

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.21 of 1996

1. Kedar Yadav S/o Late Shiv Gobind Yadav and
2. Ramuna Mallah, S/o Raghbir Mallah, both residents of village- Khatauna,
P.S. Ramnagar, District- Bettiah, West Champaran.

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s : Ms. Anukriti Jaipuriyar, Amicus Curiae
For the state : Mr. Dilip Kr. Sinha. APP

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA)

Date : 31-07-2025

The present appeal under 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') has been preferred against the judgment and order of conviction and sentence dated 12.12.1995 passed by the Court of learned 1st Additional Sessions Judge, West Champaran, Bettiah in Sessions Trial No. 147 of 1984/210 of 1995 (arising out of Ram Nagar P.S. Case no. 95 of 1982), whereby and whereunder the appellants have been convicted under Section 302 r/w Section 34 of the Indian Penal Code and they have been sentenced to undergo rigorous imprisonment for life.

2. The short facts of the case as per the *fardbeyan* of Deo Saran Yadav, the informant, which was recorded at Pakari



Sareh (near Harha river) on 28.09.1982 at 01:30 PM, is that on the previous day i.e. on 27.09.1982 at around 6:00 P.M., while the informant and Bhuar Mushahar (deceased), who had met at Bigaha, got off from the train at Bhairoganj station and were walking towards village Khatauri, they had met the accused persons, being Nand Lal Mahto, Kedar Yadav and Ramuna Mallah at a distance of around 500 yards and on their request, the informant and Bhuar Mushahar (deceased) were accompanied by the three accused persons. It is alleged that when they reached near Sareh river, Nand Lal Mahto gave a *lathi* blow on the thigh of Bhuar Mushahar due to which he fell down. On a protest raised by the informant, he was surrounded by the two other accused persons namely Kedar Yadav and Ramuna Mallah (present appellants), was threatened by Nand Lal Mahto on the point of a country made pistol and was told that he was being left unharmed as he was an employee of Babu, but Bhuar would be killed as he had assaulted him during Holi. It is further alleged that all the three accused persons assaulted Bhuar Mushahar in lying condition by means of fists, blows and legs, while Nand Lal Mahto exhorted that Bhuar Mushahar be killed and he was dragged towards the river. In the meantime, finding an opportunity, the informant fled away and



went to village Pakri raising alarm and informed the villagers about the incident, who refused to come along and thereafter, he went to village Khatauri along with Chowkidar Hari Bansh Ram and Nand Lal Ram (both not examined) and informed Tikkar Mushahar (P.W.7), brother of the deceased about the incident, whereafter a number of villagers assembled and went to Pakri Sareh in search of Bhuar Mushahar, but he could not be found. It has further been stated that on the following day, i.e. on 28.09.1982 at around 6:00 A.M., the dead body of Bhuar Mushahar was found in the shallow waters of Harha river at Pakrigaon in the sand with the neck cut by a sharp-cutting weapon and he had already died. The informant further alleged that while he was about to inform the Ram Nagar Police Station, the Investigating Officer had arrived and it was informed to him that the occurrence had taken place at around 07:45 PM in the last night with a specific claim that accused Nand Lal Mahto, Kedar Yadav and Ramuna Mallah, all have committed the murder of Bhuar Mushahar by slitting his throat

3. The aforesaid statement of the informant Deo Saran Yadav was read over to him in the presence of two witnesses Sheo Narain Choudhary (P.W.5) and Dhruv Choudhary (P.W.4), whereafter he put his left thumb impression



and the same was also signed by the abovementioned witnesses as also the Investigating Officer, Daroga Singh (P.W.11). On the basis of the aforementioned fardbeyan, Ram Nagar P.S. Case No. 95 of 1982 was instituted on 28.09.1982 under Sections 302, 201 and 34 of the IPC against the abovementioned appellants and one Nand Lal Mahto at 6:00PM. After investigation, the police submitted charge-sheet under the same sections i.e. 302, 201 and 34 of the IPC on 25.12.1982 whereafter by an order dated 18.01.1983 cognizance was taken under the aforementioned sections against the appellants and one another. Further, after commitment of the case to the court of Sessions on 06.06.1984, charges were framed on 06.08.1985 against the accused persons.

4. The prosecution, in order to substantiate its case, examined 12 witnesses during the course of trial. P.W.-1, Bansi Mushahar (maternal brother of the deceased and a hearsay witness); P.W. 2, Suresh Ram (formal witness who had signed the inquest report); P.W.3, Lalai Choudhary (Guard of the field of Baidyanath Rai and a hearsay witness); P.W. 4, Dhruv Choudhary, P.W. 5, Sheo Narain Choudhary, who are both hearsay witnesses and also signatory to the fardbeyan. P.W. 6, Deo Saran Yadav is the informant himself; P.W. 7, Tikkar



Mushahar (brother of the deceased and a hearsay witness); P.W. 8, Etwar Mushahar (father of the deceased and a tendered witness); P.W. 9, Chandra Mohan Rai (employer/master of the informant as also a hearsay witness); P.W. 10, Baidyanath Rai (hearsay witness); P.W.11, Daroga Singh (Investigating Officer as also the officer who recorded the *fardbeyan* of the informant) and P.W.-12, Dr. Ramesh (the doctor who conducted the postmortem examination of the dead body of the deceased). However, no evidence has been adduced on behalf of the defence, neither oral nor documentary.

5. The arguments as advanced by Ms. Anukriti Jaipurkar, the learned *Amicus Curiae* appointed in this case are basically pointed towards the fact that the entire case is based on suspicion as there is no eye witness to the actual incident of killing and the informant Deo Saran Yadav is a witness only to the initiation of an act of assault by the accused persons and that too with fists, slaps and lathi. There is no mention whatsoever of anyone being armed with sharp cutting weapon which is said to be the weapon used for causing the fatal injury on the deceased. It has been rather submitted that one of the accused Nand Lal Mahato (now dead) was armed with *lathi* and was subsequently said to be armed with *nalkati* (country made pistol). This fact



also leads her to the argument that in case the accused were armed with a firearm and had there been an intention to kill, it could have been done then and there and there was no requirement of developing the entire story of the deceased being dragged and being taken to the river to be killed by slitting of his throat. She has further submitted that even on the score of the deceased being dragged from the paddy field to the river, there is neither any track marks found from the field to the river nor any dragging mark has been found on the body of the deceased as per the postmortem report. Further submission made on behalf of the appellants is that barring the informant, there is no other witness, much less independent witness, who claims to have seen the incident, rather all other witnesses are hearsay witnesses who are speaking the story as narrated by the informant. There is no independent corroboration of the incident and there is no one even to support the fact that the deceased and the accused persons had all met on the date of occurrence, despite the fact that the informant along with the deceased had got off at the station, which is a busy place.

6. It has also been argued by the learned Amicus Curiae that there is no motive for the killing of the deceased and the motive which has been alleged by the prosecution being that



of the deceased having assaulted the accused Nand Lal on the day of Holi, an event which took place almost a year back, is too weak and vague a motive to cause an incident of murder after a lapse of so many month, moreso in the background of the fact that it was a minor incident which stood compromised and the issues were resolved between the parties as would appear from the evidence of P.W.-1.

7. On the point of recovery, it has been submitted that the factum of seizure of lathi and towel from the place of occurrence seems to be highly doubtful and the counsel would go to the extent of saying that the same was planted as these articles were nowhere to be found in the night at the place of occurrence. Moreover, despite an extensive search having been made for the dead body, neither the dead body nor these articles were found and there is no seizure list on record. The further submission is that the oral evidence given by the witness are not corroborated by the medical evidence as the doctor has referred to incised injuries, whereas according to the story of the informant, the accused persons were armed either with lathi or with a firearm.

8. Learned Amicus further submits that the present incident cannot be a planned incident of assault as even



according to the version of the informant, the accused persons, the informant and the deceased had just met by chance. She also emphasizes on the fact that there is no recovery of weapon either from the place of occurrence or from the house of the accused persons which was immediately searched. Learned Amicus has also taken this Court to various contradictions on the point of recovery of the dead body, the time of arrival of the Investigating Officer at the place of occurrence and also on the point as to whether the informant (P.W.6) had actually gone for any search for Bhuar Mushahar in the night of the occurrence. She has next submitted that the place of occurrence has also not been identified and hence, not established. It is also her submission that the present case is only based on circumstantial evidence and the prosecution has failed to establish its case beyond reasonable doubts. She has placed reliance on the case of **Digamber Vaishnav and Anr. Vs. State of Chhattisgarh**, reported in **2019 (4) SCC 522** (paragraphs no. 14 to 19) in order to buttress her submission that the prosecution has miserably failed to prove its case beyond reasonable doubt and the circumstances, if any, do not form a complete chain in order to unerringly point towards the guilt of the accused. Further, the incriminating circumstances have also not been put to the



accused persons u/s 313 Cr.P.C., thereby causing prejudice to the defence of the accused.

9. Per contra, Mr. Dilip Kumar Sinha, the learned APP appearing for the State has submitted that in the present case, the appellants have been named in the FIR as accused. The present case is a case of last seen as the deceased was last seen in the company of the accused persons as stated by the informant (P.W.6). It is further submitted that it was only on account of fear generated by the accused persons by means of firearm that the informant had to flee away from the place of occurrence, however he had gone to the village to inform other people and bring them to the place of occurrence for searching the deceased. It has also been submitted that the informant was indeed a witness to the initial assault made upon the deceased by means of lathi, fists and legs at the hands of the accused persons, especially Nand Lal Mahto and that part which involved the actual killing of the deceased could not be witnessed by the informant on account of the fact that he had fled away from the place of occurrence. This throws enough suspicion on the accused persons and rather establishes their complicity in the present occurrence.

10. Besides hearing the learned counsel for the



parties, we have minutely perused the evidence, both oral and documentary. Before proceeding further, it is necessary to cursorily discuss the evidence.

11. Deo Sharan Yadav, who is the informant of this case, has been examined as P.W.6. He happens to be an eyewitness to a part of occurrence, which is initiation of assault upon the deceased by the accused persons. He states that while he was returning to Bagaha by train at around 7:00 P.M. on the date of occurrence, he met Bhuar Mushahar (deceased) at Bharoganj station. While they left for Khatauri village and had just gone a distance of three bighas towards east, accused persons Kedar Yadav, Ramuna Mallah and Nand Lal Mahato met on the way. They also accompanied the informant and the deceased and when they reached Pakari village near Haraha river in the paddy field, accused Nand Lal Mahato gave one *lathi* blow on the right thigh of Bhuar Mushahar (deceased). This witness protested to the same, whereupon he was abused and even threatened on the point of a country made pistol. The informant got afraid upon seeing the pistol and in the meantime, Ramuna Mallah and Kedar Yadav surrounded him. He further states that accused Ramuna Mallah and Kedar Yadav also started assaulting Bhuar Mushahar by means of legs and fists



(fists) upon which the accused Nand Lal Mahato extorted that the deceased be killed by knife. Thereafter, all the three accused persons dragged the deceased towards the west and in the meantime, finding an opportunity, the informant fled away from the scene of occurrence raising alarm. He met Nand Lal Ram and Haribans Ram (not examined) to whom he disclosed about the incident and he asked the people to come along with him to which no one agreed. He then went to Khatauri farm alongwith Haribans Ram and Nand Lal Ram where he informed Tikkar Mushahar (P.W.7), the brother of the deceased, about the fact that the deceased was being assaulted by the accused persons. Etwar Mushahar (P.W.8), Banshi Mushahar (P.W.1), Sheo Narain Chaudhary (P.W.5), Dhruv Chaudhary (P.W.4) etc., were also informed about the incident and he along with these persons came to Pakari Sareh in search of Bhuar Mushahar but he could not be found. It has further been stated that on the next morning at 6:00 A.M., the dead body of Bhuar Mushahar with his throat slit, was found by the police on the west side of Haraha river which was recovered from shallow water. The Investigating Officer had prepared the documents, whereupon he along with Banshi Mushahar (P.W.1), Sheo Narain Chaudhary (P.W.5) and Dhruv Chaudhary (P.W.4) made their



signatures. It is stated that the statement of P.W.6 was recorded by the side of the river whereupon he made his signature alongwith Sheo Narain Chaudhary (P.W.5) and Dhruv Chaudhary (P.W.4) (Exhibit-2). He further states that a towel and a piece of *lathi* belonging to the deceased, were recovered near the field which was taken away by the Investigating Officer. It was stated upon Court's query that the incident of altercation had occurred on the day of Holi between the accused persons and the deceased and this is the reason why the accused persons had killed Bhuar Mushahar. In his cross-examination, he refers to disclosing to the Investigating Officer the incident of Holi when the three accused persons had gone to the house of the deceased in an intoxicated condition and the deceased had assaulted accused Nand Lal Mahto. The witness has further stated that he did not see any person from Khatauri village on the train and that he did not meet any other person on way. It is further stated that one *lathi* blow was inflicted upon the right thigh of Bhuar Mushahar and thereafter, all accused had assaulted by means of fists and slaps. He also stated that he could not see the location of the injuries upon Bhuar Mushahar since it was dark. Further, he states that he came to the place of occurrence along with others at 11:00 P.M.



12. P.W.1 Banshi Mushahar is a hearsay witness and also a signatory to the inquest report. He has stated in his evidence that he came to know through Deosharan Yadav, the informant of this case that while he was coming along with Bhuar Mushahar (deceased), he was intercepted by the three accused persons and they resorted to assault by means of *lathi* due to which the deceased fell down. The informant thereafter ran to village Khatauri and raised alarm that Bhuar Mushahar has been done to death by the accused persons. On such alarm being raised, this witness along with others went to Sareh in order to search for the dead body. The dead body with the neck slit, was found at 7:00 A.M. on the next day from shallow water of river Haraha. It further transpires from his evidence that the Investigating Officer prepared documents at the place of occurrence upon which his signature was also taken. He also refers to a seizure list having been prepared, of the clothes of the deceased and *lathi* whereupon he had signed. He has further referred to the fact that there was a dispute between accused persons and the deceased over an incident which had happened on the day of Holi. On a query made by Court, it was replied by him that he was not an eyewitness to the occurrence and he rather got the knowledge of the incident from the informant. In



his cross-examination, he has stated that the deceased Bhuar Mushahar was his maternal cousin. He has further stated that he is not even a witness to the incident of altercation which happened on the day of Holi, however he states that there was no dispute thereafter and cordial relations prevailed between the parties. While stating that he is a labour of Chandra Mohan Rai (P.W.9), he has referred to a dispute with the said Chandra Mohan Rai with regard to *batai* but the accused persons were not the *bataidars* of P.W.9. It has been further stated that the informant Deosharan Yadav disclosed about the incident at 8:00 P.M. in the night when he had come along with chowkidar Hari Bansh Ram but neither the informant Deosharan Yadav nor the *chowkidar* accompanied in the search for the dead body in the night rather Deosharan Yadav remained at his farm. He met Deosharan Yadav on the next day between 8:00 to 9:00 A.M. while in the night itself, Etwar Mushahar (P.W.8) had informed the police at the police station at around 10:00 P.M. However, he came along with Investigating Officer in the morning. It has also been stated that he did not go to khatauri village to inform any one that the dead body of the deceased was embedded in the sand. He also states that blood stains were found near the river in an area of about 4-5 hands and has asserted the fact that dead



body was recovered by them.

13. P.W.2 Suresh Ram is also a hearsay witness as also a witness of the inquest report and his signature has been marked as Exhibit-1 while the inquest report is Exhibit-4. This witness has also refers to an alarm raised by the informant Deosharan Yadav that the deceased had been killed. The following day, the police arrived and the dead body was brought to the village, whereafter he signed on the document prepared by the police which was the inquest report (Exhibit-1). He informed the police that an alarm had been raised by Deosharan Yadav that Bhuar Mushahar was being killed by the three accused persons, whom he knew. In his cross-examination, this witness has stated that the alarm was raised in the night, however, he met Deosharan Yadav following day at 9:00 A.M. in the village itself after the police had arrived. He has further stated that he got to know the details of the occurrence while the informant was narrating the same to the Investigating Officer.

14. One Lalai Chaudhary has been examined as P.W.3, who is the guard of the field of Baidyanath Rai (P.W.10). He states that while he was guarding the field of P.W.10 between 8:00 to 9:00 P.M., he heard some alarm with regard to altercation and saw a person coming running and he also



followed him. The next day, the police arrived and he got to know that Bhuar Mushahar had been killed. The police had brought the dead body of the deceased from Haraha river, however, he did not hear the name of the assailants. Upon inquiry by the police, he did not disclose the names of the three accused as being the perpetrators of the crime. In the cross-examination, this witness has only stated about the distance of the field from Haraha river and that he had gone to the field in the evening.

15. P.W.4 is one Dhruv Chaudhary, who besides being a hearsay witness, is also a signatory to the *fardbeyan*. He has stated that he heard an alarm in the night that some people have killed Bhuar Mushahar whereafter, he went to Sareh near Haraha river but the dead body of the deceased could not be found. Later on, he heard that the dead body with the throat slit, was at the police station and the Investigating Officer had recovered the dead body. He has further stated that the informant Deosharan Yadav had given his statement before the police at the police station and he along with Sheo Narain (P.W.5) had signed on the same and their signatures have been marked as Exhibit-1/1 and Exhibit-1/2 respectively. The Informant Deosharan Yadav disclosed the names of the



assailants as Kedar Yadav, Ramuna Mallaha and Nand Lal Mahto, whom he knew. In the cross-examination, he stated that he heard about the occurrence when it was being narrated by Deosharan Yadav to the Investigating Officer and before the same, he had no conversation with the said Deosharan Yadav. In his further cross-examination, this witness has referred to a dispute between the accused Nand Lal Mahato and Chandra Mohan Rai (P.W.9) with regard to watering of fields.

16. P.W.5 Sheo Narain Chaudhary is a hearsay witness and also a signatory to the *fardbeyan* of the informant (Exhibit-1/2). He stated in his examination-in-chief that the statement of informant Deosharan Yadav was recorded before him and Dhruv Chaudhary (P.W.4), whereafter he made his signature upon the same. It has been further stated that he came out of the house upon alarm being raised and he got to know from one Shiv Ratan (not examined) that Bhuar Mushahar was being assaulted by the three named accused persons, whom he knew. He however, states that he did not go towards the river. The dead body of the deceased was recovered from Haraha river in the morning and he saw the dead body kept in a tractor while the clothes on the dead body were stained with blood. He went to the police station all alone and saw the dead body at the



police station, where he made his signature and gave his statement before the police. His attention has been drawn to the statement made before the police recorded under Section 161 Cr.P.C wherein he has denied the fact that he made any statement with regard to the informant Deo sharan Yadav having disclosed to him that he had gone to Khatauri village and informed about the incident of assault in the night. In the cross-examination, he had reiterated that he did not meet Deosharan Yadav, the informant in the night and rather met him at the police station. He also did not disclose the name of Shiv Ratan to the police. Tikkar Mushahar (P.W.7) was called from his door and 3-4 mushahars had also come along. Etwar Mushahar (P.W.8), Banshi Mushahar (P.W.1.) and Tikkar Mushahar (P.W.7), the witnesses in the case along with others, had gone to the place of occurrence in the night itself but *lathi* and towel were not found at that time. He has further stated that distance between the place of occurrence and the river was about 500 feet and some trampling was found in the paddy field. He further states that they had stayed back in the field during the night for searching the dead body. The Investigating officer, however, came to the place of occurrence at 6:00 A.M. in the morning on the next day. The statement of this witness was



recorded after recovery of the dead body and the same was done near the bank of the river. The statements of other witnesses were also recorded by the Investigating Officer. He has denied a suggestion that there was a dispute between his master (P.W.9) and the accused persons with regard to watering of fields.

17. Tikkar Mushahar is the brother of the deceased Bhuar Mushahar and has been examined as P.W.7. As per his evidence, Deo Sharan Yadav (informant) had come to him in the night of the occurrence and informed that the accused persons were assaulting Bhuar Mushahar at Pakari village. They went to look for the dead body in the same night along with the informant but could not find the same. The dead body, however, was later found in the shallow water of Haraha river and the neck of the deceased was found slit. He further refers to an incident of verbal altercation having taken place between the deceased and the accused persons on the occasion of last Holi when Nand Lal Mahto etc., had come to the house of the deceased and had spoken in filthy language, which was the cause of the occurrence. In his cross-examination, this witness has stated that he got to know about the occurrence between 7:00 to 8 P.M. in the night on the date of occurrence, however he did not disclose this fact before the police. It is further stated



that Etwar Mushahar, Dhurv Chaudhary etc., had also gone along with him for searching the dead body. They, however, did not go to the house of accused persons after the occurrence to enquire. It is further stated that incident of Holi was not reported to the police, however the said incident was subsequently compromised. It has further been stated that the dead body of the deceased was found before the police at 10 A.M.

18. While P.W.8, Etwar Mushahar, is the father of the deceased and has been tendered for cross-examination, Chandra Mohan Rai, who has been examined as P.W.9 who is the master of the informant and P.W.10 Baijnath Rai is the master of P.W.3 (Lalai Chaudhary) and nothing substantial emerges from their evidence, hence the same is not being discussed.

19. The Investigating Officer, Daroga Singh, has been examined as P.W.11 and he states that he had recorded the *fardbeyan* of the informant Deo Sharan Yadav near Harha river on 28.09.1982 and has also signed upon the same (Exhibit-2). The formal FIR also bears the signature of this witness which is Exhibit-3 and he took up the Investigation of this case. It is stated that on 29.09.1982 (it should be 28.09.1982) at 11 A.M, he went to the place of occurrence which is situated at Pakari Sareh near the Harha river and recovered the dead body from



the shallow water of the Harha river which was covered by sand. A trailing mark on the sand at Haraha river was also found which appeared to be that of dragging a person. The inquest report was prepared by him which is in his writing and has been signed by Suresh Ram (P.W.2) and Banshi Mushahar (P.W.1) (Exhibit-4). The dead body was sent for postmortem. He further stated that a *lathi* and a towel was recovered in the paddy field near the place of occurrence which was also seized in the presence of the witnesses but he is unable to find the seizure list. He took the statements of the witnesses and submitted charge-sheet while declaring Ramuna Mallaha as an absconder. In the cross-examination, this witness has stated that he did not prepare any sketchmap of the place of occurrence and the statement of the informant was recorded by him at 01:30 PM before Sheo Narain Choudhary (P.W.5) and Dhruv Chaudhary (P.W.4)., who also signed on the said *fardbeyan and their* statements were also taken on 29.09.1982 around 12 noon. From his further cross-examination, it transpires that towel and the *lathi* were not found stained with blood and when he had gone to the village of the accused persons, they were found absconding. However, nothing was recovered from the house of the accused persons.



20. The doctor, who has conducted the postmortem examination of the deceased is one Dr. Ramesh, who has been examined as P.W.12 by the prosecution. It has been stated that he conducted the postmortem examination of the dead body of Bhuar Mushahar on 29.09.1982 at 01:00 P.M. and had found the following ante-mortem injuries:

- (i) one incised wound 8"x3" upto vertibance skin muscles, soft tissues, vengels throat bones trachia,
- (ii) incised wound 1/2"x1/2" x1/3" on the left chick and,
- (iii) bruise caused bruise 4"x2" on the back of the right thigh caused by hard and blunt substance storm and raise caused by sharp-cutting weapon.

21. P.W.12 has further stated that the death was caused due to injury no.1 by sharp cutting weapon as described above. The injury no.3 was caused by hard and blunt substance while the rest were caused by sharp-cutting weapon. He has identified his writing and signature on the postmortem report which has been marked as Exhibit-5, and has stated that the death had occurred within 48 hours of the postmortem examination.

22. After closing the prosecution evidence, the learned Trial Court recorded the statement of the appellants, namely, Kedar Yadav and Ramuna Mallah under Section 313 Cr.P.C. on



10.05.1989 wherein the accused persons have denied the allegation.

23. The learned Trial Court, upon appreciation, analysis and derivating of the evidence adduced at the trial, has found the aforesaid Appellants guilty of the offence and had sentenced them to imprisonment and fine, as noted above, by its judgment and order.

ANALYSIS AND CONSIDERATION

24. We have perused the impugned judgment of the learned Trial Court, the entire materials on the record and have given a thoughtful consideration to the rival submissions made by the learned Amicus Curiae for the appellants as well as the learned APP for the State.

25. The contents of the FIR have already been dealt with in detail and a perusal of the same in nutshell would indicate that the informant Deo Sharan Yadav is the solitary eyewitness to the initiation of assault by the accused persons. He has stated that he saw the accused persons assaulting the deceased by means of *lathi*, fists and legs and since he was threatened on the point of pistol shown by accused Nand Lal Mahato, he fled away from the place of occurrence and thereafter, rushed to the village to inform other people.



26. On going through the evidence discussed hereinabove in the preceding paragraphs, it would appear that out of the twelve witnesses examined on behalf of the prosecution, the informant P.W.6 is the only person who claims to be an eyewitness and that too with regard to the initial part of the occurrence. All the rest witnesses, being P.W.1 to P.W.5 and P.W.7 to P.W.10 are all hearsay witnesses who came to know about the occurrence subsequently, either from the informant or by way of an alarm raised in the village. While P.W.11 is the Investigating Officer, P.W.12, Dr. Ramesh Prasad is the doctor who had conducted the postmortem examination. It would be evident from a perusal of the evidence of all the hearsay witnesses that there are a number of inconsistencies and contradictions in their evidence with regard to the vital facts of this case. All the prosecution witnesses have a different story to tell and some foundational facts going to the root of the case, cannot be reconciled. There are several variations in the version of the witnesses with regard to the time of recovery of the dead body, the time of arrival of the Investigating Officer at the scene of occurrence and on the very factum as to who all had actually gone to the place of occurrence in search of the dead body and whether the informant himself had gone for such search or not.



Further, there is no recovery of any murder weapon.

27. Upon a careful consideration of the evidence of all these hearsay witnesses, one can reach to a safe conclusion that their evidence is not of much significance but for the fact that some of them were informed about the incident on the night of occurrence, whereafter they went in the search of the dead body which was nowhere to be found. The recovery of the dead body, as per their evidence, was either before arrival of the police at the place of occurrence on the next morning or at a time when the police had arrived. These witnesses are merely signatories to the *fardbeyan* or to the inquest report prepared by the police, hence they are more formal in nature and they do not shed any light on the details of the occurrence or the complicity of the accused persons and whatever knowledge they have, it is on the basis of the disclosure made by the informant Deo Sharan Yadav. Thus, the entire case rests on the sole testimony of the informant, in the background of the fact that the informant happens to be the only witness who claims to have witnessed the initial part of the occurrence, hence it would be necessary to scrutinize his evidence with extreme care and caution to come to a finding as to whether it is trustworthy, cogent and unimpeachable and whether conviction can rest on his sole



testimony. The informant, Deo Sharan Yadav claims to be a witness to the initiation of assault by the accused persons on the deceased but his story suffers from several inconsistencies as the timings referred by him do not get corroborated from the evidence of the Investigating Officer, right from the time of preparation of inquest report, etc. According to the informant, the dead body was recovered on the next day morning, i.e. 28.09.1982, at 06:00 A.M. and the police had also arrived at the scene of occurrence upon an information given by someone else, thus there appears no reason as to why the *fardbeyan* was recorded after substantial and unexplained delay at about 01:30 P.M. and the formal FIR was instituted even much later at 06:00 P.M. The Investigating Officer confirms that he had arrived at the place of occurrence at around 06:00 A.M. on the next day of the occurrence, however states that it was he who had recovered the dead body after reaching the place of occurrence. This time of recovery of the dead body at 06:00 A.M. also does not match with the evidence of other prosecution witnesses who have given different timings for the same.

28. We further find that the credibility of the informant is also shaken by the fact that while in his initial statement, there was no reference to any sharp-cutting weapons



having been used or the accused persons even being armed with the same, however reference to a knife has been very deftly introduced during the course of his deposition in order to make the same corroborate with the medical evidence which shows the presence of incised injuries and the death also having been caused by a sharp-cutting weapon. The informant has also failed to render any explanation with regard to the delay caused in the recording of the *fardbeyan* and further, the signatories to the *fardbeyan*, P.W.4 and P.W.5, completely negate his story of the *fardbeyan* being recorded at the place of occurrence as they have given a very specific and categoric statement that the statement of the informant was recorded at the police station and the documents were prepared at the police station where the informant along with these witnesses P.W.4 and P.W.5 had put their signatures thereupon. From the evidence of P.W.1, it would transpire that as a matter of fact, the informant P.W.6 never went along with other persons in the night of the date of occurrence for searching the dead body. The evidence of P.W.3 also suggests that while he was guarding the field of P.W.10, he did not hear the name of any assailants and that is precisely the reason why he, in his statement before the police, did not name any of the accused persons, which would lead us to an inference



that none of the accused persons were seen around the place of occurrence and the informant also did not disclose these names to at least P.W.3.

29. In such hazy facts, the evidence of the informant cannot be said to be of such sterling quality that it can be made the sole basis for conviction. There is no dispute about the fact that it is the quality and not quantity of evidence which would be relevant for reaching a considered decision, the same also being the mandate of Section 134 of the Evidence Act but in the facts of the present case, the informant remains the solitary witness whose evidence is replete with inconsistencies, contradictions and embellishments, which makes his entire testimony doubtful and untrustworthy.

30. Thus, in absence of any ocular evidence, the circumstances appearing in the case need to be examined. The incriminating circumstances which arise for consideration in the present case are enumerated hereunder:

(I) The deceased was last seen in the company of the accused persons;

(II) There is recovery of lathi and towel which is claimed to be that of the deceased;

(III) The trail mark being present on the sand near the bed



of the river;

(IV) Trampling marks in the paddy field and

(V) The accused persons had some motive to commit the said occurrence.

31. So far as the circumstance of the deceased being seen last in the company of the accused persons is concerned, such narrative has only come from the mouth of the informant and there is virtually no other witness to support such contention, hence in absence of any independent corroboration to the factum of the deceased being last seen with the accused persons and also considering the proximity of time, the last seen theory propounded by the prosecution also fails, moreso in the background of the fact that upon consideration of the evidence of the informant, we have not found his evidence to be cogent, reliable and trustworthy.

32. The recovery of lathi and towel does not stand proved at all as barring the oral statements of the informant and the Investigating Officer that such recovery was made from the place of occurrence, there is no documentary proof of the same. The Investigating Officer has clearly stated that he is unable to find the seizure list which would lead us to an inference that as a matter of fact, no seizure list was prepared and even if it was



prepared, the same never saw the light of the day making it totally inconsequential. Further, there is nothing to claim that these articles belonged to the deceased but for a bald assertion made by the informant and moreover, neither the *lathi* nor the towel has been found to be stained with blood.

33. The presence of trail marks on the sand does not seem to be an acceptable proposition as according to the evidence of the witnesses themselves, the dead body was recovered from the shallow water which negate the existence of any trail mark being present thereupon. Moreover, no other witness has talked about any such trail mark from the place of occurrence to the place from where the dead body was recovered and the postmortem report of the deceased also does not indicate any dragging or scratch marks being present upon the body of the deceased.

34. So far as the trampling of crops found at the paddy field is concerned, the same has only been stated by the informant, P.W.6 which does not stand corroborated by any of the other witnesses or even by the Investigating Officer who has inspected and examined the place of occurrence. The Investigating Officer has rather neither collected nor produced any objective evidence in order to support the fact that the



occurrence had taken place at the place as alleged by the prosecution, hence place of occurrence also remains unproved. Motive, no doubt assumes extreme significance in the cases of circumstantial evidence and once the same has been introduced, the conscience of the Court needs to be satisfied. In the present case, the prosecution has tried to introduce a motive by referring to an incident which had occurred long back on the day of Holi in the form of an altercation between the deceased and the accused persons. Such a motive can definitely be categorised as too bleak, vague and a weak motive, so as to cause the death of the deceased in the manner as alleged. Further, two of the prosecution witnesses P.W.1 and P.W.7, who happen to be the brother of the deceased have also clearly stated in their evidence that the said matter had been compromised between the parties and cordial relations had been established between them. In such view of the matter also, there appears no proximate cause leading to causing the death of the deceased. Hence, the motive which has been alleged and introduced by the prosecution also fails to give any credence to the case of the prosecution.

35. Considering the fact that all the aforesaid incriminating circumstances have not at all been proved by the prosecution, the present case cannot be said to be proved even



on the basis of circumstantial evidence inasmuch as the prosecution has failed to bring any circumstantial evidence on record to bring home the guilt of the appellants beyond all reasonable doubt, since the chain of links connecting the appellants with the crime remains inconclusive. It has been laid down in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR 1984 SC 1622**, where five golden principles of circumstantial evidence have been enumerated, that in order to prove the guilt of the accused in a case of circumstantial evidence, there has to be a complete chain of circumstances which would unerringly points towards the guilt of the accused and no other hypothesis could be possible.

36. In the case of **Kanhaiya Lal Vs. State of Rajasthan** reported in **(2014) 4 SCC 715**, the Hon'ble Apex Court has stated in paragraph nos. 12 and 15 that the circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. It has been noticed that the theory of last seen was the singular piece of circumstantial evidence available against the appellant in the said case, as also in the case at hand. The Hon'ble Apex



Court held that the conviction of the appellant could not be maintained on suspicion, however strong it may be and such facts further assume importance in the backdrop of absence of motive and rather when it is proved that there was a cordial relationship between the accused and the deceased for a long time.

37. Thus, taking into consideration all the above-mentioned factors and also considering the law laid down by the Hon'ble Apex Court, it can be safely concluded that there is complete dearth of even circumstantial evidence as against the appellants so as to prove their guilt beyond all reasonable doubts. Further, we have also noticed that the statement of the accused persons, which have been taken u/s 313 Cr.P.C., is nothing but an empty formality as all the three accused persons have been asked one and the same question which is with regard to causing death of the deceased, however none of the incriminating circumstances appearing in the evidence of the prosecution witnesses have been put to the accused persons so as to enable them to personally explain those circumstances. The basic fairness of criminal trial requires that the attention of the accused is drawn towards each and every circumstance which appears against him, failing which the chain cannot be



used against him. A reference in this context, is being made to the case of **Raj Kumar Vs. State of NCT Delhi**, reported in **2023 SCC Online Supreme Court 609**, paragraph No. 17 whereof is being reproduced hereinbelow:

“

It is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the court must ordinarily eschew such material from consideration. It is also open to the appellate court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate court any plausible or reasonable explanation of such circumstances, the Court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial court he would not have been able to furnish any good ground to get out of the circumstances on which the trial court had relied for its conviction. In such a case, the



Court proceeds on the footing that though a grave irregularity has occurred as regards compliance with Section 342CrPC, the omission has not been shown to have caused prejudice to the accused. In the present case, however, the High Court, though not the trial court has relied upon the presence of blood on the pants of the blood group of the deceased. We have not been shown what explanation the accused could have offered to this chemical finding particularly when we remember that his answer to the question regarding the human blood on the blade of the knife was “I do not know”. Counsel for the appellants could not make out any intelligent explanation and the “blood” testimony takes the crime closer to the accused. However, we are not inclined to rely over much on this evidentiary circumstance, although we should emphasise how this inadvertence of the trial court had led to a relevant fact being argued as unavailable to the prosecution. Great care is expected of the Sessions Judges who try grave cases to collect every incriminating circumstance and put it to the accused even though at the end of a long trial the Judge may be a little fagged out.”

38. The above mentioned case of **Raj Kumar (supra)** was once again considered in the case of **Ashok Kumar Vs. State of U.P.** reported in **2025 (1) BLJ Page 27 SC** by a three-Judge Bench and in paragraph nos. 15 & 16 of the



said judgment, the aforesaid paragraph no. 17 of the judgment rendered in the case of **Raj Kumar (supra)** has been quoted and it has been held that the appellant was prejudiced due to material circumstances not having been put to him, thereby taking away from him the opportunity to explain those circumstances.

39. Thus, after consideration of the entire prosecution evidence and its careful analysis, it becomes quite apparent that the present case has been instituted only on suspicion and nothing more. In a criminal case, the court has a duty to ensure that mere conjectures and suspicion do not take place of legal proof. The phrase “may be true” signifies a possibility or uncertainty, while “must be true” indicates a certainty or a legal necessity. The difference lies in the degree of certainty or the level of evidence required. The large mental distance between “may be true” or “must be true”, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, which does not seem to have been traversed in the instant case. In this context, we may refer to a judgment relied upon by the learned Amicus, rendered in the case of **Digamber Vaishnav and Anr. Vs. State of Chhattisgarh (supra)**,



paragraph nos. 14 to 16 and 19 whereof are being reproduced hereunder:

“14. One of the fundamental principles of criminal jurisprudence is undeniably that the burden of proof squarely rests on the prosecution and that the general burden never shifts. There can be no conviction on the basis of surmises and conjectures or suspicion howsoever grave it may be. Strong suspicion, strong coincidences and grave doubt cannot take the place of legal proof. The onus of the prosecution cannot be discharged by referring to very strong suspicion and existence of highly suspicious factors to inculcate the accused nor falsity of defence could take the place of proof which the prosecution has to establish in order to succeed, though a false plea by the defence at best, be considered as an additional circumstance, if other circumstances unfailingly point to the guilt.

15. This Court in *Jaharlal Das v. State of Orissa* [*Jaharlal Das v. State of Orissa*, (1991) 3 SCC 27 : 1991 SCC (Cri) 527], has held that even if the offence is a shocking one, the gravity of offence cannot by itself overweigh as far as legal proof is concerned. In cases depending highly upon the circumstantial evidence, there is always a danger that the conjecture or suspicion may take the place of legal proof. The court has to be watchful and ensure that the conjecture and suspicion do not take the place of legal proof. The court must satisfy itself that various circumstances in the chain of



evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused.

16. In order to sustain the conviction on the basis of circumstantial evidence, the following three conditions must be satisfied:

(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; and

(iii) 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 none else, and it should also be incapable of settled explanation on any other hypothesis than that of the guilt of the accused.

19. It is also well-settled principle that in criminal cases, if two views are possible on evidence adduced in the case, one binding to the guilt of the accused and the other is to his innocence, the view which is favourable to the accused, should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence [see *Kali Ram v. State of H.P.* [*Kali Ram*



v. *State of H.P.*, (1973) 2 SCC 808 : 1973
SCC (Cri) 1048]”

40. Thus, only two issues arise for consideration in the present case, one is the last seen theory and the other is the informant being the solitary eye witness of the initial part of the occurrence. Having carefully considered both the issues in detail herein above in the preceding paragraphs which have formed the basis for the conviction of the present appellants, we are constrained to hold that not only the reasonings offered by the learned Trial Court are not in consonance with the law laid down by the Hon’ble Supreme Court of India but the learned Trial Court has also erred on facts while convicting the present appellants.

41. From the entire conspectus of the case and considering the factual matrix, it can be gathered that the evidence of the informant as a solitary eye witness with no other independent corroboration to lend support to his evidence has resulted in failure on part of the prosecution to prove the charges against the appellants beyond all reasonable doubts. There are several loopholes in the prosecution case which cannot be overlooked and brushed aside as they have a significant bearing on the case. Thus, considering the glaring infirmities and dearth



of evidence, the appellants would be entitled to benefit of doubt.

42. Thus, taking into account overall perspective of the entire case, emerging out of the totality of the facts and circumstances as indicated hereinabove and having perused the entire evidence on record as also for the foregoing reasons, we find that the prosecution has miserably failed to prove the charges against the appellants beyond all reasonable doubts the commission of the offence by the appellants. Therefore, we find that the learned Trial Judge has committed a gross error in holding that the evidence adduced by the prosecution definitely prove the offence under Section 302 read with Section 34 of the Indian Penal Code.

43. Hence, in the facts and circumstances as discussed here-in-above and for the foregoing reasons, we are of the view that there are compelling reasons in the present case which necessitates that the appellants of the aforesaid appeal be given the benefit of doubt, thus the appellants deserve to be acquitted of the charges in absence of any concrete and credible evidence against them.

44. Accordingly, the finding of conviction recorded by the learned Trial Court, in our opinion, is not sustainable and requires interference. Therefore, the judgment of conviction and



order of sentence dated 12.12.1995 passed by the 1st Additional Sessions Judge, West Champaran, Bettiah in Sessions Trial No. 147 of 1984/210 of 1995 (arising out of Ram Nagar P.S. Case No. 95 of 1982), are set aside. The appellants of the aforesaid appeal are acquitted of the charges levelled against them.

45. The appellants are on bail, hence, they are discharged from the liability of their bail bonds. Accordingly, the present Criminal Appeal (DB) No. 21 of 1996 is allowed.

46. We also at this point, place on record our appreciation for the efforts taken by the learned Amicus Curiae, Ms. Anukriti Jaipurkar, Advocate, who has assisted this Court with all sincerity and diligence.

(Mohit Kumar Shah, J)

(Soni Shrivastava, J)

divyanshi/harsh-

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