

25.11.2024
Court No.13
SL No.43 & 44
pk/AP

CRA 60 of 2012

In the matter of : **Jagadish Mondal**

With

CRA 218 of 2010

In the matter of : **Jitram Mahato**

Mr. Ramdulal Manna
Mr. Sayan Mukherjee
Ms. Manju Manna (Dey)

...For the appellant in CRA 60 of 2012.

Mr. Sumanta Chakraborty

...For the appellant in CRA 218 of 2010.

Mr. Debasish Roy
Ms. Faria Hossain
Mr. Anand Kesheri

...For the State.

1. The instant appeals are directed against a judgment and conviction dated 25th February, 2010 passed by the Additional District and Sessions Judge, Fast Tract 2nd Court, Malda in Sessions Case No.197 of 2009 arising out of Habibpur Police Station Case No.5 of 2001 dated 24.01.2001 being G.R. Case No.133 of 2001.

2. By the impugned judgment, the accused Jagadish Mondal and Jitram Mahato have been convicted under Section 302 and 379 of the IPC read with Section 34.

3. The prosecution case in brief is as follows:-

4. The victim was Tulsi Mondal, daughter of the de facto complainant. On 24.01.2001 the victim, who came to visit her mother at Kutumbari Aktile village along with her husband and

granddaughter in a neighbouring village. They were returning to her matrimonial house at village Bhagadanga, after having lunch, at 4. p.m. Around 6.30 p.m. on the same day the de facto complainant came to know from the fellow villagers that her daughter has been murdered near a Canal on the way to Bhangadanga by unknown miscreants.

5. She travelled on a motorcycle along with some relatives and friends, to her son-in-law's home at Bhagadanga. She found her son in law crying with his minor daughter on his lap. The de facto complainant thereafter upon being informed of the place where her daughter was lying, went to a harvested paddy field near the canal. She found her daughter with serious injury marks on the left and right side of her neck. Her legs were tied down and was stated to be facing west and the head was facing east. Her daughters earrings were missing. She thereafter went to the Habibpur Police Station at about 9 p.m. and lodged a complaint.

6. The complaint was written by PW 12, one Madhusudan Sarkar. The police registered FIR at about 9.05 p.m. on 24.01.2001 under Sections 302/379/34 of the IPC. Half hour later two police officials S.I. and I.O. Ashutosh Roy, PW 14 and Madhusudan Misra, PW 2, police constable visited the place of occurrence.

7. The deceased was found with severe cut marks on both sides of her neck and several other wounds on various parts of

her body. The victim was six months pregnant at the relevant point of time.

8. The body was thereafter sent for inquest which was conducted in the presence of the witnesses and was later sent for Post Mortem to Malda Sadar Hospital. A charge sheet was later submitted against the two accused persons. Charges were framed and the trial commenced on 07.08.2009 that is eight years after the incident.

9. The prosecution examined as many as 14 witnesses. PW1, Sailen Mondal, was a fellow villager and inquest witnesses. He only heard of the killing of the victim and went to the Habibpur P.S. He admitted that he did know of the contents of the inquest report he had signed on.

10. PW 2 was Madhusudan Misra, who was a constable posted at Habibpur Police Station. He visited the place of occurrence on the date of incident along with I.O., Ashutosh Roy. He took the body for inquest to the morgue at Malda Sadar Hospital. He identified the body of the victim before it was given to the doctor for post mortem. He received the wearing apparel of the victim from the post mortem doctor and handed the same to the I.O. and signed on the seizure list. The seized articles were not produced in trial by the prosecution.

11. PW 3, Ajay Kumar Das who was the post mortem doctor, opined that the death was due to the effect of injuries ante

mortem and homicidal in nature. He has listed out the injuries. Most of them were on the scalp/head and on the neck. There were also injuries on the left part of the back, left arm and left shoulder. The postmortem was conducted on the day after the incident. He handed over the wearing apparel of the victim to the constable present.

12. PW 4 was Uttam Mondal was a cultivator in Bhagadanga village, and he knew Jitram Mahato, the accused no. 2, and the victim. He was an inquest witness. He admitted that he was not interrogated by the police. He also admitted that he wasn't aware of the contents of the inquest report he had signed.

13. PW 5, Ajay Mondal was tendered but not examined.

14. PW 6, Deben Pramanik was a barber at the nearby Tajpur village and knew Jitram Mahato, the accused no. 2. He did not know the accused no. 1. He identified his signature and that of accused no. 2 on seizure list dated 30th January, 2001.

15. He had denied, in course of cross examination by the State, that Jitram Mahato had made any such confession or had surrendered any weapon or earrings to the police. He further stated that the police did not seize any article in his presence.

16. This is contrary to the prosecution case that Jitram Mahato had confessed before the police and surrendered the weapon and the earrings in the presence of Deben Pramanik,

PW 6. He also stated that the police did not examine him and his signatures were obtained on blank papers by the police. He had however admitted signature on a seizure list in course of examination.

17. PW 7 was Shyam Raj Pramanik, another barber of Tajpur village. He was cited but not examined by the prosecution.

18. PW 8 was the Officer-in-Charge of the Habibpur Police Station. PW 9 was the 2nd I.O. He had filed the charge sheet but most of the investigation was conducted by Ashutosh Roy, PW 14.

19. PW 10 was the de facto complainant/ mother of the victim. Nowhere in her evidence has she stated any animosity between her daughter and son-in-law. She narrated the entire incident and chain of events as indicated herein above without a whisper or even an indication of any involvement of her son-in-law in the death of her daughter. She identified the earrings of her daughter. She denied that she came to know from the villagers of Bhagadanga village that the victim was murdered.

20. The examination-in-chief and cross examination of PW 10 Siroda Mondal, the de facto complainant, mother of the victim was not even anywhere close to proving the prosecution's case.

21. PW 11, Najen Mondal was a co-villager of accused Jagadish Mondal and knew him. He was declared hostile. He denied having informed the police that the accused Jagadish Mondal with another person Jitram were in collusion with each other and murdered the victim.

22. PW 12 was Madhusudan Sarkar was a scribe, who wrote the complaint on the instruction of PW 10.

23. PW 13 was the Goldsmith, who deposed that the earrings, allegedly seized by the police and allegedly surrendered by Jitram Mahato to the police, are commonly available in the market.

24. PW 14 was the I. O., Ashutosh Roy. It is essentially his evidence that was relied upon by the Trial Judge for the purpose of conviction.

25. He has stated that he was assigned by the O. C. of the Police Station to take up the investigation. He visited the place of occurrence in the presence of the three witnesses, none of whom were examined by the Prosecution.

26. He further stated that he had removed the body of the victim from the place of occurrence and had taken it to the morgue for inquest. He obtained signatures of two witnesses on the seizure list, of the wearing apparel of the victim. Only one of whom that is Najen Mondal was examined as PW 11, who was eventually declared hostile.

27. He recorded the statement of the witnesses Najen Mondal and Ajoy Mondal under Section 161 of the Cr. P. C. on the next day i.e. 25.01.2001. He arrested the husband of the deceased in the early hours of 25.01.2001 at 5 a.m. Interestingly the wearing apparel was never sent for forensic or chemical examination, neither was the blood stained earth. No such report was produced before the Trial Court.

28. He further stated that five days later, on 30.01.2001, at about 2.40, he arrested the 2nd accused Jitram from his house at Tajpur, in the presence of witnesses Najen Mondal and Ajoy Mondal. Jitram is stated to have recorded statement under Section 161 of the Cr. P. C. and produced the offending weapon Hansua and a pair of gold earrings in the presence of a witness named Shyam Raj Poramanik. Seizure list was prepared and the weapon and the earrings that were produced before the Trial. Ajoy Mondal, a seizure witness was not produced by the prosecution. Najen Mondal had denied any seizure confession.

29. It is Jitram Mahato's statement that was recorded under Section 161 of the Cr. P. C. that he had actually inflicted the blows on the victim and had taken the earrings. One seizure witness has denied the seizure and confession of Jitram.

30. This Court is surprised that the statement of Jitram Mahato was not recorded before the Magistrate under Section 164 of the Cr. P. C. The accused were produced before the SDJM, Malda and remanded to custody. The earrings were

weighed before a Jeweller, namely, Jiten Barman, PW 13. The I. O. further examined another witness called Deben Pramanik, PW 6, who is stated to have told the I.O. that Jagadish Mondal agreed on the proposal of Jitram to murder his wife. He also examined Najen Mondal, Soilan Mondal, Harasar Mondal and Uttam Mondal, who were not produced as witnesses.

31. The Trial Judge went on to examine the two accused under Section 313 of the Cr. P. C. Surprisingly the husband of the victim was not asked as to where he parted with the wife on the fateful day and what he was doing around 4 p.m. when he left his in-laws' house for his own house. The conviction of the accused by the Trial Judge was based on the last seen theory, and circumstantial evidence.

32. That the victim was last seen by the de facto complainant mother with Jagadish, her son-in-law, was the principal reason for conviction. Referring to several decisions of the Supreme Court, the Trial Judge was of the view that the failure on the part of Jagadish Mondal to explain where his wife went after being seen together last, would ipso fact implicate him for the murder of his wife.

33. It is not well settled that it is indeed a challenge to convict a person under Section 302 of the IPC based purely on the circumstantial evidence. In such cases, circumstantial evidence must be complete and comprehensive, and each link perfectly connected to one and another to make an

unquestionable and the only conclusion of guilt of the accused. The most important of the link is “motive”. There must be a clear co-relation of the ‘motive’ with the recovery of the alleged weapon and medical evidence and forensic opinion, along with the last seen theory may constitute completion of the chain.

34. The chain of circumstantial evidence must be such as would irrevocably lead to a conclusion that it is only and only the accused, who was the last seen with the victim that must have committed the offence in question. It must conclusively exclude all other possibilities and theories.

35. Even the slightest of gap in a chain of circumstantial evidence, cannot lead to conviction of a person more so under Section 302 of the IPC.

36. Reference in this regard is made to the case of ***Indrajit Das v. State of Tripura*** reported in **2023 SCC OnLine SC 201.**

“10. The present one is a case of circumstantial evidence as no one has seen the commission of crime. The law in the case of circumstantial evidence is well settled. The leading case being *Sharad Birdhichand Sarda v. State of Maharashtra*². According to it, the circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence. The said principle set out in the case of *Sharad Birdhichand Sarda* (supra) has been consistently followed by this Court. In a recent case - *Sailendra Rajdev Pasvan v. State of Gujarat*³, this Court observed that in a case of circumstantial evidence, law postulates two-fold requirements. Firstly, that every link in the chain of circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond

reasonable doubt and secondly, all the circumstances must be consistent pointing out only towards the guilt of the accused. We need not burden this judgment by referring to other judgments as the above principles have been consistently followed and approved by this Court time and again.

11. In the above backdrop of the settled legal propositions, we proceed to deal with the facts, circumstances and evidence of the present case and find out as to whether each link of the chain of circumstances is fully established by the prosecution or not.

12. The basic links in the chain of circumstances starts with motive, then move on to last seen theory, recovery, medical evidence, expert opinions if any and any other additional link which may be part of the chain of circumstances.”

37. In the instant case, this Court notices that the Trial Judge has completely misconstrued the scope of Section 106 of the Evidence Act. While it is true that Jagadish Mondal was last seen with his wife and the same could at best be one link in a chain of circumstances, the I.O. has not been able to bring another single link, let alone on another link for any chain to even begin to be completed. The argument of the prosecution, that the recovery of the gold earrings and the offending weapon is a vital link, cannot be accepted in these circumstances. The reason, therefore, is that the said two articles have not been recovered from Jagadish Mondal. He was not even confronted with the fact that he was last seen with the victim, under section 313 of the Cr.P.C. The ratio of ***Nagendra Sah v. State of Bihar*** reported in **(2021) 10 SCC 725** and paragraph 37 of the ***Darshan Singh v. State of Punjab*** reported in **2024 INSC 19** would clearly apply to acquit the accused no. 1.

38. In the ***Nagendra Sah decision (Supra)***, reported in, at paragraph 21, it was held as follows:-

“21. Under Section 101 of the Evidence Act, whoever desires any court to give a judgment as to a liability dependent on the existence of facts, he must prove that those facts exist. Therefore, the burden is always on the prosecution to bring home the guilt of the accused beyond a reasonable doubt. Thus, Section 106 constitutes an exception to Section 101. On the issue of applicability of Section 106 of the Evidence Act, there is a classic decision of this Court in *Shambu Nath Mehra v. State of Ajmer* [*Shambu Nath Mehra v. State of Ajmer*, 1956 SCR 199 : AIR 1956 SC 404 : 1956 Cri LJ 794] which has stood the test of time. The relevant part of the said decision reads thus : (AIR p. 406, paras 10-13)

“10. Section 106 is an exception to Section 101. Section 101 lays down the general rule about the burden of proof.

‘101. **Burden of proof.**—Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist’.

Illustration (a) to Section 106 of the Evidence Act says—

‘(a) A desires a court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime’.

11. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are “especially” within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word “especially” stresses that. It means facts that are **pre-eminently** or **exceptionally** within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. It is evident that that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are *Attygalle v. R.* [*Attygalle v. R.*, 1936 SCC OnLine PC 20] and *Seneviratne v. R.* [*Seneviratne v. R.*, 1936 SCC OnLine PC 57 : (1936) 3 All ER 36, 49]

12. Illustration (b) to Section 106 has obvious reference to a very special type of case, namely, to offences under Sections 112 and 113 of the Indian Railways Act for travelling or attempting to travel without a pass or ticket or with an insufficient pass, etc. Now if a passenger is seen in a railway carriage, or at the ticket barrier, and is unable to produce a ticket or explain his presence, it would obviously be impossible in most cases for the railway to prove, or even with due

diligence to find out, where he came from and where he is going and whether or not he purchased a ticket. On the other hand, it would be comparatively simple for the passenger either to produce his pass or ticket or, in the case of loss or of some other valid explanation, to set it out; and so far as proof is concerned, it would be easier for him to prove the substance of his explanation than for the State to establish its falsity.

13. We recognise that an illustration does not exhaust the full content of the section which it illustrates but equally it can neither curtail nor expand its ambit; and if knowledge of certain facts is as much available to the prosecution, should it choose to exercise due diligence, as to the accused, the facts cannot be said to be “especially” within the knowledge of the accused. This is a section which must be considered in a commonsense way; and the balance of convenience and the disproportion of the labour that would be involved in finding out and proving certain facts balanced against the triviality of the issue at stake and the ease with which the accused could prove them, are all matters that must be taken into consideration. The section cannot be used to undermine the well-established rule of law that, save in a very exceptional class of case, the burden is on the prosecution and never shifts.”

(emphasis supplied)

39. Even Jitram Mahato was not confronted with alleged confession and recovery of the Hansua (weapon) and earrings, under Section 313 of the Cr. P. C. None of the accused were confronted with any evidence against them by the Trial Judge. The principles in **Nagendra Sah (Supra)** and paragraph 37 of the **Darshan Singh (Supra)** case are once again applicable to the accused no. 2. Reliance in this regard is also placed in the case of **Sharad Birdichand Sarda v. State of Maharashtra** reported in **(1984) 4 SCC 116** at paragraphs 153, 157, 158, 159 and 160:-

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

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

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

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

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

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

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

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

157. This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. *Horry case* [1952 NZLR 111] was approved by this Court in *Anant Chintaman Lagu v. State of Bombay* [AIR 1960 SC 500 : (1960) 2 SCR 460 : 1960 Cri LJ 682] . *Lagu case* [AIR 1960 SC 500 : (1960) 2 SCR 460 : 1960 Cri LJ 682] as also the principles enunciated by this Court in *Hanumant case* [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases — *Tufail case* [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] , *Ramgopal case* [(1972) 4 SCC 625 : AIR 1972 SC 656] , *Chandrakant Nyalchand Seth v. State of Bombay* [Criminal Appeal No 120 of 1957, decided on February 19, 1958] , *Dharambir Singh v. State of Punjab* [Criminal Appeal No 98 of 1958, decided on November 4, 1958 printed on green papers in bound volumes] . There are a number of other cases where although *Hanumant case* [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] has not been expressly noticed but the same principles have been expounded and reiterated, as in *Naseem Ahmed v. Delhi Administration* [(1974) 3 SCC 668, 670 : 1974 SCC (Cri) 198, 200 : (1974) 2 SCR 694, 696] , *Mohan Lal Pangasa v. State of U.P.* [(1974) 4 SCC 607, 609 : 1974 SCC (Cri) 643, 645 : AIR 1974 SC 1144, 1146] , *Shankarlal Gyarasilal Dixit v. State of Maharashtra* [(1981) 2 SCC 35, 39 : 1981 SCC (Cri) 315, 318-19 : (1981) 2 SCR 384, 390 : 1981 Cri LJ 325] and *M.G. Agarwal v. State of Maharashtra* [AIR 1963 SC 200 : (1963) 2 SCR 405, 419 : (1963) 1 Cri LJ 235] — a five-Judge Bench decision.

158. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor General relying on a decision of this Court in *Deonandan Mishra v. State of Bihar* [AIR 1955 SC 801 : (1955) 2 SCR 570, 582 : 1955 Cri LJ 1647] to supplement his argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor-General we are unable to agree with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus:

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

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

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

160. If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was examined in *Shankarlal case* [(1981) 2 SCC 35, 39 : 1981 SCC (Cri) 315, 318-19 : (1981) 2 SCR 384, 390 : 1981 Cri LJ 325] where this Court observed thus: [SCC para 30, p. 43: SCC (Cri) p. 322]

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

40. In the ***Darshan Singh case (Supra)***, at paragraph 37, it was held as follows:-

“37. Seen in this background, we need not go further and consider the evidence qua other circumstances sought to be proved by the prosecution since the failure to prove a single circumstance cogently can cause a snap in the chain of circumstances.

There cannot be a gap in the chain of circumstances. When the conviction is to be based on circumstantial evidence solely, then there should not be any snap in the chain of circumstances. If there is a snap in the chain, the accused is entitled to benefit of doubt. If some of the circumstances in the chain can be explained by any other reasonable hypothesis, then also the accused is entitled to the benefit of doubt. [See: Bhimsingh Vs. State of Uttarakhand, (2015) 4 SCC 281.]”

41. There are several missing links in the instance case between the death of the victim and Jagadish Mondal. The missing links do not complete the chain of circumstances. In this regard reference is made to the decision of the case of Laxman Prasad @ Laxman Vs. The State of Madhya Pradesh.

42. What is, however, found extremely vital is the complete failure on the part of the prosecution to even suggest, much less prove any motive on the part of Jagadish or Jitram to murder his wife.

43. On the contrary, the evidence on record indicates that the de facto complainant has not even uttered whisper against her son-in-law. There is no evidence of any marital discord or any demand for any sums of money from the in-laws. PW 10 has not said a single word in her evidence in this regard. None of the other witness or even the police witnesses have given a suggestion or indication or existence of any motive on the part of the accused to commit any offence on the victim.

44. In the case of **Nandu Singh v. State of Madhya Pradesh** reported in **2022 SCC OnLine 1454** at paragraph 13, 14 and 15, it was held as follows:-

“13. In *Anwar Ali v. State of Himachal Pradesh*¹, this Court made the legal position clear in following words:—

24. Now so far as the submission on behalf of the accused that in the present case the prosecution has failed to establish and prove the motive and therefore the accused deserves acquittal is concerned, it is true that the absence of proving the motive cannot be a ground to reject the prosecution case. It is also true and as held by this Court in *Suresh Chandra Bahri v. State of Bihar*² that if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. However, at the same time, as observed by this Court in *Babu*³, absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. In paras 25 and 26, it is observed and held as under : (*Babu case*³, SCC pp. 200-01)

“25. In *State of U.P. v. Kishanpal*⁴, this Court examined the importance of motive in cases of circumstantial evidence and observed : (SCC pp. 87-88, paras 38-39)

‘38. ... the motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to explain what actually promoted or excited them to commit the particular crime.

39. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction.’

26. This Court has also held that the absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. (Vide *Pannayar v. State of T.N.*⁵)”

14. In the subsequent decision in *Shivaji Chintappa Patil v. State of Maharashtra*⁶, this Court relied upon the decision in *Anwar Ali*¹ and observed as under:—

“27. Though in a case of direct evidence, motive would not be relevant, in a case of circumstantial evidence, motive plays an important link to complete the chain of circumstances. The motive... ..”

15. In the instant case even on the issue of “last seen”, the evidence of PW-8-Ullekh Prasad did not give any particulars nor did it establish any proximity in terms of time. Further, even after the deceased had gone missing, no suspicion was

entertained at any juncture against the appellant and his name came to the surface only after the crime was converted to one under Section 302 of the IPC.”

45. Insofar as the alleged confession of Jitram Mahato, the same, apart from being denied by the persons , who were alleged present at the time of such alleged confession is even otherwise inadmissible in a criminal trial. The same would constitute an extra judicial confession. Reference in this regard is made to the decision of the case of ***Devi Lal v. State of Rajasthan reported in (2019) 19 SCC 447.***

“9. At the outset, it may be noticed that neither in the initial complaint on which the missing report was lodged nor at the stage after inquiry, when the FIR came to be registered (Ext. P-73), the name of appellant Devi Lal surfaced. Even in the statement of Vandna (PW 5), while recording statement under Section 164 CrPC, (Ext. D-5), no such reference was made of any conspiracy having been hatched by Devi Lal, the accused-appellant. In the testimony of PW 5 Vandna and PW 10 Uma Devi, it was deposed that accused Devi Lal came to the house on 5-2-1999 and wanted to purchase the half portion of bada from the deceased Dharam Chand for a sum of Rs 10,000. Devi Lal threatened the deceased to sell his Bada which he refused.

16. The classic enunciation of law pertaining to circumstantial evidence, its relevance and decisiveness, as a proof of charge of a criminal offence, is amongst others traceable to the decision of the Court in *Sharad Birdhichand Sarda v. State of Maharashtra* [*Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116 : 1984 SCC (Cri) 487] . The relevant excerpts from para 153 of the decision is assuredly apposite: (SCC p. 185)

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

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

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

‘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.”

(emphasis in original)

17. It has further been considered by this Court in *Sujit Biswas v. State of Assam* [*Sujit Biswas v. State of Assam*, (2013) 12 SCC 406 : (2014) 1 SCC (Cri) 677] and *Raja v. State of Haryana* [*Raja v. State of Haryana*, (2015) 11 SCC 43 : (2015) 4 SCC (Cri) 267] . It has been propounded that while scrutinising the circumstantial evidence, a court has to evaluate it to ensure the chain of events is established clearly and completely to rule out any reasonable likelihood of innocence of the accused. The underlying principle is whether the chain is complete or not, indeed it would depend on the facts of each case emanating from the evidence and there cannot be a straitjacket formula which can be laid down for the purpose. But the circumstances adduced when considered collectively, it must lead only to the conclusion that there cannot be a person other than the accused who alone is the perpetrator of the crime alleged and the circumstances must establish the conclusive nature consistent only with the hypothesis of the guilt of the accused.”

46. The alleged statement of confession by Jitram Mahato was not even recorded before a Magistrate under section 164 of Cr.P.C. It would then have been difficult for him to have retracted from the same in course of trial, particularly if he confronted the same in course of examination by the sessions Court under section 313 of Cr.P.C. Reference in this regard is made to the case of ***Vijay Singh and Anr. v. State of Uttarakhand*** being Criminal Appeal no. 122 of 2013 decided on 26th November, 2024 by the Hon’ble Supreme Court.

47. For the reasons stated herein above, the impugned judgment and conviction of Jagadish Mondal and Jitram Mahato cannot be sustained in law and is set aside for complete failure on the part of the prosecution to prove the charges. The accused appellants are hereby set at liberty. The bail bond of Jitram Mahato be discharged, after six months in terms of Section 437 A of the Cr.P.C. corresponding to Section 481 of BNSS, 2023.

48. Jagadish Mondal shall be released from the Baharampur Central Correctional Home, if not wanted in any other case upon execution of a bond to the satisfaction of the trial which shall remain in force for a period of six months in terms of Section 437 A of the Cr.P.C. corresponding with Section 481 of BNSS, 2023.

49. This order may be communicated to the court below as well as the Superintendent of concerned correctional home.

50. All parties are to act on a server copy of this order duly downloaded from the official website of this court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)