

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.115 of 2018

Arising Out of PS. Case No.-241 Year-2014 Thana- GAURICHAK District- Patna

Ravi Sahni s/o Raj Kumar Sahni @ Raj Kumar Kewat, Resident of Village-
Manpur Bariya, P.S.- Gopalpur, District- Patna.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 324 of 2017

Arising Out of PS. Case No.-241 Year-2014 Thana- GAURICHAK District- Patna

Chandan Kumar Son of Ashok Mistri, Resident of Village- Manpur, Barira,
Police Station- Gopalpur in the district of Patna.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 173 of 2018

Arising Out of PS. Case No.-241 Year-2014 Thana- GAURICHAK District- Patna

Udai Chaudhary S/o Jay Nandan Chaudhary @ Jiv Nandan Chaudhary,
resident of Mohalla Manpur, Bairea, P.S.- Gopal Pur, Dist.- Patna.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 115 of 2018)
For the Appellant/s : Mr.Rupesh Kumar, *Amicus Curiae*
For the Respondent/s : Mr.Sujit Kumar Singh, APP
(In CRIMINAL APPEAL (DB) No. 324 of 2017)
For the Appellant/s : Mr.Ajay Kumar Thakur, Advocate
Mr. Birendra Kumar Singh, Advocate
For the Respondent/s : Mr.Sujit Kumar Singh, APP
(In CRIMINAL APPEAL (DB) No. 173 of 2018)
For the Appellant/s : Mr.Rajendra Kishore Prasad, Advocate
Mr. Debendra Kumar, Advocate
For the Respondent/s : Mr.Mr.Sujit Kumar Singh, APP



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CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 11-12-2024

The present appeals have been filed under Section-374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C.') challenging the impugned judgments of conviction dated 12.10.2017, 25.02.2017 and 21.12.2017 and orders of sentence dated 12.10.2017, 28.02.2017 and 21.12.2017 respectively, passed in Sessions Trial Nos. 705A/15, 705/15 and 705B/15, all arising out of Gaurichak P.S. Case No. 241 of 2014 dated 24.09.2014 by the learned Additional Sessions Judge-VI, Patna City, whereby all the appellants/convicts have been convicted for commission of the offence under Section-302 of I.P.C. and sentenced to undergo life imprisonment and a fine of Rs.10,000/- each and, in default of payment of fine, to undergo further R.I. for one year each.

2. When the matters were called out, no one appeared for the appellant Ravi Sahni in Cr. Appeal (D.B). No. 115 of 2018. Hence, we requested Mr. Rupesh Kumar, learned counsel, to assist in the matter as an *Amicus Curiae*. With his consent, he is appointed *Amicus curiae* to represent the



appellant Ravi Sahni.

3. Heard Mr. Rupesh Kumar Singh, learned *Amicus Curiae*, for the appellant in Cr. Appeal (D.B.) No. 115 of 2018, Mr. Ajay Kumar Thakur, learned counsel for the appellant in Cr. Appeal (D.B.) No. 324 of 2017, assisted by Mr. Birendra Kumar Singh and Mr. Rajendra Kumar Prasad, learned counsel for the appellant in Cr. Appeal (D.B.) No. 173 of 2018, assisted by Mr. Devendra Kumar Prasad and Mr. Sujit Kumar Singh, learned A.P.P. for the respondent-State in all the three matters.

4. Since all the appeals arise out of the same F.I.R., i.e. Gaurichak P.S. Case No. 241 of 2014 dated 24.09.2014, they are being heard together and disposed of by this common judgment and order.

5. The brief facts leading to the filing of the present appeals are as under:

“Informant Ashok Das gave his statement in front of In-charge of Gaurichak police station on 24.09.2014 stating that last night his son Sonu, aged around 25 years, did not return home. So his friend Suraj Kumar went to Bairia Durga temple, P.S. Gopalpur in his search. Suraj and his son Sonu both used to drive Piaggio tempo No. BR-01PD9265 of Rangi Rai, resident of Ilahibagh, P.S. Gopalpur, district- Patna. Suraj told that on



23/09/2014, due to his ill health, during the day Sonu went alone to drive the tempo at around 2:00 p.m. They searched for Sonu and the tempo at night but could not find him. On 24/09/2014, while inquiring about the tempo and gold in Bairia market in the morning, he came to know that a dead body was found ahead of Gaurichak police station bearing tattoo of Sonu on his right hand. Sonu was also written in tattoo on his son Sonu's right hand. Then, with apprehension, they went ahead of Gaurichak to Abgila turn to see the dead body and saw that his son Sonu was lying dead on the roadside. He had been hit with a knife many times on his neck, face and other parts of the body. The tempo which he had gone out to drive previous day was also missing. His son Sonu and Suraj both used to drive tempo between Samptachak and Sheetla Mata Mandir, Agamkuan. Thus, he claims that his son has been murdered by unknown.”

6. 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 under Section-209 of the



Code of Criminal Procedure, where it was registered as Sessions Trial Nos.705, 705/A and 705/B of 2015.

7. Learned advocates appearing for the respective appellants mainly contended that, in the present case, there is no eye-witness to the incident in question and case of the prosecution rests on circumstantial evidence. However, the prosecution has failed to complete the chain of circumstances from which it can be said that the present appellants have killed the deceased. It has been pointed out by the learned advocates that P.W. 3, informant, gave the F.I.R. by stating that his son left the house in the previous night. However, he did not return to the house and, therefore, when enquired, during the course search, dead body of his son was found and the tempo which he was driving was also missing. Therefore, he has filed the F.I.R. against unknown. It is contended that P.W. 1 Santosh Kumar and P.W. 2 Shambhu Rai are seizure-list witnesses. However, during cross-examination, both these witnesses have stated that their signatures were obtained on a blank paper and nothing was recovered/discovered in their presence. It is also contended that P.W. 3 Ashok Das is the informant who did not identify the accused and also deposed that he was not aware about the accused. Even P.W. 4 Rudal Ram, who is brother of the



deceased, has also not identified the accused. Learned advocates submitted that the trial court has convicted the accused appellants only on the basis of the evidence given by P.W. 5 Ranjeet Kumar, the Investigating Officer. It is further submitted that, though there is a reference of call detail reports (C.D.Rs.) of mobile phone of the deceased as well as the appellants, he has admitted that mobile phone of the deceased was not seized. It is also submitted that the I.O. has carried out the investigation only on the basis of the confessional statements of the accused and so-called discovery of blood stained shirt, knife and the foot mat of tempo, but the same were not sent for analysis to the Forensic Science Laboratory (For short F.S.L.). Even the I.O. did not collect the blood stained soil from the place of occurrence. It is also contended that there is no reference in the case diary that in whose company the deceased was lastly seen. At this stage, it is further contended that though C.D.Rs. of the concerned mobile phones are produced before the Court, no certificate issued under Section- 65B(4) of Indian Evidence Act came to be produced by the I.O. Learned advocates, therefore, urged that prosecution has miserably failed to prove the case against the appellants beyond reasonable doubt, despite which the trial Court has passed the impugned judgment of conviction



and orders of sentence.

8. On the other hand, learned Additional Public Prosecutor Mr. Sujit Kumar Singh has opposed the present appeals. Learned A.P.P. would submit that it is true that the case of the prosecution rests on circumstantial evidence. From the deposition given by the I.O., P.W. 5, the prosecution has proved the case against the appellants beyond reasonable doubt. It is submitted that on the basis of the call details of the mobile phone of the deceased, the I.O. collected necessary information and, therefore, arrested the accused persons. Their confessional statements were recorded and on the basis of the aforesaid statements, the knife which was used for commission of the crime, blood stained shirt and the blood stained foot mat of the tempo were recovered/discovered. It is also submitted that from the C.D.Rs. of the mobile phones of the accused, it is revealed that the location of the said mobile phones were found near the place where the deceased was killed. Thus, the prosecution has proved the case against the appellants beyond reasonable doubt. Therefore, the trial court has not committed any error while passing the impugned judgment and order.

9. We have considered the submissions canvassed by the learned counsels for the parties. We have also perused the



evidence of prosecution witnesses and also perused the documentary evidence exhibited.

10. At this stage, we would like to appreciate the relevant extract of entire evidence led by the prosecution before the Trial Court.

11. Before the Trial Court, prosecution examined 6 witnesses.

12. P.W. 1 Santosh Kumar has stated in his examination-in-chief that the incident took place a year ago in Bairia village. The police came and took his signature on a blank paper (Exhibit- 1).

12.1. In his cross-examination, he has stated that the police taken his signature on a plain paper. The police did not recover anything in his presence. Nothing was recovered in presence of the police. He has deposed at his free will.

13. P.W. 2 Shambhu Rai has deposed in his examination-in-chief that he recognizes his signature on the seizure list (Exhibit 1/1).

13.1. In his cross-examination, he has stated that the police got his signature on a blank paper. Nothing was recovered in his presence. He has no knowledge about this case. I does not even know as to who are the accused persons.



14. P.W. 3 Ashok Das is the father of the deceased. He has deposed in his examination-in-chief that this incident took place two years ago at 3:00 p.m. He was at home at that time. His son Sonu did not return home. So he went out to look for him the next day. The chowkidar of Gaurichak police station told him that there was a dead body lying there with tattoo of Sonu in his hands. He went to the police station. He identified the body to be of his son. He went to NMCH for *post mortem*. His son used to drive a tempo. His statement was recorded by the police. The police read out his statement to him which he found to be correct and signed it. He recognized his signature (Mark Exhibit-2). He has denied to identify accused Udai Kumar Choudhary, Ravi and Chandan Kumar, the accused under custody, present in Court. He has stated that inquest report bears his signature and that of his son.

14.1. In his cross-examination, he has stated that he has given this statement voluntarily, without any fear or coercion. Whereabouts of accused were not known.

15. P.W. 4 Rudal Ram, brother of the deceased, has stated in his examination-in-chief that the incident took place two years ago. He was on duty at the time of the incident. When he returned from duty, he found out that his brother Sonu has



not reached home. Then he went to search for him with his father and found out that a dead body was lying in Gaurichak police station with a tattoo named Sonu in his hand. He recognized his brother's dead body in the police station. There were 20-22 knife marks all over his body. The police took the body to NMCH for *post mortem*. When the police gave the dead body, signature of his father and also his signature was obtained on the same. His father had got the statement written in the police station, which bears his signature and that of his father (Exhibit 1/2). After the statement, the police come and interrogated him. He does not recognise the accused. In his cross-examination, he has denied to have stated as per the version given by him in his examination-in-chief ever before.

16. P.W. 5 Ranjeet Kumar has stated in his examination-in-chief that on 24/09/2014, he was posted as SHO at Gaurichak Police Station. On the same day, Gaurichak Police Station Case No. 241/2014 was registered by him. The statement of Ashok Das, father of deceased Sonu Das, was taken by him and as per Ashok Das's statement, he wrote F.I.R. against unknown persons. He has put his signature on the statement (Exhibit 3(3)). He recognizes his endorsements (Exhibit 1/3, Mark 1/4). He took the charge of investigation himself. He has



written in paragraph no. 1. that he went to the scene of the incident based on information. There, he prepared the inquest report, took the statement of the plaintiff and thereafter sent the dead body for *post mortem* examination with Sub Inspector Ram Janm Mishra along with Chowkidar Satyadev Paswan and Vinay Paswan to NMCH Patna. After recording the *fardbeyan*, he came to the police station, registered Case no. 241/2014 under Section 302/34 IPC. During the investigation, he enquired about the deceased. His father told that his son had no enmity with anyone. He also stated that Sonu (deceased) had a mobile bearing No.7546239895 and he was driving a tempo. Both, i.e. the mobile phone and the tempo bearing Regn. No.BR01-PD-9265. The owner of the vehicle was Rangi Ram. His statement is recorded in para-15 of the case diary. He stated that both Suraj and Sonu drive this vehicle together. He further stated that in the morning of 24/09/2014 Suraj driver came and told that on 23/09/2014 Sonu had gone out to drive the tempo. Neither he returned in the night nor did he deliver the vehicle. On 24.09.2014, Sonu's dead body has been found within the area of Gaurichak police station and the tempo is missing. He has identified the inquest report written and signed by ASI Ramjanam Mishra, prepared in carbon copy. He has produced



the photo copy of the same as Ext- x. Mobile No.7546839895 was not found with the deceased. The call details of the mobile of the deceased were obtained from Vodafone. Ownership received from the specific intelligence unit and obtained the certified copy of call details (Exhibit 4). From the observation of the call details of hand set last used by the deceased bearing IMEI No.353057063743660, it was found that on 23/06/2014 at 22.22 pm IDEA Co. SIM No. 8651104014 has been used. At that time the tower location of that Idea number was in Bairia where the deceased and the accused's houses are located. From the call details report of this IMEI, it was found that the tower location of this number was found at Baria on 23/09/2014 at 22.22 minutes, at Kanaili Shahpur, Bhojpur on 24/09/2014 at 6:00 am., again at 7.13 minutes on the same day, the tower location was found at Turiganj, Buxar at 14.42 minutes on the same day at Itarhi, Buxar. It was also found from the call details of the IMEI that on 24/09/2014 a second SIM number 8083741795 was used at 15.09 minutes. At that time his tower location was Itadi Buxar. It is clear from this that both of them were together. Mobile number 9852982269 was issued in the name of Santosh Kumar. Santosh said that this SIM is in his name, but it is used by Chandan Kumar, his brother. The second



mobile number 8083741795 is issued in the name of one Nirmala Devi. On investigation it was found that this mobile number is used by Nirmala Devi's husband Ravi Kumar. (11) Another mobile no. 8651104014 is issued in the name of Shanti Devi. On investigation of that number it was found that this mobile number is used by Shanti Devi's son in law, Uday Choudhary. All the three mobile holders Uday Choudhary, Chandan Kumar, Ravi Kumar alias Ravi Shahi have not been seen since the incident. Based on information from the spy, Uday Kumar and Chandan Choudhary were arrested on 30/09/2014 at 5:00 a.m. Uday Choudhary gave his confession which is mentioned in Clause 70 of the case diary. After the arrest, the mobile number 8083741795 used in the incident was seized from Uday Choudhary. A seizure list was prepared by ASI Ramjanam Mira upon which he identifies his signature. (Ext-7). The second mobile number 354645056421203 and 354645056421211 was found in possession of Chandan without SIM. Chandan Kumar was also interrogated. In his confession statement, he also admitted his involvement in the incident and told that apart from him, Uday Choudhary and Ravi Kumar alias Ravi Sahi were also involved in the incident. He also disclosed that on the day of the incident, he was wearing a white shirt.



There was blood on the shirt and he hid it on his roof. On his statement, the shirt was seized and the seizure list was prepared by ASI Ramjanam Mishra, which bears the signature of this witness (Exhibit- 8). It was not sent to FSL for investigation as blood sample was not given by the family of the deceased. Uday and Chandan told that Sonu was murdered with a knife in the tempo itself. Sonu ran away from the tempo in agony. A lot of Sonu's blood was spilled in the tempo, so while running away with the tempo, after going some distance ahead, they threw the tempo's mat and the knife on the eastern side of the road. The knife and the blood stained tempo mat were recovered from the *bathan*. A seizure list was prepared by ASI Ramjanm (Exhibit 8/1). Blood was also found on the shirt of accused Santosh. He was produced in the court. He arrested Chandan Km, Uday Choudhary and Ravi Sahni was remanded. Mobile no. 7546839895 of deceased Sonu Kumar has not been received. The holder of this mobile is deceased, mentioned in para-24 of the case diary. The holder of the mobile no. 7546839895 is deceased Sonu. Call details of the deceased's mobile phone were obtained from Aug. 2014 to Sept. 24, 2014. Mobile No. 8651104014 is owned by Shanti Devi and holder was Udai Chaudhary, mentioned in para-50 of the case diary. He had not



recorded the statement of Shanti Devi. Blood stains found on the road proves the place of occurrence. Confessional statement corroborates the same. He had not seized the blood stained soil from the place of incident. In whose company the deceased was last seen is not mentioned in the case diary. He had seized the blood stained knife, mat of the tempo on 30.09.2014 at 12:00 noon, but did not send those articles to F.S.L. for necessary analysis. In para-18 of his examination-in-chief, it is wrongly mentioned as Santosh in place of Chandan. He had taken the name of accused Chandan. He has denied the suggestion that he conducted a faulty investigation and has submitted a wrong report.

17. P.W. 6 is Dr. Rajiv Ranjan Das. He has deposed that on 24.09.2014 he was posted as Asstt. Prof. F.F.T. N.M.C. Patna and at 12:00 noon, he conducted the *post mortem* examination on the dead body of Sonu Kr. @ Sonu Das. The body was brought & identified by Chaukidar 3/5 Satendra Paswan & Choukidar 3/6 Vinay Paswan and found the following *ante mortem* injuries on his person:-

1. Incised wound 2" x 1" x Tissue deep on left,
2. 1½" x 1/2" Tissue Deep on outer side of the previous wound,
3. 1" x ½" x Tissue deep below the wound no.1,
4. 2" x 1" x cavity deep on left side neck,
5. 1" x 1/2" x Tissue deep about 1" lacerate to the previous wound,
6. ¾" x ½" x Tissue deep on chin in mid line,
7. 2" x ½" x Tissue deep on left Temporal area of scalp,



8. 1" x 1/2" x Cavity deep on right side back of neck with blood oozing from the wound.
9. Multiple incised wound vary from 3" x 1/2" x Cavity deep with blood oozing to 1/2" x 1/2" x Tissue deep seen on right side of neck upper part,
10. 1/4" x 1/4" on right ear (Penna),
11. Multiple incised wound varying from 2" x 3/4" x Cavity deep to 1/2" x Tissue deep were seen on right armpit and upper part of the flank of chest on right side,
12. 1/2" x 1/2" on left buttock,
13. 3" x 1 1/2" x Cavity deep on upper area laterally.
14. 1" x 1/2" x Tissue deep on right nipple,
15. 1/2" x 1/4" x Tissue deep on left flank of abdomen,
16. 1" x 1/4" & 1 1/2" x 1/2" on left fore finger & above it,
18. 1/2" x 1/4" x Tissue deep on right middle finger,
19. 1/2" x 1/2" on right front of upper arm,

II-Abrasion (1) 2" x 1/2" on front of neck extending to upper chest, (2) Grazing Abrasion 1 1/2" x 1" on left upper part of the chest, (3) Multiple tiny abrasion same similar varying incise from 1/2" x 1/2" x 1/4" x 1/4" were seen on front of neck,

III-All the incised wound were clear cut having sharp margin with varying among gaping. Internally all viscera were palm, neck muscle on front or either side (right more than left) were clear cut. Trache was also clean cut. Thyroid cartilage joint bone was dislocated blood vessels were also cut specially right side of the neck, strum showed cut mark. Intercalate muscle between 3 to 6 to 8 ribs on left side of the chest and 3rd to 5th ribs on right side. Left lung was ruptured with blood clot in thoracic cavity. Heart & bladder were empty stomach contained whitish liquid about 100 ml.

Opinion: The above noted incised wound were due to sharp cutting & Pointed weapon abrasion were due to hard & blunt substance and abrasion on neck may be due to nail mark. Incised wound on fingers of hand indicates stoggal between deceased & assailant. Death was due to-shock & hemorrhage due to above noted wound. (incised) Time since death within 6 to 24 hrs. from the time of P.



examination. He has identified the report to have been prepared by him and signed in his pen, (exhibit- 5).

17.1. In his cross-examination, he has stated that abrasion found on the neck can be caused by hard & blunt substance type iron rod, brick, lathi etc. At the time of examination, blood was oozing and some blood was clotted. He has denied the suggestion that the report is not correct.

18. We have considered the arguments canvassed by the learned counsels appearing for the parties, re-appreciated the entire evidence led by the prosecution and perused the trial court records.

19. From the evidence led by the prosecution, it would emerge that P.W. 3, who is the informant, gave his *fardbeyan* on 24.09.2014 at 07:30 a.m., wherein he has stated that his son did not return after he left the house on previous night and, therefore, enquiry was made with his friend Suraj who was also driving the tempo with the son of the informant. However, no clue was received from him. Therefore, the search was made during night. However, in the morning, the informant came to know that one dead body is found and, therefore, he went to the said place and came to know that his son has been killed by unknown. Thus, it is revealed that in the F.I.R. name of the accused has not been disclosed by the informant and no



suspicion was raised against the appellants herein. It is also revealed from the deposition given by P.W. 1 and P.W. 2 who are projected as witnesses of seizure-list, who have specifically admitted during cross-examination that their signatures were obtained on the blank paper and nothing was discovered/recovered in their presence. Even P.W. 3, who is the informant, and P.W. 4, who is the brother of the deceased, did not identify the accused in the Court. Thus, the prosecution has tried to prove the case against the appellants with the help of deposition given by P.W. 5, I.O., who had carried out the investigation. From the deposition of the said witness, it is revealed that after the F.I.R. was registered, P.W. 5 commenced the investigation and thereafter, during the course of the investigation, he came to know that deceased was possessing mobile phone No. 7546839895. However, the said mobile phone was missing. It was not found near the dead body. However, from the C.D.R. of the aforesaid mobile phone, which he had collected for the period between 01.08.2014 and 24.09.2014, tower location as well as the calls which were made on the said mobile phone were examined. Thereafter, the I.O. came to know that phone calls were made from certain mobile phones on the mobile phone of the deceased and, therefore, on the basis of the



details received from the spy, the appellants were arrested. It is further revealed that confessional statements of the appellants came to be recorded by the I.O. and it is the case of the I.O. that on the basis of the confessional statement of accused Chandan Kumar, the white shirt which he had put on was discovered which was kept by him on the terrace. Thereafter, seizure-list was prepared. It is also revealed that, on the basis of the confessional statement of accused Udai as well as Chandan, knife which was used for commission of the crime and the foot mat of the tempo having blood stains were also discovered for which also seizure-list was prepared. However, from the cross-examination of the aforesaid witness, i.e. P.W. 5, it is revealed that the said witness has admitted that the aforesaid articles which were seized were not sent for necessary analysis to the F.S.L. Even the blood sample of the deceased was also not obtained by him and, therefore, the prosecution has failed to prove that the shirt, foot mat of the tempo and the knife contained the blood of the deceased. Further, in para-34 of the cross-examination, the I.O. has admitted that he had not collected blood stained soil from the place of occurrence. He has also admitted that there is no mention in the case diary with regard to the person who was lastly seen in company of the



deceased. Even the seizure-list witnesses have specifically admitted during cross-examination that nothing was seized in their presence and their signatures were obtained on a blank paper. Hence, we are of the view that simply relying upon the so-called discovery of the weapon as well as blood stained shirt or foot mat of the tempo, conviction of the appellants cannot be recorded.

20. It is further revealed from para-24 of the cross-examination that mobile phone of the deceased was not seized by the I.O. However, it is also revealed that the mobile phone which was seized from accused Udai was, in fact, in the name of one Shanti Devi. However, the I.O. has admitted in para-29 that he did not record the statement of Shanti Devi. Further, P.W. 5, I.O., has admitted in para-25 that the owner of mobile phone No. 9852982269 was one Santosh. However, that Santosh is not joined as an accused nor his statement was recorded by P.W. 5. It is pertinent to note at this stage that though the C.D.R. of certain mobile phones were produced on record by the prosecution, the said C.D.Rs. are not duly proved. The certificate under Section -65B(4) of the Indian Evidence Act has not been produced on record.

21. It is also important to observe at this stage that,



in the present case, the prosecution has failed to prove the motive on the part of the appellants to kill the deceased by leading cogent evidence. Even the I.O. has not stated about the motive of the accused for killing the deceased while giving the deposition before the Court. It is well settled that motive assumes importance in a case of circumstantial evidence.

22. Looking to the aforesaid evidence led by the prosecution, it can be said that prosecution has failed to complete the chain of circumstances from which it can be said that the present appellants/convicts only have killed the deceased.

23. We would like to refer the judgment passed by Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra**, reported in **(1984) 4 SCC 116**, wherein the Hon'ble Supreme Court has observed in paragraph Nos. 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 Gyarsilal 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.”

24. From the aforesaid observation made by the Hon'ble Supreme Court, it can be said that certain essential conditions must be satisfied, such as the accused 'must be' and not merely 'may be' guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions. The facts so established should be consistent only with the hypothesis of the



guilt of the accused. I Further, the circumstances should be of a conclusive nature and tendency and 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.

25. Keeping in view the aforesaid decision rendered by the Hon'ble Supreme Court, if the evidence led by the prosecution is carefully examined, we are of the view that prosecution has failed 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 assailants and thereby prove the case against the present appellants/convicts. Hence, trial court has committed grave error in passing the impugned judgments/orders.

26. Further, from the aforesaid deposition of the prosecution-witnesses, we are of the view that there are major contradictions, inconsistencies, discrepancies and improvement in the deposition of the prosecution-witnesses.

27. In view of the aforesaid facts and circumstances of the present case, we are of the view that the prosecution has failed to prove the case against the appellant/accused beyond



reasonable doubt, despite which the Trial Court has recorded the impugned judgment of conviction and order of sentence. As such, the same are required to be quashed and set aside.

28. Accordingly, the impugned judgments of conviction dated 12.10.2017, 25.02.2017 and 21.12.2017 and orders of sentence dated 12.10.2017, 28.02.2017 and 21.12.2017 respectively, passed in Sessions Trial Nos. 705A/15, 705/15 and 705B/15, all arising out of Gaurichak P.S. Case No. 241 of 2014 dated 24.09.2014 by the learned Additional Sessions Judge-VI, Patna City are quashed and set aside. The appellants are acquitted of the charges levelled against them by the learned Trial Court.

28.1. Appellant Ravi Sahni (in Cr. Appeal (D.B.) No. 115 of 2018) is in custody. He is directed to be released from jail custody forthwith, if his custody is not required in any other case.

28.2. Appellant Chandan Kumar (in Cr. Appeal (D.B.) No. 324 of 2017) and appellant Udai Chaudhary (in Cr. Appeal (D.B.) No. 173 of 2018) are on bail. They are discharged from the liabilities of their respective bail-bonds.

29. Fine realized, if any, be refunded to the appellant/s forthwith.



30. The appeals stand allowed.

31. Before parting with the appeal, we record our appreciation for the able assistance rendered by Mr. Rupesh Kumar, learned *Amicus Curiae*.

31.1. The Patna High Court Legal Services Committee is, hereby, directed to pay ₹ 2,500/- (**Rupees two thousand and five hundred**) to Mr. Rupesh Kumar, learned *Amicus Curiae* as consolidated fee for the able assistance rendered by him.

(Vipul M. Pancholi, J)

(Dr. Anshuman, J)

K.C.Jha/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	20.12.2024
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