

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.398 of 2023

Arising Out of PS. Case No.-268 Year-2020 Thana- MOHANIYA District- Kaimur (Bhabua)

Nathuni Singh Son Of Late Ram Briksh Singh R/O Village- Barage, P.S.-
Mohaniya, District- Kaimur At Bhabhua

... .. Appellant

Versus

1. The State of Bihar
2. Jaleshwar Singh @ Vineet Maurya Son Of Not Known R/O Village-
Kekada, P.S.- Mohaniya, District- Kaimur At Bhabhua
3. Prabhat Kumar @ Sonu @ Langda Son Of Not Known R/O Village-
Belaudi, P.S.- Mohaniya, District- Kaimur At Bhabhua
4. Chotu Gupta Son Of Not Known R/O Village- Belaudi, P.S.- Mohaniya,
District- Kaimur At Bhabhua
5. Suresh Ram Son Of Not Known R/O Village- Mujan, P.S.- Mohaniya,
District- Kaimur At Bhabhua
6. Ramesh Ram Son Of Not Known R/O Village- Mujan, P.S.- Mohaniya,
District- Kaimur At Bhabhua

... .. Respondents

with

CRIMINAL APPEAL (DB) No. 266 of 2023

Arising Out of PS. Case No.-268 Year-2020 Thana- MOHANIYA District- Kaimur (Bhabua)

Amitabh Bachchan Bharti Son Of Sri Manbodh Ram R/O Village- Belaury,
P.S.- Mohania, District- Kaimur

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 398 of 2023)

For the Appellant : Mr. Ajay Kumar Singh, Advocate

For the Respondents : Mr. Ajay Kumar Thakur, Advocate

Ms. Vaishnavi Singh, Advocate

Mr. Mudit Meet, Advocate

Mr. Ritwik Thakur, Advocate

For the State : Mr. Bipin Kumar, Addl PP

For the Pvt. Resps : Mr. Tribhuvan Narayan, Advocate

(In CRIMINAL APPEAL (DB) No. 266 of 2023)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate

Ms. Vaishnavi Singh, Advocate

Mr. Mudit Meet, Advocate

Mr. Ritwik Thakur, Advocate

For the State : Mr. Bipin Kumar, Addl PP

For the Informant : Mr. Ajay Kumar Singh, Advocate



**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 14-10-2025

Heard Mr. Ajay Kumar Singh, learned counsel for the appellant and Mr. Ajay Kumar Thakur, learned counsel for the respondents [in Cr. App (DB) No. 398 of 2023]; Mr. Ajay Kumar Thakur, learned counsel for the appellant, Mr. Ajay Kumar Singh, learned counsel for the informant [in Cr. App (DB) No. 266 of 2023] and Mr. Bipin Kumar, learned Additional Public Prosecutor for the State.

Cr. App (DB) No. 398 of 2023

2. This appeal has been preferred by the appellant-informant for setting aside the part of the judgment and order of acquittal dated 17.01.2023 (hereinafter referred to as the '*impugned judgment of acquittal*') whereby and whereunder the learned Additional District and Sessions Judge IX, Kaimur at Bhabhua (hereinafter referred to as the '*learned Trial Court*') has been pleased to acquit respondent nos. 2 to 6 of the charges under Sections 120B, 302/149, 364/149 and 201/149 of the Indian Penal Code (in short '*IPC*') in connection with Sessions Trial No. 15 of 2021 arising out of Mohaniya P.S. Case No. 268 of 2020.



Cr. App (DB) No. 266 of 2023

3. This appeal has been preferred by the sole appellant for setting aside his conviction and sentence in the same and one trial in which Respondent Nos. 2 to 6 of Criminal Appeal (DB) No. 398 of 2023 have been acquitted.

4. The appellant/Amitabh Bachchan Bharti has been convicted for the offences under Sections 302, 364 and 201 of the IPC and has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 50,000/- and in default of payment of fine to further undergo simple imprisonment for three months for the offences under Sections 302 and 364 of the IPC and rigorous imprisonment for seven years and to pay a fine of Rs. 20,000/- and in default of payment of fine to further undergo simple imprisonment for two months for the offence under Section 201 of the IPC.

Prosecution Case:

5. The prosecution case is based on the written application dated 03.09.2020 given by the informant/Nathuni Singh (P.W. 7) stating therein that his son Akhilesh Kumar Singh (deceased) as usual left his house for 'Patna Mor' on 02.09.2020. He did not return till late in the night. The family members searched him but failed to get any trace. They tried to contact on his mobile phone but there was no reply as the



mobile phone was switched off, thus, the informant had a belief that some unknown persons had abducted his son.

6. On the basis of the aforesaid written application, Mohania P.S. Case No. 268 of 2020 dated 03.09.2020 was registered at 10:00 AM for the offences punishable under Section 365 of the IPC in which Sections 302, 201/34 of the IPC were added later on vide order dated 09.09.2020.

7. After completion of investigation of the case, the police submitted charge-sheet being Charge-sheet No. 315 of 2020 dated 30.11.2020 against six accused persons for the offences punishable under Sections 364, 302, 201 and 120B and 34 of the IPC. Altogether 17 witnesses were named in the Chargesheet.

8. The cognizance of the offences under Sections 364, 302, 201 and 120B/34 of the IPC was taken on 07.12.2020. The case was triable by a Court of Sessions, therefore, the records were committed to the Court of Session.

9. Charges were read over and explained to all the chargesheeted accused who were facing trial, in Hindi to which they pleaded not guilty and claimed to be tried.

10. The prosecution examined twelve witnesses and defence has examined one witness and also exhibited some



documentary evidences in course of trial. The description of prosecution witnesses and the exhibits are being mentioned hereunder in tabular form:-

List of Prosecution Witnesses:

P.W. 1	Rohit Kumar	Chargesheet witness
P.W. 2	Pramod Kumar Singh	Chargesheet witness
P.W. 3	Kamlesh Singh	Chargesheet witness
P.W. 4	Dinesh Kumar Gupta	Chargesheet witness
P.W. 5	Rishikesh Singh	Chargesheet witness
P.W. 6	Vinod Kumar Singh	Chargesheet witness
P.W. 7	Nathuni Singh	Chargesheet witness
P.W. 8	Rakesh Kumar Singh	Chargesheet witness
P.W. 9	Abhishek Kumar	Chargesheet witness Ist I.O. and chargesheet witness
P.W. 10	Dr. Jain Shankar Jha	Chargesheet witness
P.W. 11	Shiv Shankar Prasad	Malkhana Incharge of Mohania Police Station not named in chargesheet
P.W. 12	Balvrind Prasad	2 nd I. O. and chargesheet witness

Altogether 17 witnesses were named in the chargesheet, however, out of 17 chargesheet witnesses, the prosecution did not examine Chandrashekhar Singh, Ravi Prakash Singh, Chandrika Prasad, Dinesh Kumar Gupta, Dr. Rajnikant and Dr. Jitendra Nath Singh.

List of Defence Witnesses:

D.W. 1	Manbodh Ram
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List of Exhibits on behalf of the Prosecution:

Ext. 1 (P-1/P.W. 2)	Signature of Pramod Kumar Singh on the seizure list
Ext. X	Signature of Rishikesh Singh on the post-mortem report
Ext. X/1	Signature of Pramod Singh on the post-mortem report
Ext. 2 (P-2/P.W. 7)	Signature of the informant on the written information
Ext. 3 (P-3/P.W. 9)	Inquest report
Ext. 4 (P-4/P.W. 9)	The seizure list of mobile phone of Tembo Company of deceased Akhilesh Singh
Ext. 5 to 5/2 (P-5/P.W. 9)	Seizure list
Ext. 6 (P-6/P.W. 9)	FIR of Mohania P.S. Case No. 268 of 2020
Ext. 7 (P-7/P.W. 10)	Post-mortem report
Ext. 8 (P-8/P.W. 12)	Signature of Balvrind Prasad on the seizure list
Ext. 9 (P-9/P.W. 12)	Signature of Balvrind Prasad on the confessional statement
Ext. 10 to 10/4 (P-10/P.W. 12)	Exhibits of seized mobile phone of Akhilesh Singh, Amitabh Bachchan Bharti, Suresh Ram, Jaleshwar Singh and Ramesh Ram
Ext. 11 (P-11/P.W. 12)	Gamcha (country towel) and rope used in the occurrence
Ext. 12	Statement under Section 164 Cr.P.C. of Dinesh Sah

List of Exhibits on behalf of the Defence:

Ext. A	Signature of Gaurav Kumar on receipt no. 936 of mobile phone
Ext. A/1	Signature of accused Amitabh Bachchan Bharti on the receipt no. 964 of mobile phone



11. Thereafter, the statement of the accused was recorded under Section 313 of the Cr. P.C. The accused persons denied all the allegations and took a plea that they were innocent.

Findings of the Learned Trial Court:

12. The learned trial court after examining all the evidences available on the record found that the deceased was last seen with accused Amitabh Bachchan Bharti on 02.09.2020 at Patna Mor, Kaal Bhairo Dhaba which was corroborated by PWs 5 and 8. The deceased went on a motorcycle with accused Amitabh Bachchan Bharti to the godown. After that nobody had seen the deceased and on 04.09.2020 the dead body was recovered from the Kudra river. All the prosecution witnesses have supported the fact that the accused had taken the godown on rent from the deceased and Rs. 5 -6 lakhs was outstanding. The accused had nothing to say about the last seen with the deceased and has given no explanation as to how the deceased has died. The mobile phone of the deceased was recovered from the house of the accused. It has come during the investigation that Rs. 5 – 5.5 lakhs were outstanding and the accused was not ready to pay the same to the deceased. The doctor has found death due to strangulation by the accused and the injuries found on the deceased were caused by stone. The circumstantial



evidence, medical report and investigation shows that accused Amitabh Bachchan Bharti was responsible for killing of the deceased. The trial court further found that the accused has abducted the deceased to kill him.

13. The learned trial court has recorded in his finding that from the circumstantial evidences, medical report and the materials collected in course of investigation, the involvement of Amitabh Bachchan Bharti is proved but the involvement of the other accused persons, namely, Chhotu Gupta, Prabhat Kumar @ Sonu @ Langda, Jaleshwar Singh @ Vineet Maurya, Suresh Ram and Ramesh Ram in the killing of the deceased for any common object could not be proved, thus, the other accused persons have been acquitted of the charges under Section 302/149 IPC. Similarly, the trial court has held that it was Amitabh Bachchan Bharti who had taken Akhilesh Kumar Singh from Patna Mor, Kaal Bhairo Dhaba and thereafter the victim was murdered and his dead body was found in the river. In this regard, the learned trial court has relied on the evidences of PW-5 and PW-8. It has been held by the learned trial court that the deceased was not seen in the company of any other accused person, the other accused have not been seen committing the act of abduction. Thus, the learned



trial court has acquitted the accused Chhotu Gupta, Prabhat Kumar @ Sonu @ Langda, Jaleshwar Singh, Suresh Ram and Ramesh Ram for the charge under Section 364/149 IPC, the charges under Section 364 IPC has been found proved against the accused Amitabh Bachchan Bharti. Again, as regards the charge under Section 201/149 IPC, the learned trial court has held that according to the Doctor, Injury Nos. 2 and 3 which were present on the face and chest respectively were caused by stone after the death which shows that in order to make disappear the evidences, the accused Amitabh Bachchan Bharti had caused the injuries.

14. Learned trial court held that the recovery of rope by which the legs of the deceased were tied has been identified by PW-2. The learned trial court held that this was done by the accused Amitabh Bachchan Bharti in order to make disappear the evidences. The pickup van was also involved in this and the same belonged to the accused Amitabh Bachchan Bharti.

So far as other accused persons are concerned, the learned trial court has held that no legal evidence have been found against them. For these reasons and rationale, the learned trial court has held that the charges under Section 201 IPC is



proved against the accused Amitabh Bachchan Bharti. The charge under Section 201/149 IPC against other accused persons has not been proved.

Stand of the State in Criminal Appeal (DB) No. 398 of 2023

15. Learned Additional Public Prosecutor has defended the judgment of the learned trial court. It is submitted that as regards Respondent Nos. 2 to 6, the prosecution could not bring wholly reliable evidences and the case being based on circumstantial evidence, the prosecution failed to connect Respondent Nos. 2 to 6 with any of the circumstances so as to complete a chain of criminological events. The trial court has, therefore, not committed any error in acquitting Respondent Nos. 2 to 6.

Submissions on behalf of the appellant-informant in Criminal Appeal (DB) No. 398 of 2023

16. Learned counsel for the informant-appellant has challenged the acquittal of Respondent Nos. 2 to 6 in Criminal Appeal (DB) No. 398 of 2023. It is submitted that the accused persons made confessional statements which were recorded in presence of the witnesses. He relies on the evidence of Balvindr Prasad (PW-12) who was the I.O. of the case and had taken over the investigation on 08.09.2020. He had recorded confessional



statement of Amitabh Bachchan Bharti who had disclosed the name of Respondent Nos. 2 to 6 and at his instance, Jaleshwar Singh, Suresh Ram and Ramesh Ram were arrested from their house and from the house of Amitabh Bachchan Bharti, the mobile of the deceased and the pickup vehicle were seized. In paragraph '9' of his deposition, PW-12 has stated that in the police station, he had recorded the confessional statement of Jaleshwar Singh, Suresh Ram and Ramesh Ram. The signature of PW-12 on the confessional statement was marked Exhibit '9' (Exhibit '9/PW12'). It is with regard to these confessional statements, learned counsel for the appellant-informant has submitted that the learned trial court ought not to have discarded the confessional statements treating the same as weak evidence. The confessional statements, according to learned counsel for the informant, were getting fully corroborated by the subsequent evidences, therefore, it was an important piece of evidence. Learned counsel for the appellant has gone on to submit that the confessional statements of Respondent Nos. 2 to 6 were recorded in presence of the witnesses.

Submissions on behalf of the Respondent Nos. 2 to 6 in Criminal Appeal (DB) No. 398 of 2023

17. Learned counsel for the Respondent Nos. 2 to 6 submits that the appeal preferred by the informant-appellant is



devoid of any merit. It is evident from the submissions of learned counsel for the informant itself that the case against Respondent Nos. 2 to 6 has been sought to be established on the basis of a confessional statement of co-accused Amitabh Bachchan Bharti and on the basis of confessional statements of Respondent Nos. 2 to 6 recorded by PW-12. It is submitted that there is a wrong and false submission on behalf of the informant-appellant that the confessional statements were recorded in presence of witnesses. In fact, PW-12 has himself deposed that he had recorded the confessional statements in the police station. He has not stated about recording of confessional statements in presence of any witness. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Venkatesh @ Chandra & Anr. Vs. State of Karataka** reported in **(2022) 16 CC 797 (para 20 and 21)** to submit that in fact, the Hon'ble Supreme Court has categorically held that a confessional statement cannot form part of a chargesheet. It is submitted that the learned trial court has categorically held that the deceased was not seen in the company of Respondent Nos. 2 to 6 either while being taken away or at the time of the alleged occurrence of his killing and throwing away of his dead body. It is submitted that in a case of no evidence against Respondent



Nos. 2 to 6, the learned trial court has rightly acquitted them of all the charges. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **H.D. Sundra and Ors. Vs. State of Karnataka** reported in **(2023) 9 SCC 581** to submit that in a case of acquittal, the Appellate Court need not interfere with the judgment of the learned trial court unless it is irresistibly held by the learned Appellate Court that the charge against the accused is proved beyond all reasonable doubt. Only in a case of perversity in the judgment of the learned trial court, a judgment of acquittal may be disturbed. It is, thus, submitted that the appeal preferred by the informant challenging the acquittal of Respondent Nos. 2 to 6 is liable to be dismissed.

Submissions on behalf of the sole appellant (convict) in Criminal Appeal (DB) No. 266 of 2023

18. Learned counsel for the sole appellant has challenged the conviction of the appellant on various grounds. It is submitted that the S.H.O. (PW-12) has stated that he had called Amitabh Bachchan Bharti at police station and after inquiry, left him on a P.R. bond. He had taken out the CDR of mobile phone of deceased as well as Amitabh Bachchan and recorded his confessional statement and thereafter prepared the seizure list. He was called at the police station, he did not say



anything about the occurrence whereafter he was let off on P.R. bond. The I.O. has stated that during the investigation, none of the family members of the deceased had stated that they had talked with Amitabh Bachchan Bharti on mobile. He has not mentioned that from which place of the house, the mobile phone was seized and from which place, the vehicle was seized. He has further stated that Amitabh Bachchan brought the mobile and vehicle and gave the same. PW-12 was suggested that knowingly, the mobile of Amitabh Bachchan was shown as mobile of Akhilesh Singh (deceased). Referring to the evidence of DW-1, learned counsel submits that DW-1 has stated that Amitabh Bachchan Bharti had purchased the mobile phone from Om Telecom R.O. Centre, Mohania for which receipt was given which was produced in the court and on both the receipts, the IMEI number sticker is pasted. Both the mobiles are of Tembo Company. Both receipts i.e. Receipt No. 936 and Receipt No. 964 were proved by DW-1 and he identified the signatures of his youngest son Gaurav Kumar and Amitabh Bachchan respectively on the receipts as Exhibit 'A' and Exhibit 'A/1' (with the objection).

19. Learned counsel submits that for the first time during the trial, the prosecution witnesses have tried to improve



upon the case saying allegedly that they saw the appellant and deceased at the *Chauk*. In this regard, the attention of the witnesses as well as the I.O. has been drawn. Both PW-5 and PW-8 deposed for the first time during the trial that they saw the appellant with the deceased. Similarly, on the point of recovery of mobile also, prosecution has not produced any reliable evidence whereas accused has produced document showing that both the mobiles were purchased by him.

20. Learned counsel submits that the learned trial court has held that there is no witness of the occurrence and the case is based on circumstantial evidence but erred in convicting the appellant on the basis of last seen theory.

21. Learned counsel submits that the prosecution has failed to prove that the seized mobile belonged to the deceased. The prosecution has withheld most of the independent witnesses who were examined by the first Investigating Officer and for this an adverse inference is liable to be drawn.

22. It is lastly submitted that the deceased was unmarried but he was living separately from his brother and had partitioned the property. In this regard, evidence (paragraphs '12' and '13') of the PW-2 who is one of the brothers of the deceased has been referred to. Submission is that with the death



of Akhilesh Kumar Singh, his three brothers were only to be benefited.

Submissions on behalf of the State in Cr. Appeal (DB) No. 266 of 2023

23. On the other hand, learned Additional Public Prosecutor for the State and learned counsel for the informant have opposed the appeal. It is submitted that learned trial court has analyzed the entire evidences available on the record and has concluded that the appellant Amitabh Bachchan Bharti in this case is solely responsible for the abduction of Akhilesh Singh who was killed and then acting with an intention to make the evidence disappear, his dead body was thrown in a river. It is submitted that Akhilesh Singh was abducted from Kaal Bhairo Dhaba, Patna Mor, Mohania. Abhishek Kumar (PW-9) who was the first I.O. of this case has stated that after taking over the charge of investigation of the case on 03.09.2020, he had recorded the restatement of the informant, thereafter, he had recorded the statement of Kamlesh Kumar Singh (PW-3), Binod Kumar Singh (PW-6) and Pramod Kumar Singh (PW-2) who had supported the prosecution case. He also recorded the statement of independent witnesses, namely, Praveen Kumar Singh @ Dabal Singh (not examined), Chandrashekhar Singh



(not examined), Ravi Prakash Singh (not examined) and Rishikesh Singh (PW-5) who had supported the prosecution case. He has stated that on 04.09.2020, he had received a telephonic information from the Station House Officer that the dead body of the abducted person Akhilesh Singh had been recovered near 'Asaw Van' which is one kilometer from Kaithiya village, in Kudra river. With him, Sub-Inspector of Police, Shrikant Paswan (not examined) was also accompanying and after reaching there, he had taken out the dead body and informed, the family members were informed whereafter the family members reached. Sub-Inspector of Police Shrikant Paswan (not examined) had prepared the inquest report (Exhibit '3'). This witness has stated that during investigation a black colour button Tembo company mobile without SIM of the deceased Akhilesh Singh was recovered from the house of Amitabh Bachchan Bharti (Exhibit '4') and the pickup van was recovered from Belauri village and seizure list was prepared on 10.09.2020 on which the Constables had put their signatures. He had prepared the seizure list (Exhibit '5'). He had also prepared the another seizure list of recovery of second mobile bearing SIM No. 8521184900 of Airtel Company and SIM No. 8292428055 from the house of accused Amitabh Bachchan



Bharti. The seizure list witnesses are Ashok Kumar and Azad Kumar Gautam, both are Constables. These two seizure list witnesses have not been examined. He had handed over the charge of investigation to the Station House Officer, Mohania by order of Dy.SP on 08.09.2020.

24. PW-9 has, however, stated that he had not recorded the statement of *dhaba* owner. Regarding the search in the house of Amitabh Bachchan Bharti, PW-9 has stated that he had no order for conducting search in the house of Amitabh Bachchan Bharti, he was a member of the team and he had no proof that the I.O. or any other senior officer had ordered him to conduct raid in the house of Amitabh Bachchan. He had gone to the house of Amitabh Bachchan on 10.09.2020 at 01:00 O'clock. Chaukidar had informed about the house of Amitabh Bachchan, prior to entering into the house of Amitabh Bachchan Bharti, he had not called any person from the village. He had not obtained signature of any independent person on the seizure list. Pramod Singh (PW-2) had not stated before him that rope which was seized was seen in the godown of Amitabh Bachchan Bharti. He had also not stated that he had seen Amitabh Bachchan Bharti talking with other persons. This witness had also not stated that he had seen Amitabh Bachchan and other



four persons with his brother in the godown.

25. Learned Additional Public Prosecutor submits that notwithstanding some minor discrepancies in the evidence of the prosecution witnesses, the whole prosecution case cannot be thrown out. The prosecution has produced cogent and reliable evidences in course of trial and has proved the prosecution case beyond all reasonable doubts through chain of circumstantial evidence.

Consideration:

26. Having heard learned counsel for the appellant(s) in both the appeals, learned counsel for the respondents and learned APP for the State as also on perusal of the trial court records, we find that the whole prosecution case is based on circumstantial evidences.

27. The written information with regard to the missing/abduction of the victim Akhilesh Kumar Singh was lodged on 03.09.2020 at 10:00 A.M. He had not returned his home since the evening of 02.09.2020. It has come in evidence of Rakesh Kumar Singh (P.W. 8) in paragraph-10 of his deposition that Dinesh Sah and Rishikesh Singh had told him about the deceased Akhilesh Kumar Singh accompanying the appellant/Amitabh Bachchan Bharti on his motorcycle. While



Dinesh Sah has not been examined in course of trial, the evidence of P.W. 8 has been contradicted by the I.O. (P.W. 9) in paragraph - 39 of his deposition where the I.O. has stated that Rishikesh Singh (P.W. 5) had not stated before him that Akhilesh and Amitabh Bachchan had left together from the shop.

28. This Court further finds that Rishikesh Singh (P.W. 5) is a co-villager of the informant. In his examination-in-chief he has claimed in paragraph-2 of his deposition that he had gone to Kaal Bhairo Dhaba for taking tea where only after sometime Akhilesh Kumar Singh and Amitabh Bachchan arrived and all the three had taken tea together and stayed for two hours. He has stated that while leaving the shop he told Amitabh Bachchan to take Akhilesh with him whereafter Amitabh Bachchan had left with Akhilesh together. We have already noticed that this statement of P.W. 5 has been contradicted by the I.O. in paragraph -39 of his deposition. At this stage, we further notice in paragraph -3 of his deposition P.W. 5 has stated that in the morning when he woke up then he heard about the abduction of Akhilesh Kumar Singh and the family members were in search of him. After two days he came to know that his dead body was found in Kaithia village near



Kudra river where he had reached and found that the dead body had been taken out and was lying on the bank of the river. This Court finds that even though P.W. 5 has claimed that he had seen the deceased in the company of the appellant at the Dhaba and both had left together in his presence, he did not disclose this fact to the informant when search was going on. In his written information (Ext. 2) (P-P/2) lodged on 03.09.2020 at 10:00 AM, the informant had not raised any suspicion against any person. He lodged the FIR against unknown person.

29. We have further noticed that P.W. 5 is an inquest report witness and he has stated in paragraph '19' that police had only got his signature at the river whereafter he had not met police. In paragraph '20' of his deposition he has stated that whatever he was speaking in the Court was speaking for the first time as prior to the said occasion he had no opportunity to speak. It is for all these reasons we find that P.W. 5 would not come in the category of a wholly reliable witness in terms of Section 134 of the Indian Evidence Act (now known as *Bhartiya Sakshya Adhiniyam*).

30. At the stage of examination of the accused Amitabh Bachchan Bharti under Section 313 of the Code of Criminal Procedure the circumstances were brought to his



notice which he answered. In order to appreciate the circumstances brought to the notice of the appellant, we reproduce Section 313 CrPC statement of the accused hereunder for a ready reference:-

“प्रश्न:-क्या आपने अभियोजन साक्ष्य सुना है ?

उत्तर:-जी हाँ ।

प्रश्न:- आपके विरुद्ध साक्ष्य है कि आपने दिनांक 02.09.2020 को पटना मोड़ थाना मोहनियाँ जिला कैमूर से अन्य अभियुक्तों के साथ मिलकर मृतक अखिलेश सिंह का अपहरण उनकी मृत्यु कारित करने के आशय से किया था ?

उत्तर:- जी नहीं ।

प्रश्न:- आपके विरुद्ध यह भी साक्ष्य है कि आपने दिनांक 02.09.2020 से दिनांक 04.09.2020 के बीच अन्य अभियुक्तों के साथ मिलकर एक बड़े पत्थर से प्रहार करके अखिलेश कसंह की मृत्यु कारित की ?

उत्तर:- जी नहीं ।

प्रश्न:- आपके विरुद्ध यह भी साक्ष्य है कि आपने घटना तिथि औरसमय पर मृतक अखिलेश सिंह की मृत्यु कारित करके उनके लाश को नदी में डूबो दिया जिससे साक्ष्य मिटाया जा सके ?

उत्तर:-जी नहीं ।

प्रश्न:- आपके विरुद्ध यह भी साक्ष्य है कि आपने दिनांक 02.09.2020 से पूर्व मृतक अखिलेश सिंह का मृत्यु कारित करने के लिए न्य अभियुक्त जालेश्वर सिंह उर्फ विनित मार्या, प्रभात कुमार उर्फ सोनू उर्फ लंगड़ा, छोटु गुप्ता, सुरेश राम और रमेश राम के साथ मिलकर अखिलेश सिंह की मृत्यु कारित करने के लिए एक षडयंत्र बनाया ?

उत्तर:-जी नहीं ।

प्रश्न:- आपको अपने बचाव में क्या कहना है ?

उत्तर:- मैं निर्दोष हूँ । मैं घटना के बारे में कुछ नहीं जानता हूँ ।”

31. It is evident on going through the circumstances brought to the notice of the accused that the most



important and vital circumstances which have been made basis of his conviction have not been brought to the notice of the appellant. It has not been brought to his notice that he was seen with the deceased in Kal Bhairo Dhaba, Patna Mor, Mohania which is the Dhaba of one Dinesh. It has also not been brought to the notice that Rishikesh Singh (PW 5) told him that he would take Sadhuji (alias name of the deceased) along with him whereafter he had left with the deceased. The prosecution did not bring to the notice of the appellant that a raid was conducted in his house by the I. O. (PW-9) and the mobile phone of the deceased was recovered from his house. It was also not brought to the notice of the appellant that he along with others were seen in the godown and it was also not brought to the notice of the appellant that the legs of the deceased were tied with a rope which was seen in his godown by the witnesses.

32. We have also noticed that in this case, the prosecution witnesses have stated that the appellant had taken a godown of the deceased on rent and against the said rent of the godown, some outstanding amount had fallen due which the appellant had not paid. Besides that, the appellant had also received some money from the deceased. The prosecution has sought to prove this as the motive behind the occurrence.



However, we find that on the point of the renting out of the godown and that some amount were given by the deceased to the appellant, there is no direct witness. Moreover, we have noticed that when the accused were produced for recording of their statements under Section 313 Cr.P.C., the prosecution did not bring this incriminating circumstance to the notice of the accused as a result whereof the accused persons were deprived of answering an important circumstance on which the prosecution relies to prove the motive behind the occurrence.

33. In the case of *Sharad Birdhichand Sarda v. State of Maharashtra* reported in **AIR 1984 1622**, the Hon'ble Supreme Court has observed with regard to omission to place all incriminating circumstance to an accused in the following words:

“142. Apart from the aforesaid comments there is one vital defect in some of the circumstances mentioned above and relied upon by the High Court, viz., circumstances Nos. 4, 5, 6, 8, 9, 11, 12, 13, 16 and 17. As these circumstances were not put to the appellant in his statement under Section 313 of the Criminal Procedure Code they must be completely excluded from consideration because the appellant did not have any chance to explain them. This has been consistently held by this Court as far back as 1953 where in the case of *Hate Singh Bhagat Singh v. State of Madhya Bharat* AIR 1953 SC 468 this Court held that any circumstance in respect of which an accused was not examined under Section 342 of the Criminal Procedure Code cannot be used against him. Ever since this decision, there is a catena of authorities of this Court uniformly taking the view that unless the circumstance appearing against an accused is put to him in his examination under Section 342 or Section 313 of the Criminal Procedure



Code, the same cannot be used against him. In *Shamu Balu Chaugule v. State of Maharashtra*, (1976) 1 SCC 438 : (AIR 1976 SC) this Court held thus:

“The fact that the appellant was said to be absconding, not having been put to him under Section 342, Criminal Procedure Code, could not be used against him.”

143. To the same effect is another decision of this Court in *Harijan Megha Jesha v. State of Gujarat*, AIR 1979 SC 1566 where the following observations were made:

“In the first place, he stated that on the personal search of the appellant, a chadi was found which was bloodstained and according to the report of the serologist, it contained human blood. Unfortunately, however, as this circumstance was not put to the accused in his statement under Section 342, the prosecution cannot be permitted to rely on this statement in order to convict the appellant”

34. An another circumstance which has been brought by the prosecution is the recovery of mobile phone of the deceased from the house of the appellant. We have noticed that the seizure list witnesses of the seizure of the mobile were the two Constables, namely, Ashok Kumar and Ajad Kumar Gautam, they have not been examined in this case. Further, the evidence of the I.O. (P.W. 9) on the point of the seizure of the mobile phone would not inspire confidence of this Court. PW-9 has admitted that he had no order for conducting raid in the house of the appellant. It has come in evidence that he had reached the house of the appellant on 10.09.2020 at 01:00 O' Clock, three police officers had gone there but in the seizure list not recorded that from which room of the house the mobile was recovered. In paragraph '36' of his deposition the I.O. (P.W. 9)



has stated that before entering into the house of the appellant he had not called any co-villager of the appellant and he had not obtained signature of any independent person on the seizure list. It is evident that the seizure was not done in accordance with law and despite the fact that the villagers were there, the I.O. had not taken any of the villagers with him in course of search of the house and seizure of the mobile phone of the deceased. On the other hand, the defence has brought on record the two receipts bearing nos. 936 and 964 respectively on which two stickers of IMEI Number are pasted. The signatures of Kumar Gaurav the youngest son of DW-1 and that of the appellant appearing on the receipts have been proved Ext. 'A' & 'A/1' (with objection) on behalf of the defence. There is no identification of the mobile of the deceased.

To this Court, it appears that the prosecution has miserably failed to prove recovery of the mobile of the deceased from the house of the appellant. Even this circumstance has not been brought to the notice of the accused during their statements under Section 313 CrPC.

35. We have further noticed that the I.O. (P.W. 9) has contradicted the prosecution witnesses namely Pramod Kumar Singh (P.W. 2) and has stated that Pramod Kumar Singh



had never told him that the rope which was seized was seen in the godown of the appellant. He has also stated that this witness had not told him that he had seen the appellant talking to the other persons and he had also not said to the I.O. that the appellant along with four other persons and the deceased brother of this witness were seen in the godown. The prosecution did not point out this to the accused during their statements under Section 313 CrPC. The trial court has relied upon this fact that there was a rope with which the legs of the deceased were tied and this rope was seen in the godown of the accused Amitabh Bachchan. Thus, it was all the more necessary to bring this incriminating circumstance to the notice of the accused Amitabh Bachchan.

36. From the evidence of the I.O. (P.W. 9), it is evident that he has also contradicted the witness Kamlesh Singh (P.W. 3). The witness Kamlesh Singh had not said to the I.O. that his brother (the deceased) had given a loan of Rs. 5 – 6 lakhs to the appellant and the rent of the godown was outstanding therefore, for not returning the money his brother was killed. We have, therefore, noticed that even the evidence of P.W. 2 and P.W. 3 are not wholly reliable. They have improved upon their stand in course of trial.



37. It is evident from the written information (Exhibit '2') furnished by the informant Nathuni Singh (PW-7) that while submitting the written information, PW-7 had not raised any suspicion against anyone. In the written information, the mobile no. 9576000637 of the deceased had been mentioned. The I. O. (PW-9) has stated that one back colour Button Tembo Company mobile without SIM was recovered from the house of Amitabh Bachchan which is of the accused. PW-9 has proved Exhibit '4' as the seizure list of this mobile. A perusal of Exhibit '4' would show that it has been prepared on 10.09.2020 at 16:45 Hrs. whereas raid has been conducted at 01 O'clock (13:00 Hrs.). The seizure list witnesses are the two Constables, namely Ashok Kumar and Azad Kumar Gautam, who have not been examined in course of trial. In fact, they were not made chargesheet witnesses. PW-9 has deposed that he had no order of any senior officer to conduct raid in the house of the appellant and while entering into the house of the appellant, he had not called any person from the village and he had not obtained signature of any independent person on the seizure list. It is not the stand of PW-9 that there was no person in the village or that no one was ready to become a witness to the seizure. Moreover, we find that the mobile phone, which is said



to be of the deceased, was not sent to Forensic Science Laboratory and no matching of the mobile number given in the written information (Exhibit '2') with that of the seized mobile of black colour has been done to prove that the SIM of the given mobile number was being run through the said black colour mobile. This circumstance is to be considered together with the fact that as per the prosecution case, in the same raid which was conducted in the house of the appellant an another mobile of black colour of Tembo company which was also buttoned mobile was recovered from the appellant but in the seizure list prepared by police (Exhibit '5-1/PW-9') while date and time of seizure is 10.09.2020 at 13:45 Hrs., the place of seizure has been shown as Mohania Police Station premises, therefore at 13:45 Hrs. PW-9 has shown seizure of one mobile from the appellant in the premises of the police station. The same two Constables are the seizure list witnesses in Exhibit '5/1' also. Thus on 10.09.2020 at 1:00 PM, PW-9 had conducted raid in the house of the appellant, at 1:45 PM, he had prepared seizure list of one mobile recovered from the appellant in the police station and then another seizure list of recovery of one mobile, which is said to be of the deceased and one pickup van (Exhibit '4') is being shown from village Belauri at 4.45 PM. The place of



recovery is shown as village Belauri and not the house of the appellant.

On the one hand, there are vital discrepancies in the time of preparation of the seizure list, place of seizure and at the same time non-observance of the mandatory provision of law in the matter of search and seizure by PW-9 would make this Court to disbelieve the prosecution case that the mobile of the deceased was recovered from the house of the appellant. Not only the recovery is highly doubtful and not duly proved, the connection between the mobile and the SIM/mobile number which was belonging to the deceased has not been established by the prosecution.

38. This Court has noticed from the evidences of the I.O. (PW-9) that he had not examined the *dhaba* owner. In paragraph '18' of his deposition, PW-9 has stated that the place of occurrence from where the deceased had gone missing is the '*dhaba*' but he he had not recorded the statement of *dhaba* owner. After taking over charge of investigation on 03.09.2020, he had recorded the statement of Kamlesh Kumar Singh, Binod Kumar Singh and Pramod Kumar Singh. He had also recorded the statement of independent witnesses namely, Praveen Kumar Singh, Chandrashekhar, Ravi Prakash Singh and Rishikesh



Singh. Out of all these witnesses, the prosecution has examined Pramod Kumar Singh (PW-2), Kamlesh Kumar Singh (PW-3), Binod Kumar Singh (PW-6) and Rishikesh Singh (PW-5). As regards the statements made by these witnesses, PW-9 has stated that he had not mentioned the time of recording of the statement of the witnesses. In paragraph '37' of his deposition, PW-9 has stated that Pramod Singh (PW-2) had not stated before him that the rope which was seized was seen in the godown of Amitabh Bachchan. He had also not stated that the appellant was seen talking with other persons. PW-2 had also not stated that Amitabh Bachchan and four other persons were seen with his brother in the godown. Why statement of Dinesh the *Dhaba* owner was not recorded immediately even as PW-9 states that he had recorded the statement of other witnesses on 03.09.2020 at *Dhaba* itself, remains a mystery. No plausible reason for the same has been offered by PW-9.

39. It is evident that PW-2, who is the brother of the deceased, had not stated before the I.O. that the appellant had abducted the deceased, killed him and his dead body has sought to be made disappear. A perusal of the evidence of PW-2 would show that in his examination-in-chief, he has improved upon his statement made before the I.O. and went on to say that



he was going to the machine at 8:00 PM, he had seen Amitabh Bachchan Bharti-his brother and four-five persons. It is evident that the I.O. contradicted PW-2 with his earlier version.

40. The another witness, Kamlesh Singh (PW-3) has stated that on 02.9.2020, at 5:00 PM, his brother Akhilesh Kumar Singh had gone to Patna Mor for a walk but he did not return till 9:00-10:00 PM, whereafter his mobile was coming switched off. Search were made all around but no trace could be made. On 03.09.2020, his father had gone to the police station and submitted an application. On 04.09.2020, the dead body of his brother Akhilesh Singh was found. For the first time, in his examination-in-chief, PW-3 has stated that Akhilesh Singh had given Rs. 5-6 lakhs to Amitabh Bachchan which Amitabh Bachchan had not returned and to ensure that the money is not required to be returned, he killed his brother. This statement of PW-3 has been contradicted by the I.O. (PW-9). In paragraph '38', PW-9 has stated that Kamlesh Singh had not made statement before him that his younger brother had given Rs. 5-6 lakhs as loan to the appellant and the appellant did not return the outstanding rent amount of godown and killed his brother. It is evident from the deposition of I.O. (PW-9) that PW-3 has for the first time stated in course of trial about giving Rs. 5-6 lakhs by



the deceased to the appellant.

41. The another witness, Rishikesh Singh (PW-5) has for the first time deposed on the point that on 02.09.2020, he had also gone to Kaal Bhairav Dhaba for taking tea where he had met Akhilesh Kumar Singh and Amitabh Bachchan and all the three had stayed there for about two hours. This witness has stated in his examination-in-chief that when he told Akhilesh Singh that he was going to his house and whether he would also come then Akhilesh Singh told him that he would go with Amitabh Bachchan thereafter this witness told Amitabh Bachchan to take him while returning. For the first time, he deposed in course of trial that when he met the deceased, the deceased was holding a black colour mobile in his hand. Regarding this evidence of PW-5, I.O. (PW-9) has stated in paragraph '39' of his deposition that this witness (PW-5) had not stated before him that Akhilesh Singh and Amitabh Bachchan reached the tea shop together where he was taking tea. He had also not stated before the I.O. that Akhilesh Kumar and Amitabh Bachchan both had left from the shop together and went towards eastern side. The witness had told I.O. that he told Amitabh that he would take him together while returning. This witness had also not said that at the time of taking tea, Akhilesh Kumar was



holding a black colour mobile in his hand.

An analysis of evidence of PW-5 would show that though in course of trial he has deposed for the first time that he had seen Amitabh Bachchan and the deceased together leaving the shop but when the search of the deceased was going on by his family members, this witness did not disclose it to PW-2 or PW-3. In fact, till the next day, i.e. 03.09.2020, when the written information was furnished by Nathuni Singh (PW-7), this witness had not come forward to say that he had seen the deceased leaving with Amitabh Bachchan (appellant) from the *dhaba*. We have taken note of the evidence in earlier part of our consideration.

To this Court, therefore, it appears that PW-5 has deposed on the point of 'last seen' only at a much belated stage in course of trial.

42. Binod Kumar Singh (PW-6) is the younger brother of the deceased Akhilesh Kumar Singh @ Sadhuji @ Awadhesh. He has also stated that when his brother did not return on 02.09.2020 then he had tried to contact on his mobile number but the same was coming switched off. On 03.09.2020, his father Nathuni Singh had gone to police Station to lodge the FIR against unknown. On 04.09.2020, his brother Pramod



Kumar Singh and some villagers came to know that a dead body is lying in Kundra river whereafter, they had gone there and the dead body was taken out and identified as that of his brother. In his examination-in-chief, he has stated that the villagers were saying that the rope may be of the tent house of Amitabh Bachchan Bharti. Police had got identified the mobile and pickup recovered from the house of Amitabh Bachchan Bharti on 12th or 13th by this witness and one Rohit. This Court, however, finds that I.O. and S.H.O. who are PW-9 and PW-12 respectively have not stated about identification of mobile of the deceased by any of the witnesses. In his cross-examination, this witness has stated that there was no paper showing that his brother had given the house on rent to Amitabh Bachchan. There was no partition in the family of four brothers and all of them together have about 35-36 bigha of land. This witness has stated that no case was lodged on account non-payment of rent by Amitabh Bachchan because there were cordial relation with him. He has stated that about six months and one year after giving the house on rent, Rs. 2 lakh was given to Amitabh Bachchan but this money was not given in his presence and there is no paper showing money transaction. He has admitted in paragraph '23' of his deposition that in his statement made



before Police on 3rd, he had not stated that his brother had given house on rent at the rate of Rs. 2500/- to Amitabh Bachchan and Rs. 2 lakh. He had not stated before Police that he had gone to the river, he had seen the dead body and that it was tied by ropes and there were injuries on the dead body. In paragraph '26' of his deposition, this witness has stated that in his statement before police he had stated that he believed his brother had been abducted and killed by unknown persons.

A perusal of the evidence of PW-6 would show that he is not a material witness on any aspect of the matter and does not prove any of the circumstances.

43. Nathuni Singh (PW-7) is the father of the deceased and informant of the case. In his examination-in-chief, he has stated that Police had taken action in the matter and the dead body was found in the Kundra River where boys from the house had gone with the villagers and they had identified the dead body. Thereafter, information was sent to police station and postmortem was conducted. He has stated that Amitabh Bachchan had taken the house on rent from Akhilesh Singh in which he had started godown of tent and utensils. He stated that the rope which was tied with the legs of Akhilesh Singh was of the tent. This witness has stated in paragraph '8' of his



deposition that he had not seen happening the occurrence. In paragraph '11' of his deposition, this witness has stated that he had not said to the Darogaji that house was given on rent to Amitabh and the rope with which the legs were tied were of *tentwala*. He has stated that when the dead body had come after postmortem then also the legs were tied with the rope, the ropes were untied by his son Pramod (PW-2) but he had not seen that who took away the ropes, perhaps the rope was taken to Police Station by his son. In paragraph '13' of his deposition, this witness has stated that he had not made statement regarding tying with rope, murder inside the room and renting out the house to Police. In paragraph '14', he has stated that Amitabh Bachchan was like a family member and his son and he was having a daily talk with him. Amitabh Bachchan had not come to his house that day and he had not seen him. After recovery of the dead body, he had come to know about the involvement of the accused persons. This Court finds that so far as PW-7 is concerned, he is not a material witness and is not deposing as to any of the circumstances to complete the chain, rather his evidence throws doubt over recovery/seizure of rope as according to him, his son had taken the rope to the police station.



44. Rakesh Kumar Singh (PW-8) is the resident of the house situated in the northern side of the godown. He has stated that on 02.09.2020 Akhilesh Singh had gone to Patna Mor in the Dhabha of Dinesh for taking tea from where he went missing. He was taken away by Amitabh Bachchan Bharti on his motorcycle and this witness came to know that Amitabh Bachchan had taken the godown on rent from Akhilesh Kumar Singh and had taken him with himself but in the night could not be traced. This witness has stated that on that night nothing could be found, later on hulla was raised that Akhilesh Singh had been abducted. This witness came to know that the deceased was asking for his money and that led to the occurrence.

45. In paragraph '6' of his deposition, this witness has stated that he had not seen any of the occurrence by his own eyes. He had read in the Hindustan newspaper and came to know that the persons named in the newspaper are behind the occurrence. In paragraph '10' of his deposition, this witness has stated that Dinesh Shah (not examined) and Rishikesh Singh (PW-5) had told him about Akhilesh Kumar going with Amitabh Bachchan on a motorcycle. This Court finds that this witness is not a material witness and he himself admitted that he came to know about the name of the accused from the newspaper.



46. Dr. Jai Shankar Jha (PW-10) had conducted the autopsy on the dead body on 04.09.2020. The dead body was brought and identified by *Chowkidar* Madan Pawan and Pramod Kumar Singh, the brother of the deceased. The dead body was swollen and in the process of decomposition. The doctor found a very tight ligature of *gamcha* was present around the neck with knot on right side. Three external injuries were noticed by doctor which are as under:-

- “i. About 4 cm with ligature mark around mid part of neck with knot mark on right side. The ligature mark was arranged almost in same place around the neck.
- ii. A wide massive lacerated wound on the right side of face.
- iii. A lacerated wound size 25 cm x 20 cm x bone deep on right side of lateral aspect of chest near a xilla.”

47. The doctor opined that injury no.1 was antemortem and caused by ligature around the neck used for strangulation. Injury nos.2 and 3 are postmortem injuries caused by blow impact of some heavy, hard and blunt substance may be like stone. The death was due to asphyxia caused by strangulation. The time between the death and autopsy was approximately within 72 hours.

48. This Court finds from the evidence of Shiv Shankar Prasad (PW-11) who was the *Malkhana* In-charge of Mohania Police Station that he had produced the *gamcha*



(towel) and *rassi* (rope) in the trial court. Those were kept in a white color cloth packet. PW-11 deposed that the cloth is in a bag and the inside cloth is not sealed. The paper pasted on the bag was not having a seal (stamp) and he had not seen that which cloth is there in the bag but he was told that the cloths were *gamcha* and *rassi*. It is evident from the evidence of PW-11 that the material objects *gamcha* and *rassi* were produced in course of trial which were kept inside a bag on which a paper was pasted but there was no seal/stamp. These cloths were not sent to the FSL for scientific examination.

49. The second I.O. of this case, namely, Balvrind Prasad (PW-12) took charge of the investigation on 08.09.2020. He had called Amitabh Bachchan Bharti for interrogation in the police station and left him on PR bond. On asking, the appellant had informed that at the time of occurrence his mobile phone was not switched off. This witness has stated that he submitted an application in the D.I.U. Office for the CDR of both the mobiles. He had received the CDR on 10.09.2020 from D.I.U. Office and found that from the mobile number of deceased Akhilesh Kumar calls had gone to the mobile number of Amitabh Bachchan on 01.09.2020 at 16.51 Hrs. and 16.59 Hrs. He had also found that talks had taken place from the mobile



number of Amitabh Bachchan with the family members of the deceased. On perusal of the evidence of PW-12, this Court finds that during investigation, the I.O. had not collected information regarding the tower location of both the mobiles. There is no statement that the tower location of mobile of the deceased and the appellant was the same and one on 02.09.2020 between 5-6 PM and thereafter till the mobile of the deceased went switched off.

This Court finds that the I.O. (PW-12) had got recorded the statement of Dinesh Sah of Kaal Bhairo Hotel under Section 164 CrPC. The said statement under Section 164 CrPC has been exhibited vide order dated 09.05.2022 on the application of the prosecution dated 06.05.2022. This Court has also found that the prosecution has given up the witnesses, namely, Chandrashekhar Singh, Ravi Prakash Singh, Chandrika Prasad and Dinesh Sah saying that these witnesses have come in collusion with the accused persons. In these circumstances, Dinesh Sah has not been examined in course of trial.

This Court finds that his statement recorded under Section 164 CrPC (Exhibit '12') would not come in the category of a substantive piece of evidence and in absence of his examination or the examination of the learned Magistrate in course of trial,



no reliance can be placed on his statement recorded under Section 164 CrPC alone to take it as a piece of evidence to prove the prosecution case.

50. We are dealing with a case based on circumstantial evidence. In *Sharad Birdhichand Sarda* (supra), the Hon'ble Supreme Court has been pleased to take note of the circumstantial condition which must be fulfilled before a case against an accused can be said to be fully established. Paragraph '151', 152' and '153' of the judgment in the case of *Sharad Birdhichand Sarda* (supra) are being reproduced hereunder for ready reference:-

"151. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh, 1952 SCR 1091 : (AIR 1952 SC 343). This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail v. State of Uttar Pradesh, (1969) 3 SCC 198 and Ramgopal v. State of Maharashtra, AIR 1972 SC 656. It may be useful to extract what Mahajan, J. has laid down in Hanumant's case (at pp. 345-46 of AIR) (supra):

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so



established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

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

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

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

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

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

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

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



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

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

51. On an overall analysis of the evidences available on the record, we find that in this case there is no wholly reliable witness to prove that the deceased was lastly seen in the company of the appellant. The Prosecution Witness PW-5 is the solitary witness who has deposed that he had taken tea together with Akhilesh Singh and Amitabh Bachchan Bharti on Kaal Bhairo Dhaba, Patna Mor, Mohania and he claims that Amitabh Bachchan had taken Akhilesh Kumar with him from there. This Court has noticed the conduct of this witness that even though in the morning he came to know about the abduction of Akhilesh Kumar Singh but he did not disclose the fact that he had seen Akhilesh Singh lastly in the company of the appellant to the informant who went to lodge the FIR on the next day at 10:00 AM. The I.O. (PW-9) has contradicted him in paragraph ‘39’ of his deposition. PW-5 has himself stated in paragraph ‘20’ of his deposition that whatever he was speaking in the court was speaking for the first time. The most important



witness was Dinesh Sah, the owner of *dhaba* who has not been examined in trial. In course of investigation, police has not collected the tower location of mobile phones of the deceased and that of the appellant and the prosecution has not been able to prove that since 02.09.2020 between 05:00-06:00 PM, tower location of deceased and the appellant was same and one. There is no witness who has seen the deceased with the appellant in the godown. In this regard, there is no independent witness. The trial court has not believed the involvement of other accused in absence of cogent and reliable evidences, under these circumstances it is not believable that Amitabh Bachchan Bharti can alone execute the entire occurrence right from abduction, killing in the godown and throwing away of the dead body in river. The chain of criminological events is not getting established in this case. The prosecution has not whispered that since 02.09.2020 from 05:00-06:00 PM onwards, the appellant was not present in the village. This Court has already disbelieved the prosecution story of recovery of mobile phone of the deceased from the house of the appellant.

52. This Court has noticed that how vital circumstances, which have been used against the accused, were not brought to the notice of the accused in course of their



statements under Section 313 CrPC. For all these reasons, this Court is of the opinion that it would not be safe to sustain the conviction and sentence of the sole appellant in Criminal Appeal (DB) No. 266 of 2023. The impugned judgment of conviction dated 17.01.2023 and order of sentence dated 28.01.2023 insofar as it relates to Amitabh Bachchan Bharti (the sole appellant) passed by the learned Additional District and Sessions Judge-IX, Kaimur at Bhabhua in connection with Sessions Trial No. 15 of 2021, arising out of Mohania P.S. Case No. 268 of 2020 are set aside giving benefit of doubt to the sole appellant. The appellant Amitabh Bachchan Bharti is acquitted of the charges giving him benefit of doubt.

53. The appellant is in incarceration. He shall be released forthwith if not wanted in any other case.

54. Cr. Appeal (DB) No. 266 of 2023 is allowed.

55. So far as Cr. Appeal (DB) No. 398 of 2023 is concerned, we find from the above mentioned discussions that the learned trial court has rightly appreciated the evidences with regard to the involvement of respondents no. 2 to 6 (Cr. Appeal (DB) No. 398 of 2023) in the alleged occurrence. There is neither any direct nor any circumstantial evidence on the record to connect them with the present occurrence. The principles



governing an appeal against acquittal have been reiterated by the Hon’ble Supreme Court in the case of **H. D. Sundra (supra)**. No perversity is found in the judgment acquitting Respondent Nos. 2 to 6 in this appeal. We are of the considered opinion that the acquittal of Respondent Nos. 2 to 6 of Cr. Appeal (DB) No. 398 of 2023 cannot be interfered with. In result Cr. Appeal (DB) No. 398 of 2023 stands dismissed.

56. Let a copy of this judgment together with the trial court records be sent down to the learned trial court.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

krishna/-lekhi

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.10.2025
Transmission Date	25.10.2025

