the statement of PW-12 that the accused earlier arrested by PW-10 had made confessional statement before him on 01.07.2014 at 10:30 am is not believable for various reasons. PW-10 has stated that on the basis of the CDR of the mobile, he got to know that Ranjan Kumar is with his father in Ara District. PW-10 proceeded to arrest him but the prosecution has miserably failed to place on record the CDR, the mobile number of Ranjan Kumar, the place from where Ranjan Kumar was arrested and the mode of transportation by which Ranjan Kumar was brought to Banmankhi from Ara. A detailed cross-examination of PW-12 has been done on this point and PW-12 has stated that there is nothing in the case diary to show that on which date Ranjan Kumar was arrested. The case diary did not record that on whose order Ranjan Kumar was arrested. The diary did not contain any statement that any order was obtained from the Superintendent of Police, Ara and that Ranjan Kumar was produced before any Magistrate at Ara. The diary did not contain any statement as to how Ranjan Kumar was brought from Ara to Banmankhi and on which date I.O. had proceeded and how he proceeded for Ara are not disclosed in the case



diary. The statement of PW-12 in this regard saying that Ranjan was arrested by earlier I.O. is a false statement. Ranjan has been shown arrested on 01.07.2014 and produced in the court of learned Judicial Magistrate on 02.07.2014. Further, the confessional statement of Ranjan Kumar shown to have been recorded on 01.07.2014 at 10:30 am after PW-12 took charge of the investigation same day cannot be said to be voluntary with free will.

52. PW-12 has stated that he had recovered the *dabiya* used in the crime from a bush situated towards the southern side of the house of Ranjan Kumar but he had not recorded in the diary the boundary of the place. Further, the said *dabiya* did not contain any blood stain. The FSL report (Exhibit '7') did not find any blood stain on the seized *dabiya*, therefore the prosecution is not able to prove that the said *dabiya* was the weapon of crime. PW-12 has also stated that the *dabiya* was not sealed at the place of seizure. The said *dabiya* was not produced before the learned trial court in course of trial.

53. PW-12 has stated about the recovery of dead body from a latrine tank but he has not recorded in the diary the name of the person who had taken out the dead body from the tank. He has stated that he could not see any injury on the body of the



deceased. He had recorded the statement of PW-5 only on the day he had been produced in the court to make his statement under Section 164 CrPC.

54. At this stage, this Court would take note of the judgment of the Hon'ble Supreme Court in the case of **Ravishankar Tandon** (supra) in which a detailed discussion has taken place as to what would be required for the prosecution to establish for bringing the case under Section 27 of the Evidence Act. Paragraph '13' of the judgment reads as under:

“13. As such, for bringing the case under Section 27 of the Evidence Act, it will be necessary for the prosecution to establish that, based on the information given by the accused while in police custody, it had led to the discovery of the fact, which was distinctly within the knowledge of the maker of the said statement. It is only so much of the information as relates distinctly to the fact thereby discovered would be admissible. It has been held that the rationale behind this provision is that, if a fact is actually discovered in consequence of the information supplied, it affords some guarantee that the information is true and it can therefore be safely allowed to be admitted in evidence as an incriminating factor against the accused.”

55. In the case of **Ravishankar Tandon** (supra), the only evidence with regard to the recording of memorandum of accused persons under Section 27 of the Evidence Act was that of the then Investigating Officer (PW-16). Taking note of this,



the Hon'ble Supreme Court observed in paragraphs '25' and '26' of the judgment as under:

“25. It could thus be seen that the IO (PW-16) has failed to state as to what information was given by the accused persons which led to the discovery of the dead body. The evidence is also totally silent as to how the dead body was discovered and subsequently recovered. We find that therefore, the evidence of the IO (PW-16) would also not bring the case at hand under the purview of Section 27 of the Evidence Act. Reliance in this respect could be placed on the judgments of this Court in the cases of *Asar Mohammad and Others v. State of Uttar Pradesh*³ and *Boby v. State of Kerala*⁴.

26. We therefore find that the prosecution has utterly failed to prove any of the incriminating circumstances against the appellants herein. In any case, the chain of circumstances must be so complete that it leads to no other conclusion than the guilt of the accused persons, which is not so in the present case.”

56. In a recent judgment of the Hon'ble Supreme Court in the case of **Babu Sahebagouda Rudragoudar** (supra), which has been discussed today before passing the judgment, the Hon'ble Supreme Court has reviewed the previous case laws on the subject. It has been held that the statement of an accused recorded by a Police Officer under Section 27 of the Evidence Act is basically a memorandum of confession of the accused

3. (2019) 12 SCC 253

4. 2023 SCC OnLine SC 50



recorded by the Investigating Officer during interrogation, which has been taken down in writing. The confessional part of such statement is inadmissible and only the part which distinctly leads to discovery of facts is admissible in evidence. Reference in this regard has been made to the judgment of the Hon'ble Supreme Court in the case of **State of Uttar Pradesh vs. Deoman Upadhyaya** reported in **AIR 1960 SC 1125**. In paragraph '60' of the judgment, the Hon'ble Supreme Court has observed as under.

“60. In *Ibrahim v. Emperor*, 1914 AC 599 : (AIR 1914 PC 155), Lord Sumner gave the history of rules of common law relating to confessions, and pointed out that they were “as old as Lord Hale”. Lord Sumner observed that in *R. v. Thompson*, (1893) 2 QB 12, and earlier in *R. v. Warrickshall*, (1783) 1 Leach 263 : 168 ER 234, it was ruled (to quote from the second case):

“A confession forced from the mind by the flattery of hope, or by the torture of fear, comes in so questionable a shape, when it is to be considered as the evidence of guilt, that no credit ought to be given to it.”

Lord Sumner added:

“It is not that the law presumes such statements to be untrue but from the danger of receiving such evidence Judges have thought it better to reject it for the due administration of justice : *R. v. Baldry*, (1852) 5 Cox CC 523.



Accordingly when hope or fear were not in question, such statements were long regularly admitted as relevant, though with some reluctance, and subject to strong warnings as to their weight.”

Even so, in the judgment referred to by Lord Sumner, Parke, B. bewailed that the rule had been carried too far out of “too much tenderness towards prisoners in this matter”, and observed:

“I confess that I cannot look at the decisions without some shame, when I consider what objections have prevailed to prevent the reception of confessions in evidence ... Justice and common sense have too frequently been sacrificed at the shrine of mercy.”

Whatever the views of Parke B., Lord Sumner points out that “when Judges excluded such evidence, it was rather explained by their observations on the duties of policemen than justified by their reliance on rules of law.”

57. The Hon’ble Supreme Court has quoted paragraphs ‘82’, ‘83’ and ‘84’ of it’s judgment in the case of **Subramanya vs. State of Karnataka** reported in **AIR 2022 SC 5110** which are being reproduced here under for a reference:-

“82. We may refer to and rely upon a Constitution Bench decision of this Court in the case of State of Uttar Pradesh vs. Deoman Upadhyaya reported in AIR 1960 SC 1125, wherein, Paragraph 71 explains the position of law as regards the Section 27 of the Evidence Act:

“71. The law has thus made a classification of accused persons into two: (1) those who have



the danger brought home to them by detention on a charge; and (2) those who are yet free. In the former category are also those persons who surrender to the custody by words or action. The protection given to these two classes is different. In the case of persons belonging to the first category the law has ruled that their statements are not admissible, and in the case of the second category, only that portion, of the statement is admissible as is guaranteed by the discovery of a relevant fact unknown before the statement to the investigating authority. That statement may even be confessional in nature, as when the person in custody says: "I pushed him down such and such mineshaft", and the body of the victim is found as a result, and it can be proved that his death was due to injuries received by a fall down the mineshaft."

[Emphasis supplied]

83. The scope and ambit of Section 27 of the Evidence Act were illuminatingly stated in Pulukuri Kottaya and Others v. Emperor, AIR 1947 PC 67, which have become locus classicus, in the following words:

"10.It is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce



a knife concealed in the roof of my house” does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added “with which I stabbed A” these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.”

84. What emerges from the evidence of the investigating officer is that the accused appellant stated before him while he was in custody, “I may get discovered the murder weapon used in the incident”. This statement does not indicate or suggest that the accused appellant indicated anything about his involvement in the concealment of the weapon. It is a vague statement. Mere discovery cannot be interpreted as sufficient to infer authorship of concealment by the person who discovered the weapon. He could have derived knowledge of the existence of that weapon at the place through some other source also. He might have even seen somebody concealing the weapon, and, therefore, it cannot be presumed or inferred that because a person discovered the weapon, he was the person who had concealed it, least it can be presumed that he used it. Therefore, even if discovery by the appellant is accepted, what emerges from the substantive evidence as regards the discovery of weapon is that the appellant disclosed that he would show the weapon used in the commission of offence.”

58. Since it is the submission of learned Additional

P.P. for the State that the confessional statement in this case has



been made on his own volition by the appellant Ranjan Kumar, this Court would examine as to whether the confessional statement has been recorded by the Investigating Officer (PW-12) in presence of two independent witnesses at the Police Station. The confessional statement (Exhibit '4') nowhere shows that the PW-12 had called for two independent persons in the Police Station before recording of confessional statement of Ranjan Kumar. The memorandum of statement (Exhibit '4') has been countersigned by PW-12 alone. Further, this Court finds that while deposing in the trial court, PW12 has not stated that he had recorded Exhibit '4' in presence of two independent witnesses at the Police Station. This Court also finds that in his evidence, PW-12 has not narrated the interaction between him and Ranjan Kumar.

59. In the case of **Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh** reported in **AIR 2022 SC 5273**, the Hon'ble Apex Court has held that mere exhibiting of memorandum prepared by the Investigating Officer during investigation cannot tantamount to proof of its contents. It has been observed that "while testifying on oath, the Investigating Officer would be required to narrate the sequence of events which transpired leading to the recording of the disclosure



statement.

60. In the series of infirmities which have been found in the prosecution case so far, there is one more fact which appears on perusal of the ordersheets of the learned Judicial Magistrate, Purnea. On 02.07.2014, the I.O. filed an application in the court with a request to send the dead body of Brajesh Kumar to Jawaharlal Medical College, Bhagalpur for postmortem. The court accordingly ordered. On the said date the '*dabiya*' which is claimed to have been recovered or seized on 01.07.2014 on the basis of disclosure of Ranjan Kumar was not produced in court. The order dated 11.07.2014 shows that the I.O. filed an application with the seized article '*dabiya*' and requested the court to grant permission to send the same to the Forensic Science Laboratory, Patna for examination. Thus, on 11.07.2014, the *dabiya* was produced in court and the same was ordered to be sent to the Forensic Science Laboratory, Patna. This conduct of the I.O. (PW-12) strengthens the doubt expressed by the defence that the I.O. has concocted the prosecution case only after recovery of the dead body. In his statement in course of trial, PW-12 has stated that he sent the seized *dabiya* to Forensic Science Laboratory, Patna on 11.07.2014.



61. This Court has noticed that Manoj Kumar Yadav (PW-4) has stated in his examination-in-chief that on 1st July, 2014 he came to know that Brajesh has been murdered and Ranjan Paswan has been arrested. Then he went to Banmankhi Police Station from where Police took him to the house of Ranjan and recovered the dead body. On the other hand, the memo of arrest of Ranjan Kumar shows that Manoj Kumar Yadav (PW-4) is a witness to the memo of arrest of Ranjan Kumar, therefore, the statement of PW-4 in course of trial that he reached the Police Station after knowing that Ranjan had been arrested is not a true statement. This further creates doubt when the I.O. (PW-12), who has prepared the arrest memo, states in his evidence that Ranjan Kumar had been arrested earlier by the then I.O. It is obvious that PW-12 wanted to suppress that he had made arrest of Ranjan Kumar on 01.07.2014 after recovery of dead body on some information. It is obvious from the materials on the record that PW-12 had not stated about recovery of *dabiya* in his petition filed before the learned Magistrate at Purnea on 02.07.2014 and only by backdating, the seizure list of *dabiya* (Exhibit 5) was prepared showing the same to have been seized on 01.07.2014. In the left side margin of the page of Exhibit '5' it may be clearly seen that



it was filed before the learned Judicial Magistrate only on 11.07.2014. This is corroborated from the order dated 11.07.2014 passed by the learned Magistrate.

62. This Court is, therefore, persuaded to hold that PW-12 went to the extent of making intentionally false statement, therefore in view of the judgment in the case of **V.C. Shukla vs. State (Delhi Admn.)** reported in **(1980) 2 SCC 665** (paragraph 24), the statement of I.O. (PW-12) claiming discovery of *dabiya* and the dead body of Brajesh Kumar on the basis of disclosure made in the confessional statement (Exhibit '4') of Ranjan Kumar cannot be relied upon for purpose of conviction.

63. This Court has taken note of the judgment of the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda** (supra) and **Dilavar Hussain** (supra) hereinabove. In the light of the ratio of those judgments when the evidences available on the record are examined, we find that the prosecution has miserably failed to establish the criminological chain and this Court would record that the guilt of the appellants could not be proved beyond all reasonable doubts.

64. In result, judgment of the learned trial court is set aside. The appellants are acquitted of the charges under Sections



302/34 and 201/34 IPC giving them benefit of doubt. They are in custody hence they shall be released forthwith, if not wanted in any other case.

(Rajeev Ranjan Prasad, J)

(Jitendra Kumar, J)

Rishi/-

AFR/NAFR	
CAV DATE	
Uploading Date	25.04.2024
Transmission Date	25.04.2024

