

IN THE HIGH COURT OF JUDICATURE AT PATNA
GOVT. APPEAL (DB) No.33 of 1997

State of Bihar

... .. Appellant/s

Versus

1. Moinuddin S/o Azizul Rahman
2. Azizul Rahman S/o Late Madar Bux
3. Md. Hasim S/o Azizul Rahman
4. Md. Jainuddin S/o Azizul Rahman
5. Md. Taslim S/o Azizul Rahman
6. Md. Kamruddin @ Kamo S/o Chainu Mian
7. Md. Sabat S/o Chainu Mian

All resident of village – Harsua, P.S.- Pranpur, District-Katihar.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ganesh Prasad Jaiswal, APP
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA)

Date : 06-05-2025

The present Government appeal has been filed under Section 378 of the Code of Criminal Procedure, 1973 (hereinafter referred to as ‘Cr.P.C.’) challenging the judgment of acquittal dated 19.03.1997 passed by learned 1st Additional Sessions Judge, Katihar (hereinafter referred to as ‘the Trial Court’) in Sessions Trial No. 20 of 1991 (arising out of G.R. Case No. 1823 of 1990, Pranpur P.S. Case No. 65 of 1990 committed to the Court of Sessions for the offence under Sections 302, 201, 120B/24 of I.P.C.).



2. Heard Mr. Dilip Kumar Sinha, learned A.P.P. appearing for the State/appellant.

3. The brief facts leading to the present appeal are as under.

4. The case of the prosecution is that at about 7:30 P.M. on 09.09.1990 the informant Mahmood Alam @ Rahi S/o deceased Makbool Khan gave his *fardbeyan* at his house to R.D. Rai, A.S.I. of Police of Pranpur P.S. that his father, who was a worker of Congress Party and also President of Pranpur Block of Congress Party, had gone out of his house on 07.08.1990 at about 8:00 A.M. and had informed that he will return back in the evening, but he did not return back till night, so he started searching for him thoroughly. On 09.09.1990, he came to know that there was a meeting of Congress workers at Bastol Chowk on 07.09.1990 and from there, the deceased had started on feet when the meeting was over at 6:00 P.M. He had reached near Chakbandi office at about 8:30 P.M. and had taken water from one Nand Kumar Rishi. At about 9:00 P.M., he had proceeded towards his house from Maina Bazar Chowk, but did not reach his house. Despite thorough search by the informant, he has got no information about the deceased. The informant suspected that some mishap had taken place with his father so he along with



other family members and other villagers namely Seikh Hakim, Massiuddin, Samsuddin, Muslim Mian, Imamuddin Khan, Nazir Mian etc. along with about 40-45 persons searched for his father in nearby field and during the said search Nassiruddin and Samsuddin found the spectacle and comb belonging to his father in the jute field of Bhupendra Jha situated between Maina Nagar Chowk and Harsua. It is further alleged in the F.I.R. that there was a land about 2 $\frac{1}{4}$ *bigha* in *Khata* No. 119 *Khesra* not known which was purchased from a co-villager Abdul Razak about 10 years ago which was in his cultivating possession. Azizul Rahman claimed and disputed the said land for which a case is pending. On 07.09.1990, maize and paddy standing on the land were harvested and brought to home by the informant. So the informant suspected and believed that (1) Azizul Rahman, (2) Mainuddin Mian, (3) Taslim Miyan, (4) Jainuddin Miyan, (5) Hasim Miyan, (6) Kamo Miyan @ Kamruddin and (7) Subbat Miyan of village- Harsua have abducted his father with intention of killing him or killed him and had concealed the corpse in furtherance of common conspiracy. It is further asserted that because he was searching for his father, he could not inform the police about the same earlier. The police instituted Pranpur P.S. Case No. 65 of 1990 under Sections



364/120B/34 of I.P.C.

5. After registering F.I.R., the Investigating Agency carried out the investigation. The corpse (dead body of deceased) was recovered in Fulhar river and it was sent for *post mortem*. Based on findings of the investigation, Section 302 of I.P.C. was subsequently added on 12.09.1990. During the course of investigation, the Investigating Officer (I.O.) recorded the statement of witnesses under Section 161 of Cr.P.C. and collected the relevant documents and after completion of the investigation, a chargesheet was filed against all the accused persons/respondents for the offence under Sections 364, 302, 201/120B and 34 of I.P.C. As the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions where it was registered as Sessions Trial No. 20 of 1991 and charges were framed against the respondents/accused persons.

6. The accused persons completely denied the charges levelled against them. In order to substantiate the charges levelled against the accused persons, the prosecution examined altogether nine witnesses. PW-1 is Md. Yasin , PW-2 is Rangu Rai, PW-3 is Saiyad Mehruddin, PW-4 is Gafoor Khan, PW-5 is Aawid, PW-6 is Shiekh Samiruddin, PW-7 is



Md. Sakur, PW-8 is Md. Mansur, and PW-9 is Kalimuddin. The prosecution evidence was closed on 26.02.1993. However, on petition on behalf of the informant, the Trial Court allowed the examination of the informant, Investigating Officers and Doctor who conducted *postmortem* as Court witnesses. Accordingly, four witnesses have been examined as Court witnesses viz., CW-1 is Mamhood Alam Rahi (son of deceased/informant), CW-2 Dr. Jagdish Madhav Prasad is Doctor who had examined the dead body and conducted *postmortem*, CW-3 Ram Prit Yadav and CW-4 Anil Kumar are Investigating Officers of the case. On the other hand, no defence witness was examined.

7. On behalf of prosecution altogether five documents were exhibited. Ext.-1 is Formal F.I.R., Ext.-2 is Informant Mahmood Alam's signature on *fardbeyan*, Ext.-3 is CC of *postmortem* report of deceased Makbool Khan, Ext.- 4 is *fardbeyan*, Ext.- 5 is CC of case diary from page No. 01-26 in the pen of Anil Kumar I.O. (CW-4). Furthermore, two material were exhibited viz., M.Ext-I is Spectacle having hazelnut colored frame and M.Ext-II is black colored old comb.

8. The accused persons were examined under Section 313 of Cr.P.C. wherein they denied all the allegations and charges and pleaded innocence.



9. The learned Trial Court after hearing arguments on behalf of the parties and appreciating oral and documentary evidence on record, acquitted the accused persons/respondents herein.

10. The Trial Court on considering the evidence on record held and came to the conclusions that the so-called confessional statement made to the police by Mainuddin and Md. Hasim leading to the discovery of dead body from river water is not legally admissible evidence against either Hasim or Mainuddin who were arrested. Neither confessional statement nor the station diary entry No. 167 dated 11.09.1990 had been produced and proved. The recovered comb and spectacle did not contain any specifying mark that they belong to deceased Makbool Khan and the informant also not asserted in his evidence that his father was using those material exhibits and he identified them because he used to see them always with his father, in view of the same, it cannot be accepted to belong to the deceased and the alleged recovery from the field had no bearing on the merit of the case. The Trial Court concluded that the witnesses do not appear to be such that reliance could be placed on their evidence as showing strong circumstances leading to only inference of the guilt of the accused persons.



11. Being aggrieved by the said judgment of acquittal, the State of Bihar preferred the present appeal.

12. Learned APP for the state submitted that in the present case the prosecution has proved charges against respondents/accused persons, despite which, the Trial Court has passed the impugned Judgment, whereby the respondents /accused persons have been acquitted. It is submitted that the Trial Court has not appreciated the case of the prosecution in its proper perspective and has arrived at incorrect conclusions that the prosecution has not been able to bring home the charges levelled against the accused persons on the basis of material on record and there is no such evidence which could be said to be such strong circumstances to infer the guilt of the accused persons for which they have been charged. He further submitted that the prosecution examined altogether nine witnesses and four witnesses have been examined as Court witnesses and the Trial Court should have accepted the evidence of prosecution to infer that the accused persons had conspired together to kill the deceased Makbool Khan and in furtherance of the planning they had killed the deceased. The Trial Court erred in not accepting the evidence of informant (CW-1) and held that from his evidence it is not substantiated that these accused persons had



complicity in the alleged offence. It is submitted that the prosecution has proved the motive and other chain of circumstances against the accused persons beyond reasonable doubt. The reasons given by the Trial Court for discarding their evidence are not correct. It is submitted that some minor discrepancies are bound to occur in the evidence of witnesses examined by the prosecution. The Trial Court erred in holding that confessional statements of Hasim and Mainuddin leading to discovery is not legally admissible against either of them. Therefore, the impugned judgment of acquittal may be set aside and the respondents/accused persons may be convicted and sentenced accordingly.

13. He further stated that in appeal under Section 378 of Cr.P.C., the High Court has full power to re-appreciate, review and reconsider the evidence at large, the material on which the order of acquittal is found and to reach its own conclusions on such evidence. Both question of fact and law are open for determination by the High Court in an appeal against an order of acquittal.

14. We have considered the submissions canvassed by the learned APP for the State and perused the material on record. It is well settled that this Court has power to re-



appreciate and reconsider the evidence in an appeal.

15. It is well established position of law that if the Trial Court has taken a view which is a possible view in a reasonable manner, then the same shall not be interfered. Only in exceptional cases where there are compelling circumstances and the judgment in appeal is found to be totally perverse or wholly unsustainable, the appellate Court can interfere with the order of acquittal. Presumption of innocence in favour of the accused further gets reinforced and strengthened by the acquittal from the Trial Court. The appellate Court cannot overturn acquittal only on the ground that after re-appreciating evidence, it is of the view that the guilt of the accused was established beyond reasonable doubt. Only by recording such a conclusion, an order of acquittal cannot be reversed unless the appellate Court also concludes that it was the only possible conclusion.

16. At this juncture, it is pertinent to refer to the general principles laid down by the Hon'ble Supreme Court in **Chandrappa and Ors v. State of Karnataka** reported in **(2007) 4 SCC 415** which elucidates the scope of powers vested in an appellate court while adjudicating an appeal against an order of acquittal. The principles, as culled out in the said judgment, are as follows:



“42.

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

17. Recently, the Hon’ble Supreme Court in H.D.

Sundara and Others v. State of Karnataka, reported in (2023)

9 SCC 581 has summarised the principles, which govern the exercise of appellate jurisdiction while dealing with an appeal



against acquittal under Section 378 Cr.P.C. in paragraph 8 as under:

- “8.1. The acquittal of the accused further strengthens the presumption of innocence;*
- 8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;*
- 8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;*
- 8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and*
- 8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”*

18. The Hon’ble Supreme Court in Nikhil Chandra Mondal v. State of West Bengal, reported in (2023) 6 SCC 605 has observed in paragraph 22 as under:

“22. Recently, a three-Judges Bench of this Court in the case of Rajesh Prasad v. State of Bihar has considered various earlier judgments on the scope of interference in a case of acquittal. It held that there is double presumption in favour of the accused. Firstly, the presumption of innocence that is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a



competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the court. It has been further held that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial court.”

19. The only point would arise for our consideration is whether the impugned judgment of acquittal passed by the Trial Court calls for any interference by this Court in this appeal.

20. From the evidence led by the prosecution before the Trial Court, it would reveal that in the present case, there was no eye-witness of abduction, subsequent murder and concealment of corpse of the deceased Makbool Khan. The prosecution case rests upon the circumstances for inferring that the respondents/accused persons had caused death of the deceased and had concealed the corpse in the river from where it has been subsequently recovered.

21. It appears from the evidence on record that the prosecution has rested upon his case against the accused persons on following circumstances:

(a) There was a land dispute between the deceased and accused persons and suspicion arose for involvement



of accused persons in the murder of deceased.

(b) The accused persons on the relevant date were seen in suspicious conditions near the river at 8:30 P.M. by PW-2 where the dead body of the deceased was recovered and were also seen near the jute field by PW-3 where spectacle and comb of accused were found. The accused persons were talking about the murder of the deceased as heard by PW-9. Also, PW-4 had heard 10 days earlier to occurrence that accused had stated planning to murder the deceased.

(c) On the basis of confessional statement of accused Mainuddin and Hasim dead body of accused was recovered from the river.

22. On the point of circumstantial evidence, the Hon'ble Supreme Court in the case of **Sharad Brijhichand Sarda v. State of Maharashtra** reported in (1984) 4 SCC 116 has postulated some cardinal principles regarding the appreciation of circumstantial evidence in para 153 as under:

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

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

It may be noted here that this Court



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

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

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

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

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

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

23. The prosecution has examined nine witnesses.

PW-1 Mohd. Yasin is a formal witness who proved Ext-1 (formal FIR). PW-2 Rangu Rai in his deposition deposed that he had found the accused persons coming together at 8:30 P.M. near the river on the relevant date and when he had asked them



what they were doing they had not given plausible explanation. The I.O. (CW-4) in his cross-examination admitted that PW-4 is a hearsay witness. This shows that the statement of PW-2 is an afterthought with intention to help the prosecution. PW-3 Saiyad Mehruddin who is close relative of deceased claimed that he had seen the accused persons near the field of Bhupendra Jha in suspicious condition where spectacle and comb were found. He had informed the same to Samiruddin (PW-6) and Bharat Mandal (not examined). But PW-6 in his deposition specially stated that he had no talk with anyone about the occurrence which contradict the statement of PW-3. PW-4 Gafoor Khan, own brother of the deceased who is a hearsay witness deposed that ten days prior to the occurrence he had heard the accused persons talking that they would kill the deceased Makbool. But he did not disclose it to anyone including I.O. of the case which is not a natural conduct. PW-5 Aawid deposed that when he had gone to work in the house of Azizul he had found that these accused persons were talking about a case under Section 436 of IPC and they were talking that some arrangement was to be made because Makbool was doing *pairvi* in that Case. PW-6 Sheikh Samiruddin, deposed that Hasim, Azizul, Mainuddin, etc., were kept arrested in Police Station. On saying of Hasim,



they went to the place where corpse of deceased was found. PW-7 Md. Sakur has not supported the case of prosecution and declared hostile. PW-8 Md. Mansur deposed that dead body of deceased was recovered in front of him from the Gherwa of River and with him there were many persons present there. He did not corroborate the fact that the said recovery was made at the instance of the accused Hasim or Mainuddin. PW-9 Kalimuddin is a hearsay witness who asserted that he had heard that these accused persons were talking about the murder of the deceased.

24. In the present case, four witnesses have been examined as Court witnesses. In this regard, it is relevant to note that the Court are obliged to exercise their power under Section 311 Cr.P.C. when the evidence of any person is essential for a just decision of the case. There is a wide discretion with the Court under Section 311 of Cr.P.C. These powers can be exercised *suo motu* or on an application moved by the either side. As stated above, on application moved by the informant the Trial Court examined four witnesses as Court witnesses. This power under Section 311 of Cr.P.C. can be invoked at any stage of the trial, even after closing of the evidence. As far as cross-examination of a Court witness is concerned, no party can



claim cross-examination of a Court witness as a matter of right. A Court witness can only be examined with the leave of the Court. Where a Court witness say something prejudicial to any party, then such a party must be allowed to cross-examine that witness. The cross-examination is to be restricted only to what was stated by this witness in his/her reply to the questions of the Court, and a Court witness cannot be contradicted to his/her statements made before the police i.e. statements under Section 161 Cr. P.C. At the same time, none of these restrictions apply to the Court which has wide power under Section 165 of the Indian Evidence Act to ask any question. The special powers of the Court under Section 165 of the Indian Evidence Act are not impaired or controlled by the provisions of Section 162 of the Cr.P.C. Moreover, the statement made by a witness in Court, including in cross-examination, would come under the definition of 'evidence' under Section 3 of the Indian Evidence Act. It would form part of the entire evidence which the Court can examine while arriving at its decision.

25. CW-1 Mohmood Alam Rahi, informant, deposed that his father (deceased) went outside house in morning at 7-8:00 A.M. but did not return till evening then he started searching but could not find him. On 09.09.1990 he



came to know from Nand Kumar Risi (not examined) that his father returned from Bastol and drank water and at about 9:00 P.M. he went for home lonely. During search, spectacle and comb were found then the case was instituted by him against accused persons due to suspicion that the land was purchased from Razak. He further deposed that on 10.09.1990 at about night between 12-1:00 A.M. he came to know from *chaukidar* that accused persons had concealed the dead body for his father after killing him. He alongwith villagers went there at about 2-2:30 A.M. *darogajee* came there from Police Station with Mainuddin and Hasim. He asked Mainuddin why he had killed his father then he stated that on instigation of Buddha, he killed his father. Mainuddin and Hasim had taken out the dead body of his father from the water which was further taken on the road. In the morning, police sent the corpse to Purnea. In his cross-examination, he has disclosed that he had fought some cases with the accused persons but had lost. He also admitted that on 11th September, in morning Police called him near Fulhar ghat where he reached and found that the corpse was lying with swollen stomach and he identified the same. This shows that he had not seen the corpse being taken out of the river.

26. Dr. Jagdish Madhav Prasad (CW-2) who



conducted the *postmortem* of the deceased Makbool Khan on 11.09.1990 in his deposition opined that the death was caused due to asphyxia as a result of strangulation. The ligature mark on the neck was only external injury on the dead body. The whole body was swollen. Both hands and legs were tied with *dhoti* and *gamchha* tightly. Time elapsed since death was within three to four days. The death and cause of death of Makbool Khan has not been challenged by the defence. CW-3 Ram Prit Yadav has only submitted chargesheet. CW-4 Anil Kumar was the I.O. who deposed that A.S.I. R.D. Rai recorded the *fardbeyan* of informant. After taking charge of investigation he recorded restatement of the informant and statement of Md. Sakur, Rangu Rai, Mehruddin, Kadir, Gafoor and also visited the place of occurrence where he found spectacle and comb (M.Ext. I and II) in the jute field of Bhupendra Jha situated at about 10 meters distance from road of Maina Nagar Chowk towards Harsua which were seized. He arrested accused Mainuddin and Md. Hasim and recorded confessional statement of both the accused. Further, he made SD entry (*sanha* no. 167 dated 11.09.1990) and on the basis of their confessional statement went to Fulhar Ghat where the concealed dead body was recovered from water whose inquest report (not produced



and proved) was prepared of which Abdul Gamir and Samiruddin were witnesses. The dead body was sent by him for *postmortem*. Moreover, CW-4 in his cross-examination stated that Sakur, Mehruddin, and Rangu Rai were hearsay witnesses. He also deposed that he has not written in the case diary that who had carried out the dead body from the water.

27. It is well settled that once information is given by accused, the same information cannot be used, even if voluntarily made by a co-accused who is in custody. Section 27 of the Indian Evidence Act, 1872 does not apply to joint disclosure. The manner of proving the disclosure statement under Section 27 of the Indian Evidence Act has been the subject matter of consideration by the Hon'ble Supreme Court in the case of **Subramanya v. State of Karnataka** reported in **(2023) 11 SCC 255**, wherein it was observed in para 78 as under:

“78. If, it is say of the investigating officer that the appellant-accused while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial of the dead body, clothes, etc. then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses would arrive at the police station thereafter in their presence the



accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence, etc. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or bloodstained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.”

28. In the case of Suresh Chandra Tiwari & Anr.

v. State of Uttarakhand reported in 2024 SCC OnLine SC



3531, the Hon'ble Supreme Court while considering the discovery being not made pursuant to the disclosure statement relied upon the case of **Geejaganda Somaiah v. State of Karnataka** reported in **(2007) 9 SCC 315** wherein it has cautioned the Courts about misuse of provision of Section 27 of the Evidence Act, 1872 while observing in para 22 as under:

“22. As the section is alleged to be frequently misused by the police, the courts are required to be vigilant about its application. The court must ensure the credibility of evidence by police because this provision is vulnerable to abuse. It does not, however, mean that any statement made in terms of the aforesaid section should be seen with suspicion and it cannot be discarded only on the ground that it was made to a police officer during investigation. The court has to be cautious that no effort is made by the prosecution to make out a statement of the accused with a simple case of recovery as a case of discovery of fact in order to attract the provisions of section 27 of the Evidence Act.”

(Emphasis supplied)

29. In the instant appeal the alleged confessional statement made by the two accused i.e., Mainuddin and Hasim with respect to the concealment of the dead body of deceased was neither produced nor proved in the Trial Court. Moreover, the I.O. during his examination has stated that the dead body of the deceased was recovered from the water whose inquest report was prepared in presence of two witnesses. Any *panchanama* in



the presence of two witnesses for the purpose of Section 27 of the Indian Evidence Act has not been proved. It is not proved that who had carried out the dead body of the deceased from the water. The inquest report was also not proved before the Trial Court. In these circumstances, it is clear that the recovery of the dead body pursuant to the disclosure statement of two accused persons namely, Mainuddin and Hasim has not been duly proved.

30. In our considered opinion, on the point of ‘motive’ as one of the significant nexuses in establishing the series of circumstantial evidence, in this case, raising of suspicion against the accused persons in *fardbeyan* was stated as land dispute of deceased with accused persons. It is well settled that motive acts as a double-edge sword. The fact that there was a land dispute between the deceased and accused persons could also have the motive for the prosecution witness to rope in the accused persons for the murder of deceased. Except the suspicion there is no reliable material to show the complicity of the accused persons in the murder of deceased.

31. We have re-appreciated the entire evidence on record before the Trial Court, we have also gone through the reasoning recorded by the learned Trial Court while passing the



impugned judgment and order and we are of the view that the Trial Court has not committed any error while passing the same. The view taken by the Trial Court could not be said to be either perverse, illegal or impossible to warrant interference. The decision of the Trial Court for acquitting the accused persons was possible and plausible. In our considered opinion the prosecution has failed to prove the charges against the respondents/accused persons beyond reasonable doubt and, therefore, the Trial Court has rightly given the benefit of doubt to the respondents/accused persons and thereby not committed any illegality as contended by the learned APP. No interference with the impugned judgment and order of acquittal is warranted.

32. In view of the aforesaid discussions, the present Appeal fails. Accordingly, the same is **dismissed**.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

utkarsh/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	15.05.2025
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