

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-610-DB-2003 (O&M)
Reserved on: 31.7.2024
Date of Decision: 14.8.2024

BHUPINDER KUMAR AND ANOTHER
.....Appellants
Versus
STATE OF HARYANA
.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. R.S. Cheema, Senior Advocate assisted by
Mr. Ishan Khetarpal, Advocate
Mr. Satish Sharma, Advocate and
Mr. Mahi Pal Singh Bist, Advocate
for the appellant No.1.

Proceedings qua appellant No.2 stands abated.

Mr. P.P. Chahar, Sr. DAG, Haryana.

Mr. Sunil Panwar, Advocate
for the complainant.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 12.6.2003, upon sessions case bearing No.58 of 1998, by the learned Additional Sessions Judge, Ambala, wherethrough in respect of charges drawn against the accused qua offences punishable under Sections 364, 302, 201/34 of the IPC, thus the learned trial Judge concerned, proceeded to record a finding of conviction against appellants-convicts for offences punishable under Sections 302 and 201 read with Section 34 of the

IPC. However, the other co-accused namely Rajesh Kumar and Kuldeep

Kumar alias Shalu were acquitted from the charges drawn against them. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, rather sentenced both the appellants-convicts in the hereinafter extracted manner.

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I sentence accused Bhupinder Kumar alias Kaka and Sham Lal to undergo rigorous imprisonment for life and to pay fine of Rs.300/- each under Section 302 read with Section 34 of the Indian Penal Code and in default of payment of fine, they shall undergo further imprisonment for a period of two months each. I also sentence accused Bhupinder Kumar alias Kaka and Sham Lal to undergo rigorous imprisonment for a period of seven years each and to pay fine of Rs.100/- each under Section 201 read with Section 34 of the Indian Penal Code and in default of payment of fine, they shall undergo further imprisonment for a period of one month each.”

2. Both the accused-convicts become aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent thereto sentence(s) of imprisonment, and, of fine as became imposed, upon them, by the learned convicting Court concerned, and, hence have chosen to institute thereagainst their respective criminal appeals, before this Court.

3. Since appellant No.2 namely Shyam Lal, died during the pendency of the appeal, therefore, the proceedings qua him stand declared abated through an order made by this Court, on 15.05.2024.

Factual Background & Investigation

4. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex.PH/1 is assigned. The narrations carried in Ex.PH/1 are, that on 2.11.1994 at 11.00 a.m. complainant Sushma wife of Naresh

Kumar visited police post Barara and gave her statement to the police, on the basis of which, DDR No.6, dated 2.11.1997 was recorded. During her statement, it was stated by Sushma that on 31.10.1997, around 10:00 p.m., she, her husband Naresh Kumar, her daughter Anu, aged 8 years and her other children were present in the house. A call was heard from outside, whereupon her husband Naresh went out of the house. Her daughter Anu also followed her father. Their neighbour Kaka alias Bhupinder son of Lal Chand, who giving call, entered their 'Behra'. She was told by her daughter Anu that her uncle Sham Lal was also standing in the Gali. They had taken away her husband Naresh with them. On the previous day, she remained busy in finding-out the whereabouts of her husband Naresh. Her brothers-in-law had also enquired about Naresh among their relatives, but they were also not able to find anything about him. After hearing the above statement, the same was thumb marked by Sushma. After that, Madan Lal son of Data Ram admitted the above statement of his sister-in-law Sushma to be correct and supported the same. Madan Lal has also appended his signatures.

5. Thereafter, on 6.11.1997 at about 3.05 p.m. statement was given by Madan Lal son of Data Ram, to SI Rajpal of police post Barara, Police Station Mullana, while he (SI Raj Pal) was present in village Rau Majra, in connection with the enquiry of Rapat No.6, dated 2.11.1997. Stating that he was working in a Mill at Shahabad. He was having three brothers. Naresh was his younger brother. Apart from Naresh, he was having two other brothers who were younger to Naresh. He and his other brothers were married and were residing in their separate houses. About 20 years back, when Naresh was 15/16 year old, a quarrel had taken place between them on the one hand and the sons of his uncle (Tau) on the other hand, regarding the

partition of land. In that occurrence, injury was suffered by Lal Chand, father of Bhupinder @ Kaka, on his head from the hand of Naresh Kumar. As a result of that, Lal Chand had expired. Because of this occurrence, the family of Lal Chand was having enmity with them. In the evening of 31.10.1997, Bhupinder and his uncle Sham Lal and others had called and taken away Naresh to their 'Baithak'. Liquor was served by them to Naresh Kumar. Around 8.00 p.m, his brothers Ramesh Kumar and Dharam Pal had brought Naresh to their house. Around 10:00 p.m. Bhupinder @ Kaka son of Lal Chand and Sham Lal son of Ram Kishan had again taken away Naresh. Sushma and Anu, who happened to be the wife and daughter, respectively of Naresh, had tried to prevent Naresh Kumar from accompanying them, but despite that they had taken away Naresh towards their 'Baithak'. When Naresh had not reached his house by the next morning, Sushma narrated the whole story to them. In this connection, a report was lodged by them at Police Post Barara on 02.11.1997 to the effect that Naresh was missing. Up to the day of his statement to the Police, they were finding out the whereabouts of Naresh among their relatives. He was sure that Bhupinder @ Kaka and his uncle Sham had taken Naresh from his house in order to murder him for avenging the death of Lal Chand. Raja son of Sham Lal and Shalu, who happened to be the son of maternal uncle of Bhupinder were with them. He was sure that Naresh was abducted by the above mentioned four persons in order to murder him. On the basis of the above said statement of Madan Lal, FIR No.527, dated 6-11-1997 under section 364 read with Section 34 of the Indian Penal Code was recorded at Police Station Mullana. During the investigation of this case, accused Bhupinder, Shyam Lal, Rajesh Kumar and Kuldip Kumar alias Shalu were arrested. After the

completion of formalities of the investigation, they were challaned under section 364, 302 and 201 read with section 34 of the Indian Penal Code.

Committal Proceedings

6. Since the offences punishable under Section 302 of the IPC, were exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 17.4.1998, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

7. The learned trial Judge concerned, after receiving the case for trial, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against accused, for the commission of offences punishable under Sections 364, 302, and 201 of the IPC. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

8. In proof of its case, the prosecution examined 9 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. However, they did not lead any evidence.

Submissions of the learned counsel for the appellant-accused

9. The learned counsel for the aggrieved convict-appellant has argued before this Court, that both the impugned verdict of conviction, and, consequent thereto order of sentence, thus require an interference. He support the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

Submissions of the learned State counsel

10. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent thereto sentence(s) (supra), as become imposed upon the convict-appellant, are well merited, and, do not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the appeal, as preferred by the convict-appellant, be dismissed. He further submits that the State has not challenged the verdict of acquittal against the other co-accused namely Rajesh Kumar and Kuldeep Kumar alias Shalu, either before this Court or before the Hon'ble Apex Court, as such, the verdict of acquittal rendered qua them has acquired binding and conclusive effect.

Finding of this Court

11. The instant case is rested upon various purported incriminatory links in the chain of circumstances. The primary incriminatory link as became erected by the prosecution becomes comprised in the theory of last seeing together of the deceased with the accused. The said theory is propagated by PW-4 and PW-7. Moreover, it is also based upon the statements made under Section 164 Cr.P.C. respectively by Smt. Sushma, Seo Ram, Ramesh Kumar and Madan Lal. The said became proven by PW/3.

12. Another important link in the chain of incriminatory circumstance, is comprised in the motive of the accused to kill the deceased, thus, on the ground that the father of accused Bhupinder Kumar was earlier killed by deceased Naresh Kumar and by his brother Madan Lal. In respect of the said commission of murder of the father of Bhupinder Kumar by

deceased Naresh Kumar and his brother Madan Lal, the said Naresh Kumar and Madan Lal became convicted by the learned trial Court concerned, but the said verdict of conviction became reversed by this Court.

13. Significantly the body of the deceased did not become recovered nor any autopsy became conducted on the body of the deceased nor any incriminatory disclosure statement of the accused became recorded by the investigating officer concerned, nor any consequent thereto recoveries became effectuated at the instance of the accused persons.

14. Resultantly, the instant case is a case of *corpus delicti*, whereby the hereinafter inferences do arise (i) the body of the deceased remaining unrecovered at the instance of the accused, (ii) the team of doctors concerned, thus becoming disabled to pronounce upon the effects of ante mortem injuries, as purportedly occurred on the body of the deceased, (iii) the team of doctors also concomitantly becoming disabled to pronounce whether the purported ante mortem injuries, as manifesting themselves on the body of the deceased, thus becoming inflicted with the users thereon, rather of the incriminatory weapon of offence, as became so recovered at the instance of the accused concerned, to the investigating officer concerned, thus in pursuance to a prior thereto made disclosure statement. Resultantly, thereby the effect of the above, is that thereby, the theory of last seeing together of the accused and the deceased, as propagated by PW-4 and PW-7, may become underwhelmed, besides the effect, if any of the motive (*supra*), as assigned to the accused by the prosecution also may become underwhelmed.

Deposition of PW-4

15. PW-4 (wife of the deceased) during her examination-in-chief stated that about three years back on the day of Diwali, at about 10:00 p.m.,

Kaka alias Bhupinder and Sham Lal came to her house and asked her husband Naresh Kumar (deceased) to accompany them to their baithak. Her husband went along with them, and, the accused persons were taking liquor in their baithak, despite hers restraining her husband to accompany them. She further stated that her husband did not turn up till morning. Therefore, she informed her brothers-in-law about the said fact. Her brothers-in-law searched for her husband throughout the day but could not trace him. On the subsequent morning, she along with her brothers-in-law went, to police station Barara and lodged a report that her husband is missing since the night of Diwali from about 10:00 p.m. She further echoed in her testimony that the accused were having enmity with her husband, as Lal Chand (father of accused Bhupinder Kumar) was killed by her husband about 20 years prior to the date of present incident. Earlier the relations between her husband and the family of accused Bhupinder Kumar were strained. However, for the last three years they had started talking to each other. Her husband was acquitted in the murder case registered against him.

16. During her cross-examination, she stated that at the time of murder of Lal Chand, accused Bhupinder Kumar was about 3-4 years old. She further stated that it is correct that her husband was convicted by the Court of Sessions. However, he was acquitted by the Hon'ble High Court. No quarrel took place in between her husband and family members of Bhupinder Kumar after the acquittal of her husband till the present incident. Her husband used to take liquor with the accused for the last 3-4 years. She further admitted that accused Bhupinder Kumar had gone to Germany and he remained there for about six years and returned to India in the year 1995.

She further stated that Balinder, who is the elder brother of accused

Bhupinder used to reside in the village. Her house as well as the house of accused Bhupinder Kumar, are situated in the same street which ultimately ends at the kacha path around the village (Gohar). The accused also had a farm house which is near the metaled road of the village. She further admitted that people in the village come late at night from their fields on their tractors and other vehicles. She stated that people also go to their fields at night in their vehicles. Accused Bhupinder Kumar is also having a jeep. They also go to their fields late at night and some times also come late at night from their fields. Her statement was also recorded by Inspector Surinder Singh, when he conducted enquiry in the village. Statements of Madan Lal, Ramesh, Dharam Pal, Seo Ram and Usha wife of Ramesh Kumar were also recorded by Inspector Surinder Singh. She further stated that she had herself seen the deceased taking liquor in the baithak of accused Sham Lal. At that time the deceased was taking liquor along with all the accused present in the Court, and, others. She stated that Seo Ram had never told her anything about this fact. Seo Ram had never told her that Sant Nai, Jagga Mistri and Rajbir Pandit were among those persons. She further stated that the house of accused adjoins her house. Accused Sham Lal was standing on the door of his house, whereas, accused Bhupinder Kumar had come inside the room. She had herself seen Sham Lal standing outside the house. She further stated that she was not told by anyone about this fact. She stated that except her none from her family member had seen the deceased taking liquor with the accused.

Deposition of PW-7

17. PW-7 (daughter of deceased) stated in her examination-in-chief that Kaka and Sham Lal had come to call her father. They asked her father to

accompany them when her mother objected to it, they assured that they would send Kaka after some time. Thereafter, her father left the house in their company and did not return.

18. She was subjected to cross-examination. During her cross-examination, she stated that on the next day a police official had come to her house. He had made enquiries from her and she had told him the above said facts. Thereafter, no police official ever made any enquiry from her nor did she make any statement to any police official. She further stated that about four years back she was studying in 2nd standard of her village. She used to sleep at 9 p.m. Her father was called by Kaka and Sham Lal at about 6:00 p.m., in the evening. She slept that night at about 11:00 p.m. Her mother was also with her. She had come out of the house and had seen the accused who were standing in the street. Further stated that she had told the police that when her mother tried to stop her father from going outside, the accused had told that they would send him back very soon. (Attention of this witness was drawn to the statement Ex.DB where it is not recorded that when her mother tried to stop her father from going outside, the accused assured her that her father will be sent very soon. However, it was mentioned that her mother asked her father not to go. In her cross-examination she has not made any speakings whereby the testification made by her in her examination-in-chief thus could be concluded to be uncreditworthy.

Deposition of Seo Ram under Section 164 Cr.P.C.

19. Statement of Seo Ram was recorded under Section 164 Cr.P.C. In his statement he stated that the house of Naresh (deceased) is adjacent to his house and next house is of accused Bhupinder Kumar. On 31.10.1997 in the night at about 8:30 p.m., he was going to a shop for taking tobacco and

then at the baithak of Bhupinder Kumar, he saw Bhupinder Kumar, Shyam Lal, Shalu, Raja, Satta Nai, Jagga Mistri, Rajbir Pandit and Naresh (deceased) to be sitting there. In the night when he was sleeping at his baithak, then he noticed that the *gohara* (cow dung cakes castle) of the house, located on the opposite direction thus had fallen, which caused noise and his dog barked. Resultantly, ventured into the street. In the meantime, accused Bhupinder Kumar came swiftly from outside from the side of road to his house on foot. He opened the gate of his house and brought out the jeep. Accused Bhupinder and 2-3 other persons sat in that jeep and accused Bhupinder Kumar went outside the village towards southern side by driving the jeep swiftly. The dairy of accused Bhupinder etc. is situated towards that side. In the morning, he came to know that Naresh who had gone with accused Bhupinder etc. has not come back.

Statement of investigating officer

20. The investigating officer of the case Phool Chand Inspector, stepped into the witness box as PW-9. During his examination-in-chief he echoed that the investigation of this case was entrusted to him by Rajpal ASI, Police Post Sarara. During investigation, he tried to trace the accused. On the same day Ram Charan resident of Jalbera produced before him Bhupinder Singh, Sham Lal, Rajesh and Kuldeep and they were arrested. He further echoed that on the subsequent day, he interrogated all the four accused. They made disclosure statements, but no recovery was effected in pursuance thereof. On 25.11.1997 Basheshar had produced one Gypsy bearing registration No.CH-01H-2869 which was taken into possession vide memo Ex.PB, and, the same was attested by HC Balbir Singh and Constable Chuhar Singh. He further tested that on 06.12.1997, he got recorded the

statements of PWs Sushma, Seo Ram, Ramesh Kumar and Madan Lal under Section 164 Cr.P.C. before JMIC Ambala. During investigation, he recorded the statements of PWs under Section 161 Cr.P.C. On 12.02.1998, he again obtained police remand of all the accused. Thereafter, the investigation of the case was transferred to CIA Staff. After completion of investigation, he prepared report under Section 173 Cr.P.C., which bears his signatures.

21. The said witness was put to cross-examination. During his cross-examination, he stated that except one Seo Ram, he had not recorded the statements of Jagga Mistri, Rajbir Pandit, and, Santa Nai, who were alleged to have taken drinks with deceased Naresh, and, accused, thus on the night of incident. He further stated that he has not recorded the statement of any witness or neighbour of the complainant in support of allegations of Sushma, that deceased Naresh was called by the accused and that he took drinks with other people in the baithak of accused Bhupinder Kumar. He further echoed that no other villager had supported the version of Sushma, as such, he did not record their statements under Section 161 Cr.P.C. However, he had joined several persons in the investigations and had questioned them. This fact is mentioned in the jimnis of the police file. He echoed that he has not seen any broken Gohara which is meant for storage of cow dung cakes. No such Gohara was shown to him by any of the villager.

The genesis of the prosecution is embodied in the appeal FIR, to which Ex.PH/1 is assigned.

Failure of prosecution to prove the incriminatory link of last seen together of the deceased and the accused

22. The statement made by complainant Madan Lal resulted in the appeal FIR becoming registered. However, prior thereto one Sushma, the surviving widow of deceased Naresh Kumar had recorded DDR No.6 dated

02.11.1997 before the police agency.

23. The prosecution case, is rested upon the deposition of PW-4 and PW-7. Both in their respectively recorded statements thus made speakings, qua one Bhupinder Kumar and Sham Lal, visiting their house and requesting the deceased to accompany them to their baithak, whereupon all went to the baithak of the accused, where all consumed liquor. Since the husband did not return till the morning, thereby the appeal FIR became registered. Consequently, thereby both the witnesses (supra) propagated the incriminatory link of both seeing together the accused and the deceased.

24. Though the said witnesses became subjected to the ordeal of a scathing cross-examination but yet in their respective cross-examinations they did not make any articulations whereby this Court may become coaxed to draw an inference, that their respective propagations, as carried in their respective examinations-in-chief, thus becoming rendered uncreditworthy.

25. Be that as it may, on the basis of the said inculpatory statements by the witnesses (supra), no formidable inculpatory conclusions can be drawn by this Court.

26. The primary reason for stating so, becomes grooved in the factum, qua apart from the above certain other witnesses also made their respective statements under Section 164 Cr.P.C., before the learned Magistrate concerned. The said persons are Seo Ram, Ramesh Kumar and Madan Lal. Their respectively made statements are ad verbatim extracted hereinafter.

“Statement of Seo Ram son of Sadhu Ram

Stated that the house of Naresh is adjacent to my house and next house is of Bhupinder. On 31.10.1997 in the night at about 8.30 I was going to a shop for taking tobacco and then in the ‘baithak’ of

Bhupinder I saw Bhupinder, Shyam Lal, Shalu, Raja, Satta Nai, Jagga Mistri, Rajbir Pandit and Naresh sitting there. I had gone ahead to do my work. In the night I was sleeping in my 'baithak' the 'gohara' (cow dung cakes castle) of the house of our opposite direction had fallen and there was a noise and our dog barked. I went out in the street to see. In the meantime Bhupinder came swiftly from outside from the side of road to his house on foot. He opened the gate of his house and brought out the jeep. Bhupinder and two three other persons sat in that jeep and Bhupinder went away outside the village towards south by driving the jeep in a fast manner. The dairy of Bhupinder etc. is situated towards that side. In the morning I came to know that Naresh who had gone with Bhupinder etc. has not come back.

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Statement of Ramesh Kumar s/o Shri Data Ram

Stated that on 31.10.1997 in the evening at about 8.00, our brother Naresh Kumar was sitting in the 'baithak' of Shyam Lal with Shyam Lal, Bhupinder, Raja and Shalu. I and Dharam Pal, my brother, had called him and he was made to sit in the house of Naresh Kumar. We had an old enmity with Bhupinder etc. because at the hands of Naresh Kumar the death of father of Bhupinder had occurred. Due to this reason we had called Naresh from there. Then we had gone to our house. In the morning we came to know that in the night Bhupinder and Shyam Lal had called Naresh Kumar from the house. This has been told to us by our 'bhabi' (brother's wife) Sushma. We enquired in the village and Shyam Lal and his son Rajesh alias Raja about Naresh because he had not returned to the house till morning. They did not reply satisfactorily. Then we had gone to their Dairy Farm. One way of the dairy farm is closed with 'ballies' (wooden polls). Those 'ballies' were found broken. We saw on the earth the signs of feet of Bhupinder due to drops of dew and also the 'chappals' of Bhupinder. By seeing so, it appeared that some quarrel had taken place there. There the signs of tyres of gypsy had come from inside the dairy farm towards outside the road. The signs were not visible on the road. From all the circumstance we have full belief that Bhupinder, Shyam Lal, Raja and Shalu have committed the murder of Naresh and the dead body has been concealed somewhere.

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Statement of Madan Lal son of Data Ram

*Stated that 20 years back from today there occurred a quarrel between us and Lal Chand father of Bhupinder in which I had been sentence because Lal Chand had been murdered in the hands of Naresh. Naresh Kumar is my brother. Naresh Kumar had also faced a trial regarding this murder. Due to this reason, Bhupinder Kumar and Shyam Lal and his family members have enmity with us. On 31.10.1977 in the evening at 8.00 Naresh Kumar was consuming liquor with accused Bhupinder Kumar, Shyam Lal, Rajesh Kumar and Kuldeep Kumar by sitting in the 'baithak' of Shyam Lal. Shyam Lal is the son of our taya (father's elder brother) and Bhupinder Kumar is the grandson of our taya (father's elder brother). Regarding taking of liquor by Naresh Kumar my brothers Ramesh Kumar and Dharam Pal came to know. They called him from there. In the night at 10.00 A.M. Bhupinder Kumar and Shyam Lal, had come to the house of Naresh Kumar to call him. Shyam Lal stood outside and Bhupinder brought him outside by calling him. Naresh's wife Sushma and his daughter Anu came with him upto the door and tried to stop him. But Bhupinder Kumar and Shyam Lal told that "we will leave him there". Till the morning when Naresh Kumar did not come back then his wife Sushma told about this to Ramesh Kumar and Dharam Pal and asked Bhupinder Kumar regarding Naresh Kumar. He did not reply satisfactorily. Then my brothers Ramesh and Dharam Pal had gone to the dairy farm of Bhupinder Kumar and met his servant Neelu alias Sardara. He told that some persons had come in the night there but "I was under the influence of intoxicant and, therefore, I did not take notice of it specially, on 1.11.1997 we along with Sushma had gone to police post, Barara and gave complaint in writing upon which they did not take any action. Then on 2.11.1997 Sushma lodged a report. Then on 6.11.1997 I made statement to the police in Police Post, Barara. We have a doubt that the accused have killed Naresh Kumar and his dead body has been concealed somewhere
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27. For gauging the veracity of the testification made by Anu, who

is the daughter of the deceased, and, by one Sushma, who is the surviving

spouse of the deceased, both of whom stepped into the witness box as PW-4 and PW-7, wherein, they supported the prosecution version, that the deceased and the accused being last seen together in the house of the deceased and in the baithak of the accused, it is but necessary to also refer to the testifications (supra) as made under Section 164 Cr.P.C., before the learned Magistrate concerned. The said statements are proven by the Magistrate concerned, who stepped into the witness box as PW-3.

28. The said Seo Ram in his statement made before the learned Magistrate concerned, unraveled the fact that at the baithak of the accused, his sighting Sham Lal, Shalu, Raja, Satta Nai, Jagga Mistri, Rajbir Pandit. However, the names of many of the above persons, do not become unfolded by Sushma (PW-4), thereby it appears that the statements made by the witnesses (supra) become belied by the above made proven statement(s) by Seo Ram, thus before the learned Magistrate concerned.

29. The effect of the speakings (supra), as occur in the statement of one Sushma (PW-4) rather not being *in tandem* with Seo Ram, inasmuch as, the latter disclosing therein the names of Satta Nai, Jagga Mistri, and of Rajbir Pandit, to be the ones who were available at the baithak of the accused, whereas PW-4 not disclosing their names, is that, thereby the testification of PW-4 to the extent, that the concerned, had assembled at the baithak of accused and were consuming liquor there besides all being last seen together, rather becomes *ipso facto* falsified.

30. It appears that the learned trial Judge concerned, has failed to conjunctively analyse the statements of PW-4 and PW-7, thus with the statement made under Section 164 Cr.P.C., by Seo Ram. In case there was a conjunctive analysis of the said statements, thereby the above inter se

contradictions would have emerged. Furthermore, the above inter se contradiction, is rife and open and as such clouds the prosecution case with a shroud of doubt and thereby this Court is led to conclude, that the theory of last seeing together of the accused with the deceased, rather becoming falsely propagated by PW-4 and PW-7. Moreover, since the interested testifications but respectively rendered by the surviving widow and the daughter of the deceased, becomes the relevant prime prosecution evidence, thereby the statement made under Section 164 Cr.P.C., by Seo Ram rather did comprise an independent version vis-a-vis the crime event. Resultantly, when the version (supra) propagated by Seo Ram, is completely distinct from the version propagated by PW-4 and PW-7, thereby the said inter se contradiction but also readily belies the prosecution case. Conspicuously also even if assuming, that the statement made by one Seo Ram, before the Magistrate concerned, irrespective of the fact, that it contradicts the statements made respectively by PW-4 and PW-7, rather is to be assigned credence qua his purportedly corroborating the theory of last seeing together of the accused and the deceased.

31. Nonetheless, yet before assigning any credit to the statement of Seo Ram, *de hors* the fact that it became proven by PW-3 (who is the Magistrate concerned), wherebefore whom the said statement was made, it became incumbent, upon the prosecution to ensure that the said Seo Ram rather is also led into the witness box. The leading of Seo Ram into the witness box would have ensured that the defence cross-examines him, thus for impeaching the creditworthiness, of his previous statement made under Section 164 Cr.P.C., wherein he expressed, about his last seeing together the accused and the deceased. It appears that even if the learned Public

Prosecutor concerned, did not ensure, the stepping into the witness box of Seo Ram, yet the learned trial Judge concerned, was required to *suo motu* order for the said Seo Ram being led into the witness box, so that, after the conclusion of his examination-in-chief, he becomes cross-examined by the learned defence counsel, so that thereby the efficacy, if any, of any of the inculpatory echoings made by him, becomes attempted to be shred apart.

32. The omission (supra) on the part of the learned trial Judge concerned, has caused a severe casualty to the defence, inasmuch as, the defence being disabled to cross-examine him rather for belying the speakings as occur in his statement (supra). Moreover, the further casualty which emerges, from the non leading into the witness box of Seo Ram, is that, the learned defence counsel also becoming incapacitated to confront him, thus with testifications respectively made by PW-4 and PW-7, especially when on the said Seo Ram becoming confronted with the said statements, thereby the defence may have proven, that either the respectively made statements of PW-4 and PW-7 are false and/or even qua the statement of Seo Ram, thus lacking in veracity.

33. In aftermath, the effect of, non citing of Seo Ram as a witness, besides his non stepping him into the witness box, is that thereby, the prosecution has smothered the emergence of truth qua the genesis of the occurrence. Resultantly, the benefit of doubt has to be bestowed to the accused.

34. Moreover, since the investigating officer concerned, during the course of his investigation, failed to record the statements of Raja, Satta Nai, Jagga Mistri, and of Rajbir Pandit, who were named by Seo Ram, to be last seen together with the deceased at the baithak of the accused, does also

arouse an inference, that despite the said persons becoming purportedly last seen together, with the deceased yet neither their role in the crime event being investigated nor theirs being cited as witnesses nor as accused. The said omission by the investigating officer concerned, thus leads to an inference that therebys the investigating officer concerned, rather conducted a slipshod and sketchy investigation. Since reiteratedly the statements of the widow of deceased and her minor daughter but are interested testifications, therebys also it was but imperative upon the investigating officer concerned, to record the statements of the above persons, whereas, his omission to either record their statements or to investigate their role in the crime event or to respectively cite them as prosecution witnesses or as accused, thus has resulted in completely inept investigations, becoming conducted, wherebys concomitant failure of justice has ensued.

Failure of the prosecution to prove the motive for commission of the crime event

35. Now coming to the theory of the motive etching in the minds of the accused to eliminate the deceased. The said purported motive etching in the minds of the accused to eliminate the deceased, when becomes entwined with but the frailly propagated theory of last seeing of the deceased and the accused, therebys but concomitantly the purported motive etching in the minds of the accused to eliminate the deceased, also becomes eclipsed in a cloud of doubt. However, assuming that there was a motive, as such nursed by the accused to eliminate the deceased, yet when in her cross-examination one Sushma, rather candidly stated that there was resumption of good will and friendliness amongst the accused and the deceased. Further assuming that the accused along with others had assembled at the baithak of accused to

friendliness amongst the accused and the deceased, thereby there was no motive as such etched in the minds of the accused. Resultantly, the purported motive for the murder does stagger.

Failure of the prosecution to record the signed disclosure statement of the accused and the further failure to cause pursuant thereto recoveries of incriminatory weapons of offence.

Further failure of the prosecution to recover the dead body of the deceased, and, besides the further failure to, at the instance of the accused get the crime site demarcated

36. The investigated officer concerned, in his deposition stated that he did not record the statements of the accused. Moreover, he stated that despite his holding the accused to custodial interrogation yet he failed to record their respective signed disclosure statements nor in pursuance thereto, he made recoveries of any incriminatory materials or articles.

37. The omission(s) (supra), and importantly the gravest omission, but of the accused to cause the recovery of the body of the deceased, is that, thereby there was complete disablement on the part of doctor concerned, to conduct post mortem report on the body of the deceased, besides concomitantly to make observations in the apposite report, about the entailment of any ante mortem injuries on the body of the deceased. Moreover, it also forbade him to make any opinion that the said purported ante mortem injuries, on the body of the deceased rather were a sequel of users thereon of the recovered weapon of offence. In addition, since even the crime site remained undemarcated or earmarked, at the instance of the accused, despite the investigating officer concerned, holding the accused to custodial interrogation, thereupon also this Court is coaxed, to conclude, that the accused have been falsely implicated in the present case.

38. In aftermath, all the incriminatory links in the chain of

incriminatory circumstances erected by the prosecution remain unproven.

39. In sequel, the appreciation of evidence, as done by the learned trial Judge concerned, suffers from a gross perversity of mis-appreciation and non appreciation of the evidence germane to the charge.

Final Order

40. The result of the above discussion, is that, this Court finds merit in the appeal, and, is constrained to allow it. Consequently, the appeal is allowed. The impugned judgment convicting, and, sentencing the appellants, and, as becomes recorded by the learned trial Judge concerned, is quashed, and, set aside. The appellants are acquitted of the charge framed against them. The fine amount, if any, deposited by them, be, in accordance with law, refunded to them. The personal, and, surety bonds of the accused shall stand forthwith cancelled, and, discharged. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal. The appellants, if in custody, and, if not required in any other case, be forthwith set at liberty. Release warrants be prepared accordingly.

41. Records be sent down forthwith.

42. The miscellaneous application(s), if any, is/are, also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

August 14th, 2024
Ithlesh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No