

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.727 of 2023

Arising Out of PS. Case No.-116 Year-2020 Thana- KALUAHI District- Madhubani

RAM NATH SAHNI S/O KISHORI SAHNI R/O VILLAGE- MALMAL, PS.
KALUAHI, DIST. MADHUBANI

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Dhananjay Nath Tiwary, Advocate Mr. Bhavesh Kumar Sah, Advocate Mr. Priyesh Kumar, Advocate
For the State	:	Mr. Ajay Mishra, APP
For the Informant	:	Mr. Bimal Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT

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

Date : 01-03-2024

The present appeal has been filed under Section-374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C.') challenging the judgment of conviction dated 07.06.2023 and order of sentence dated 14.06.2023 passed by learned Additional Sessions Judge-VI-Cum-Special Judge, POCSO, Madhubani, in connection with G.R. POCSO Case No. 43 of 2020 (arising out of Kaluahi P.S. Case No. 116 of 2020) by which the appellant/convict has been sentenced to undergo rigorous imprisonment for life and a fine of Rs. 20, 000/- (Rupees twenty thousand only) and in default of payment of fine, further three



month Simple Imprisonment for the offence u/S-302 of the I.P.C. Further the convict has been sentenced to undergo rigorous imprisonment for life, which shall mean imprisonment for the remainder of natural life of the convict and fine of Rs. 20,000/- (Rupees twenty thousand only) and in default of payment of fine, further three month Simple Imprisonment for the offence u/S- 6 of the POCSO Act (read with Section 376(A) and 376(D) of the I.P.C. as per provision of Section-42 of POCSO Act). Both the sentences have been directed to run concurrently.

2. Heard Mr. Dhananjay Kumar Tiwary assisted by Mr. Bhawesh Kumar Sah and Priyesh Kumar, learned Advocates for the appellant, Mr. Ajay Mishra, learned A.P.P. for the respondent-State and Mr. Bimal Kumar, learned advocate appearing for the informant.

3. The brief facts leading to the filing of the present appeal are as under:

“On the night of 17.08.2020, around 09:00-09:30 p.m., the daughter of the informant, namely Soni Kumari, went outside to ease out. When she did not return for a considerable period, the family members started to search her whereabouts. Despite hectic search, she could not be traced out. In the morning, they got information from the local people that a dead



body is lying in the house of Kishori Sahani of village-Malmal, who is a handicapped person. The informant went to the police station and informed the police about the same. When police party reached, he along with the police party went to the house of Kishori Sahani. As soon as he saw the dead body, he identified it to be the dead body of his daughter Soni Kumari. In the meantime, so many villagers had assembled there. On carefully watching the articles around the place and from the discussion going among the local people, he came to know that Ram Nath Sahani (appellant), Vijay Kumar Sahani, Prasadi Sahni, Shivji Sahni, wife of Shivji Sahni and wife of Prasadi Sahani had together kidnapped his daughter, killed her and had concealed the deadbody in the house. He has apprehension that the accused have together committed gang rape on his daughter.”

4. After filing of the F.I.R., the investigating agency carried out the investigation and, during the course of investigation, the Investigating Officer recorded the statement of the witnesses and collected the relevant documents and thereafter filed the charge-sheet against the accused. As the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions.

5. Before the Trial Court, prosecution examined 9



prosecution witnesses and defence has also examined two defence witnesses.

6. Learned advocate appearing for the appellant, at the outset, submitted that the present is a case of circumstantial evidence and there is no eye-witness to the occurrence in question. It is submitted that the prosecution has examined only interested witnesses and no independent witness has been examined. It is thereafter contended that there are major contradictions in the depositions of the prosecution-witnesses and, though the prosecution has proved the death of the deceased as homicidal death, the prosecution has failed to prove beyond reasonable doubt that the appellant herein has committed the alleged offences. It is also submitted that the prosecution has failed to complete the chain of circumstances from which it can be established and concluded that only the present appellant and none else has committed the alleged offences. In support of his submissions, learned counsel for the appellant has relied upon the decisions rendered by Hon'ble Supreme Court in the cases of **Ravi Sharma Vs. State (Government of NCT of Delhi) & Anr**, reported in (2022) 8 SCC 536 , **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 **Sharad Birdhichand Sarda Vs. State of Maharashtra**, reported in **(1984) 4 SCC 116**.

7. Learned counsel lastly urged that the present appeal be allowed and thereby the impugned judgment of conviction and order or sentence passed by the learned Trial Court be quashed and set aside.

8. On the other hand, learned A.P.P., as well as learned counsel appearing on behalf of the informant, have vehemently opposed the present appeal. It has been mainly contended that, in the present case, some of the prosecution-witnesses have deposed before the Court that they have seen deceased Soni Kumari going towards the house of Vijay Kumar Sahani and three boys, including the present appellant, were going after her. Thus, in the present case, the prosecution has applied the theory of last seen together. It is further submitted that the conduct of the appellant and other accused is also required to be considered by this Court. Immediately after the occurrence, all the accused persons, including the appellant, were absconding. It is further submitted that the prosecution has proved the homicidal death of the deceased Soni Kumari and from the medical evidence, it is revealed that the rape was



committed on the deceased and thereafter she was killed. It has also been submitted that the dead body of the deceased was also recovered from the house of the present appellant. Thus, by leading the aforesaid evidence, the prosecution has established complete chain of circumstances from which it can be said that appellant has committed the alleged offences. Thus, when the prosecution has proved the case against the appellant beyond reasonable doubt, no error has been committed by the learned Trial Court while passing the impugned judgment of conviction and order of sentence. He has, therefore, submitted that the present appeal be dismissed.

9. We have considered the submissions canvassed by the learned counsel for the parties. We have also perused the evidence of prosecution witnesses and defence witnesses and also perused the documentary evidence which is exhibited.

10. At this stage, we would like to appreciate the entire evidence led by the prosecution as well as the defence before the Trial Court.

11. P.W. 1 is Jogi Yadav @ Upendra Yadav. He has stated in his examination-in-chief that he is a neighbour of Mohan Yadav (informant). He has further stated that around 09:30 p.m., in the night, he had seen deceased Soni Kumari



going on the path in front of his house. After some time, Soni Kumari's parents came to search for her. However, whereabouts of Soni Kumari could not be traced in the night. Thereafter, in the morning, it was revealed that rape was committed on Soni Kumari and thereafter she has been killed and her dead body was found at the house of Kishori Sahani. Later, it came to light that Shankar Sahani, Vijay Kumar Sahani and Ram Nath Sahani(appellant) together have committed rape on her and thereafter she has been killed. The said witness identified the accused who was present in Court.

11.1 During cross-examination, the said witness has stated that the informant Mohan Yadav is his nephew. He has further stated that Kishori Sahani is a handicapped person. He has also admitted that he was not present when Soni Kumari was searched by her parents. He has also stated that he was sitting near his door and at that time he had seen Soni Kumari going on the path. Further, at 09 to 10 O'Clock in the morning, he came to know that the dead body of Soni Kumari has been found in the house of Kishori Sahani. He has further stated that Soni Kumari was studying in school. However, he is not aware in which class she was studying.

11.2. The said witness has further specifically



admitted in paragraph-13 of the cross-examination that when he saw Soni Kumari, she was going alone. He has further stated that Mohan Yadav is his cognate. He has further stated that the houses of Prasadi Sahani and Vijay Sahani are within one kilometer to the east of his house. The police recorded his statement 5 to 7 days after the incident.

12. P.W. 2, Ramkali Devi has stated in her examination-in-chief that she saw daughter of Mohan Yadav going from North to South. At that time, it was around 09:00 to 09:30 at night. After some time, three boys, Vijay Sahani, Shankar Sahani and Ram Nath Sahani were also following the same route. After that she went to sleep. Next day, when she woke up, she came to know that the accused persons have killed Soni Kumari and her dead body was concealed in the cattle-house of Mohan Yadav.

12.1. During cross-examination, the said witness has stated that Mohan Yadav is her cognate. She has further stated that her statement was recorded by the police three days after the incident. She further states that Kishori Sahani lives on begging and his wife is dead. The said witness has further specifically admitted in paragraph-11 of the cross-examination that she had seen the girl going alone and 5 to 10 minutes after the girl left,



the accused persons were seen going after her.

13. P.W. 3 is Nand Kishor Shyam. He has stated in his examination-in-chief that deceased Soni Kumari is his niece by cognate relation. The occurrence took place on 17.08.2020. At that time, he was returning home from Jaynagar. When he reached near the house, he saw the deceased Soni Kumari walking ahead on the road. It was about 9:15 in the night. After some time, following her Vijay Sahani, Ram Nath Sahani and Shankar Sahani were going on the same route. At 10:30 p.m., Mohan Yadav, father of deceased, came to his house and he told that his daughter Soni Kumari is missing. At that time, the said witness told the informant that he had seen her going towards Chowk. Thereafter, he went to search for the deceased Soni Kumari. However, she could not be found out. It is further stated that when he was going back from walk at 05:30 a.m. in the morning, he saw Shankar Sahani, Ram Nath Sahani and Vijay Sahani running away. Thereafter, at 08:30 a.m. in the morning, Mohan Yadav and others told him that the dead body of Soni Kumari was lying in the Mallah Toli. At around 10:30 a.m., Yogendra Yadav called him and informed that the dead body found in the Mallah Toli was that of a girl. Thereafter, he advised father of Soni Kumari to inform the police station about the



same. Thereafter, police came to the place of occurrence. He also went to Kishori Sahani's house along with police personnel where the dead body of Soni Kumari was found. The house was chained and locked from outside which was opened by the police. A *Khanti* (iron rod with sharp edge at one end) and mobile phone were also recovered from near the dead body. He identified the dead body. The mark of strangulation was found on the neck of the dead body. At that time, Kishori Sahani was also shouting after taking liquor. All the accused were absconding. Therefore, he raised suspicion that all these accused might have killed the daughter of Mohan Yadav. He further states that all the three boys/accused used to sleep at Kishori Sahani's house as there was no female member residing at his house. Later, he came to know that his niece, deceased Soni Kumari, used to talk to Vijay Sahani on telephone.

13.1. During cross-examination, the said witness has stated that there are 5-6 houses between his house and the house of Mohan Yadav. The police recorded his statement for the first time one day after the incident. He has further stated that the dead body was recovered from the house of Kishori Sahani. He has further specifically stated that Soni Kumari was a student. She had passed 8th from the Middle School of her village and had not



got herself enrolled in 9th standard. He had gone to Kishori Sahani's house with the police.

14. P.W.4 Rekha Devi is the mother of the deceased. She has stated in examination-in-chief that at around 9:00 p.m. in the night, her daughter Soni Kumari left the house saying that she is going to obey the nature's call. However, her daughter did not return after defecating. So, she informed her in-laws and the husband about the same and, thereafter, they started searching for Soni Kumari. They searched throughout the night, but she could not be traced out. Next morning, dead body of her daughter was found in the house of Kishori Sahani. She further states that Nand Kishor Shyam told her that the three boys were following her daughter in the night of the incident.

14.1. During cross-examination, she states that Nand Kishor Shyam is her brother-in-law who is standing at the door of the Court. Nand Kishor Shyam's testimony has already been recorded and today she came to the Court with Nand Kishor Shyam only.

15. P.W.5 Mohan Yadav is the father of the deceased and informant of the case. This witness has stated that on 17.08.2020, he came to the house after planting paddy at around 09:30 p.m. He and his wife went to sleep and deceased



Soni Kumari left the house telling his wife about going for defecating. After some time, when his wife woke up, she did not find Soni Kumari. She went out and searched for her and, thereafter, she informed the said witness. Thereafter they together started searching and inquired from his agnates/cognates. His cognate Nand Kishor Shyam told him that he had seen Soni Kumari going towards the Chowk when he was coming back from Jaynagar at 09:30 p.m. At that time, Ram Nath Sahani, Vijay Sahani and Shankar Sahani were seen going at some distance behind her. Next day morning, it was learnt from the villagers that dead body of a girl is lying in the house of Kishori Sahani. They informed the police and police arrived at the place of Kishori Sahani and went inside the house. He has further stated that the accused persons wanted to create confrontation between Hindu and Muslim community by throwing the dead body in the Muslim locality. However, when they could not succeed in their ill design as it was early in the morning, the accused persons dumped the dead body in the house of Kishori Sahani and put a chain on the door and locked the same from outside. He further states that the written application was given by him which was written by Pawan Kishore, as dictated by him.

15.1. During cross-examination, P.W. 5 has stated



that father of Ram Nath Sahani, i.e. Kishori Sahani, is a handicapped person and he earns his livelihood by selling liquor. He walks with the help of a stick. He further states that Pawan Kishore is his cognate and said Pawan Kishore is the younger brother of Nand Kishor Shyam. He further states that he had not given any mobile phone which was in his name or his wife's name to his daughter. He also does not know whether the SIM of the mobile phone which was found near the dead body was in the name of the husband of Akula Devi or not. He also does not know Dinesh Prasad, Abshek Kumar Yadav and Rakesh Kumar of Gobrahi village.

16. P.W. 6 Dr. Kunal Kishor Gautam, P.W.7 Dr. Khushboo Kumari and P.W.9 Dr. Mukesh Kumar are the members of the Medical Board who have conducted the *post mortem* of the dead body of the deceased.

17. The Medical Board has made following observations:-

"2. Anti-Mortem Findings:-

- I. Blackening around neck from right ear to left ear anteriorly in semicircular fashion above and through upper margin of thyroid cartilage.
- II. Ecchymosis present beneath the ligature mark.
- III. Stretching and Lengthening of neck muscles are absent.
- IV. Right Conjunctival hemorrhage present.



3. On Vaginal Examination :-

1. Labia majora, Labia minora and mons pubis are torned with internal private part injury.

II. Discharge present on upper part of mons pubis:

III. Blood tinged secretions present in Vaginal cavity for which sample for vaginal swab test sent for pathological examinations.

4. Pathological Examination of Vaginal Swab was done by Dr. Binod Kumar (M.D.) on 19-08-02020 and shows the following Microscopic findings-

Spermatozoa Present (0-3/HPF)

WBC-1-2 HPF

RBC-3-10 HPF

EPI Cells-3-5 HPF

Others - Nothings

5. On Dissection :-

1. Trachea-laryngeal secretion mixed with saliva.

II. Thyroid cartilage dislocated and fracture.

III. Lung-Congested

IV. Heart-Left chamber filled and Right chamber empty.

V. All internal viscera such as liver, spleen and both kidneys are pale.

VI. Stomach-Containing digested food material.

VII. Intestine-Containing gas and fecal matter.

VIII. Urinary Bladder - Empty.

IX. Uterus-Non gravid

X. Brain and meninges-Pale.

Time since death-Within 24 hrs.

6. Death in our opinion due to Asphyxia caused by strangulation along with sexual assault as Rape is Confirmed by above mentioned injuries and Pathological findings.



7. This P.M report of the medical board is dictated by board. I alongwith Dr Kunal Kishor Gautam and Dr. Khushboo Kumari Signed, which I identify.”

18. P.W. 8 Raj Kumar Mandal is the Investigating Officer who has stated in his examination-in-chief that he was posted as S.H.O. at Kaluahi police station on 18.08.2020. He got the information that dead body of a girl was lying in Malmal Malahtoli. After getting the said information, he instructed the police party to reach the place of occurrence. Thereafter, he along with S.I. and armed police force and lady constable reached to the place of occurrence for verification of the information and necessary action. When he reached the place of occurrence, he got the information that dead body of a girl was lying in the house of disabled Kishori Sahani. Dead body of deceased Soni Kumari was found in the west side house of Kishori Sahani. After that inquest report was prepared and the dead body of the deceased was sent for *post mortem*. A Nokia mobile phone and an iron rod were found near the deceased girl at the place of occurrence. A seizure-list was, therefore, prepared. Thereafter, the statement of the informant was taken and the first information report was registered against the accused persons.

19. Defence has also examined two witnesses as D.W.1 Mahavir Sahani and D.W. 2 Sushila Devi.



20. D.W. 1, Mahavir Sahani has only stated that he is acquainted with accused Ram Nath Sahani. He is brother-in-law (Sala) of his son. Ram Nath Sahni's mother had died 5-6 years ago. After that he lives at his house. About 2 to 2.5 years ago, the then Headman of the village Radhe Yadav had taken Ram Nath Sahni saying that an F.I.R. has been lodged against him. He will return after interrogation. At that time, his age was 12 years.

21. D.W. 2 Sushila Devi is the aunt of accused Ram Nath Sahani. She has stated that her house is situated by the side of the house of Ram Nath Sahani. His mother had deserted the house when he was 6-7 years old. His father is handicapped. After the marriage of his sister, his sister took him to her in-laws' house. Radhe Mukhia had taken Ram Nath Sahani from the house of his sister on the pretext that the police is searching him. At that time, the age of Ram Nath Sahani was 14-15 years. Ram Nath Sahni was not present in the village on the date of occurrence.

22. We have considered the submissions canvassed by the learned counsels for the parties.

23. We have re-appreciated the entire evidence led by the prosecution as well as by the defence. We have also perused the material placed on record. It is not in dispute that the



present is not a case of direct evidence, but the case of the prosecution rests on circumstantial evidence. From the aforesaid depositions of the prosecution-witnesses, it can be said that, as per P.W. 1 Jogi Yadav, who is a neighbour and uncle of the deceased Soni Kumari, deceased was going alone whereas P.W. 2 Ramkali Devi, who is also a cognate of the informant, has stated that at about 09:00 to 09:30 p.m., deceased Soni Kumari was going on the path near her house and, after some time, three boys were following her. During cross-examination, said witness has specifically admitted that the girl was going alone and after 5-10 minutes after the same, the accused were also going in the same direction. Statement of this witness was recorded three days after the incident. Similarly, P.W. 3 Nand Kishor Shyam, who is also a neighbour and uncle of the deceased, states that at 09:15 p.m. he had seen the deceased going towards the Chowk and after some time accused were also following her. The said witness specifically stated that at about 10:30 p.m., informant came to his house and he was in search of his daughter. They tried to search Soni Kumari, however, she was not found out.

23.1. At this stage, it is pertinent to note that Mohan Yadav, who is the father of the deceased and informant, has not stated in the written complaint/information given to the police



that Nand Kishor Shyam saw his daughter going towards the Chowk at about 09:15 p.m. and that three boys were following her. For the first time, the informant has stated before the Court about the same in his examination-in-chief. Even otherwise, P.W.1, 2 and 3 have not stated that deceased was lastly seen in company of the accused during night hours. P.W. 1 has specifically stated that Soni Kumari had gone alone. P.W. 2 has stated that after the deceased had gone, 5-10 minutes thereafter, accused were going towards the Chowk. Even P.W. 3 has also stated that deceased was going at about 09:15 p.m. and after some time accused were following the same path. Thus, we are of the view that the theory of last seen together put forward by the prosecution is not correct because none of the prosecution-witnesses has stated that the deceased was lastly seen in company of the accused, including the present appellant.

23.2 It further transpires from the record that one Nokia mobile phone was found near the dead body of the deceased at the house of Kishori Sahani. The Investigating Officer has inquired about the owner of the said mobile phone and it was found that the SIM card was in the name of Anula Devi. It is pertinent to note that Anula Devi was neither shown as an accused nor she was cited as a witness. It further transpires



that the father of the deceased girl, i.e. the informant, P.W. 5, handed over one red colour mobile phone which was found beneath the pillow to the Investigating Officer. The SIM card of the said mobile phone was in the name of Vijay Sahani and from the C.D.R. received by the Investigating Officer, it was revealed that deceased was in contact with accused Vijay Sahani and she had contacted on the night of the occurrence with the said accused. It further reveals that there was a conversation between the accused Vijay Sahani and the deceased a day before the occurrence and deceased also talked to accused Vijay Sahani many times. The Investigating Officer has specifically stated that during the course of investigation from some villagers, it came to light that the matter is of love affair. The Investigating Officer has further stated that the red colour mobile phone which was presented by the informant is not available with him at the time of deposition. However, the number of the said mobile phone is 9523346230. The mobile phone which was being used by Vijay Sahani was having SIM No. 9741784051. However, it was in the name of father of Vijay Sahani. It further reveals that Vijay Sahani gave red colour mobile phone having SIM No. 9523346230 to the deceased which was found beneath her pillow. It further transpires from the deposition of Investigating Officer



that from the C.D.R. it was found from the call record of mobile phone recovered from the deceased that there had been conversation between the victim and accused Vijay Sahani on mobile No. 8409670047 having its location in Bangalore. Holder of the said mobile phone is Rakesh Kumar. He had interrogated Rakesh Kumar. However, said Rakesh Kumar is neither an accused nor a witness. Similarly, Investigating Officer has specifically stated that there has been a conversation right at the night of the occurrence from mobile No. 7761999400 on the mobile phone which was recovered from the deceased. Holder of the said mobile phone is Sangeeta Kumari, however, in the True Caller I.D. it is mentioned as Abhishek. Investigating Officer has specifically stated that Abhishek or Sangeeta Kumari is neither an accused nor a witness. Thus, from the aforesaid evidence led by the prosecution, it can be said that the present appellant was not in contact with deceased Soni Kumari and though the deceased Soni Kumari had made conversation with the mobile phone which was found near her dead body with Abhishek or Sangeeta Kumari, they are not shown as the witness or the accused.

23.3 It is further revealed from the record that the present appellant had examined two defence witnesses. From the deposition of those witnesses, it reveals that the appellant was



residing at his sister's in-laws' house and not that of Kishori Sahani. At this stage, it is pertinent to note that Kishori Sahani, from whose house dead body of Soni Kumari was found, is also not shown as an accused or a witness by the prosecution. The appellant has, by examining the two defence witnesses, discharged the burden of proving that he was not in possession of the house from which the dead body was found and, in fact, his father Kishori Sahani was the owner and in possession of the house in question.

23.4 At this stage, it is also important to note that P.W. 5, Mohan Yadav, father of the deceased and informant of the present case, has specifically deposed before the Court that the accused persons wanted to create confrontation between Hindu and Muslim community by throwing the dead body in the Muslim locality. However, when they could not succeed in their ill design as it was early in the morning, the accused persons put the dead body in the house of Kishori Sahani and chained the same and locked it from outside.

24. Thus, from the deposition of the informant itself, it can be said that the rape was not committed in the house of Kishori Sahani nor the deceased was killed in the said house. However, after committing rape and killing the deceased, her



dead body was put in the house of Kishori Sahani. Thus, merely because the dead body was found from the house of Kishori Sahani, who is the father of the appellant/accused, it cannot be said that the appellant, in any way, is connected with the occurrence in question.

25. Thus, from the aforesaid evidence led by the prosecution, we are of the view that the prosecution has failed to complete the chain of circumstances from which it can be said that the present appellant has committed the alleged offences. At this stage, we may also observe that the prosecution has failed to prove the age of the victim by producing any documentary evidence before the Trial Court. It is the specific case of Nand Kishor Shyam that deceased had studied upto 8th standard in the village middle school. However, the prosecution has failed to produce any school register or the birth certificate of the deceased from which it can be established that she was minor at the time of occurrence.

26. On the point of motive assuming importance in a case of circumstantial evidence, the Hon'ble Supreme Court in the case of **Ravi Sharma Vs. State (Government of NCT of Delhi) & Anr**, reported in (2022) 8 SCC 536, has observed in Para-14 as under:



14. When we deal with a case of circumstantial evidence, as aforesaid, motive assumes significance. Though, the motive may pale into insignificance in a case involving eyewitnesses, it may not be so when an accused is implicated based upon the circumstantial evidence. This position of law has been dealt with by this Court in *Tarseem Kumar v. Delhi Admn.* [*Tarseem Kumar v. Delhi Admn.*, 1994 Supp (3) SCC 367 : 1994 SCC (Cri) 1735] in the following terms : (SCC p. 371, para 8)

“8. Normally, there is a motive behind every criminal act and that is why investigating agency as well as the court while examining the complicity of an accused try to ascertain as to what was the motive on the part of the accused to commit the crime in question. It has been repeatedly pointed out by this Court that where the case of the prosecution has been proved beyond all reasonable doubts on basis of the materials produced before the court, the motive loses its importance. But in a case which is based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. Of course, if each of the circumstances proved on behalf of the prosecution is accepted by the court for purpose of recording a finding that it was the accused who committed the crime in question, even in absence of proof of a motive for commission of such a crime, the accused can be convicted. But the investigating agency as well as the court should ascertain as far as possible as to what was the immediate impelling motive on the part of the accused which led him to commit the crime in question.”

27. At this stage, we would like to refer the decision rendered by the Hon’ble Supreme Court in the case of **Anjan Kumar Sarma & Ors. Vs. State of Assam**, reported in (2017)



14 SCC 359, wherein the Hon'ble Supreme Court has observed in paragraph Nos.13, 16 and 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.”

28. In the case of **Ravi & Anr. Vs. State of Karnataka**, reported in **(2018) 16 SCC 102**, the Hon’ble Supreme Court has observed in Paragraph Nos. 3 and 5 as under:

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

5. “Last seen together” is certainly a strong piece of circumstantial evidence against an accused. However, as it has been held in numerous pronouncements of this Court, the time-lag between the occurrence of the death and when the accused was last seen in the company of the deceased has to be reasonably close to permit an inference of guilt to be drawn. When the time-lag is considerably large, as in the present case, it would be safer for the court to look for corroboration. In the present case, no corroboration is forthcoming. In the absence of any other circumstances which could connect the appellant-accused with the crime alleged except as indicated above and in the absence of any corroboration of the circumstance of “last seen together” we



are of the view that a reasonable doubt can be entertained with regard to the involvement of the appellant-accused in the crime alleged against them. The burden under Section 106 of the Evidence Act, 1872 would not shift in the aforesaid fact situation, a position which has been dealt with by this Court in *Malleshappa v. State of Karnataka* [*Malleshappa v. State of Karnataka*, (2007) 13 SCC 399 : (2009) 2 SCC (Cri) 394] wherein the earlier view of this Court in *Mohibur Rahman v. State of Assam* [*Mohibur Rahman v. State of Assam*, (2002) 6 SCC 715 : 2002 SCC (Cri) 1496] has been extracted. The said view in *Mohibur Rahman* [*Mohibur Rahman v. State of Assam*, (2002) 6 SCC 715 : 2002 SCC (Cri) 1496] may be profitably extracted below: (*Malleshappa case* [*Malleshappa v. State of Karnataka*, (2007) 13 SCC 399 : (2009) 2 SCC (Cri) 394] , SCC p. 408, para 23)

“23. ... ‘10. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. There may be cases where, on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide. In the present case there is no such proximity of time and place. As already noted the dead body has been recovered about 14 days after the date on which the deceased was last seen in the company of the accused. The distance between the two places is about 30-40 km. The event of the two accused persons having departed with the deceased and thus last seen together (by Lilima Rajbongshi, PW 6) does not bear such close proximity with the death of the victim by reference to time or place. According to Dr Ratan Ch. Das the



death occurred 5 to 10 days before 9-2-1991. The medical evidence does not establish, and there is no other evidence available to hold, that the deceased had died on 24-1-1991 or soon thereafter. So far as the accused Mohibur Rahman is concerned this is the singular piece of circumstantial evidence available against him. We have already discussed the evidence as to recovery and held that he cannot be connected with any recovery. Merely because he was last seen with the deceased a few unascertainable number of days before his death, he cannot be held liable for the offence of having caused the death of the deceased. So far as the offence under Section 201 IPC is concerned there is no evidence worth the name available against him. He is entitled to an acquittal.’ (*Mohibur Rahman* [*Mohibur Rahman v. State of Assam*, (2002) 6 SCC 715 : 2002 SCC (Cri) 1496] , SCC pp. 720-21, para 10)”

29. In the case of **Reena Hazarika Vs. State of Assam**, reported in **(2019) 3 SCC 289**, the Hon’ble Supreme Court has observed in Paragraph No. 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.”

30. In the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra**, reported in **(1984) 4 SCC 116**, the Hon’ble Supreme Court has observed in paragraph 150 to 160 as under:

“150. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a court.

151. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone.



The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh 1952 SCR 1091 : (AIR 1952 SC 343) . This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail v. State of Uttar Pradesh, (1969) 3 SCC 198 and Ramgopal v. State of Maharashtra, AIR 1972 SC 656. It may be useful to extract what Mahajan, J. has laid down in Hanumant's case (at pp. 345-46 of AIR) (supra):

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

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

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

It may be noted here that this Court indicated that the circumstances concerned ‘must or should’ and not ‘may be’ established. There is not only a grammatical but a legal distinction between ‘may be proved’ and ‘must be or should be proved’ as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : (AIR 1973 SC 2622) where the observations were made:



“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

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

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

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

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

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

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

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

155. Lord Goddard slightly modified the



expression 'morally certain' by 'such circumstances as render the commission of the crime certain'.

156. This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. Horry's case (supra) was approved by this Court in Anant Chintaman Lagu v. State of Bombay, (1960) 2 SCR 460 : (AIR 1960 SC 500). Lagu's case as also the principles enunciated by this Court in Hanumant's case (supra) have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases — Tufail case (1969) 3 SCC 198 (supra), Ramgopal's case (AIR 1972 SC 656) (supra), Chandrakant Nyalchand Seth v. State of Bombay (Criminal Appeal No 120 of 1957 decided on 19-2-1958), Dharambir Singh v. State of Punjab (Criminal Appeal No 98 of 1958 decided on 4-11-1958). There are a number of other cases where although Hanumant's case has not been expressly noticed but the same principles have been expounded and reiterated, as in Naseem Ahmed v. Delhi Administration, (1974) 2 SCR 694 (696) : (AIR 1974 SC 691 at p. 693), Mohan Lal Pangasa v. State of U.P., AIR 1974 SC 1144 (1146), Shankarlal Gyarasilal Dixit v. State of Maharashtra, (1981) 2 SCR 384 (390) : (AIR 1981 SC 765 at p. 767) and M.G. Agarwal v. State of Maharashtra, (1963) 2 SCR 405 (419) : (AIR 1963 SC 200 at p. 206) a five-Judge Bench decision.

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



with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus:

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

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

- (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved,
- (2) the said circumstance point to the guilt of the accused with reasonable definiteness, and
- (3) the circumstance is in proximity to the time and situation.

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

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

160. This Court, therefore, has in no way



departed from the five conditions laid down in Hanumant's case (AIR 1952 SC 343) (supra). Unfortunately, however, the high Court also seems to have misconstrued this decision and used the so-called false defence put up by the appellant as one of the additional circumstances connected with the chain. There is a vital difference between an incomplete chain of circumstances and a circumstance which, after the chain is complete, is added to it merely to reinforce the conclusion of the Court. When the prosecution is unable to prove any of the essential principles laid down in Hanumant's case, the High Court cannot supply the weakness or the lacuna by taking aid of or recourse to a false defence or a false plea. We are, therefore, unable to accept the argument of the Additional Solicitor-General."

31. Keeping in view the aforesaid decisions rendered by Hon'ble Supreme Court, if the evidence of the present case is appreciated, we are of the view that prosecution has failed to establish the case against appellant beyond reasonable doubt. Hence, trial court has committed grave error in passing the impugned judgment and order.

32. In view of the aforesaid facts and circumstances of the present case, we are of the view that the prosecution has miserably failed to prove the time of occurrence, place of occurrence, manner of offence, motive and complicity of the appellant/accused and conversation on mobile phone against the appellant beyond reasonable doubt, despite which the Trial Court has passed the impugned judgment and order. Therefore, it



deserves to be and is quashed and set aside.

32.1. Since the appellant named above is in jail, he is directed to be released from custody forthwith, if his presence is not required in any other case.

33. The appeal stands allowed.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

K.C.Jha/-

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