

IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (DB) No.328 of 1996

- 1. SARBA SINGH S/o Bir Bahadur Singh R/o vill - Nawadah, P.s.- Rivilganj, Distt.- Saran
- 2. Upendra Singh S/o Chandeshwar Singh R/o vill - Nawadah, P.s.- Rivilganj, Distt.- Saran
- 3. Nag Narayan Singh S/o Bikrama Singh R/o vill - Nawadah, P.s.- Rivilganj, Distt.- Saran
- 4. Amresh Singh S/o Jitendra Singh R/o vill - Nawadah, P.s.- Rivilganj, Distt.- Saran

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

with  
CRIMINAL APPEAL (DB) No. 335 of 1996

- 1. Lallan Singh S/o Bharat Singh R/o vill - Nawada, P.s.- Revilganj, Distt.- Saran
- 2. Ganesh Singh S/o Bharat Singh R/o vill - Nawada, P.s.- Revilganj, Distt.- Saran
- 3. Satyendra Singh S/o Bharat Singh R/o vill - Nawada, P.s.- Revilganj, Distt.- Saran

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :  
(In CRIMINAL APPEAL (DB) No. 328 of 1996)  
For the Appellants : Mr. Shivendra Kishore, Senior Advocate  
Mr. Ajay Kumar Thakur, Advocate  
Mr. Saroj Kumar, Advocate  
For the State : Mr. Sujit Kumar Singh, APP  
For the Informant : Mr. Nishant Kumar Sinha, Advocate  
(In CRIMINAL APPEAL (DB) No. 335 of 1996)  
For the Appellants : Mr. Bindhyachal Singh, Senior Advocate  
Mr. Kumar Awnish Ankit, Advocate  
For the State : Mr. Sujit Kumar Singh, APP  
For the Informant : Mr. Nishant Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI  
and  
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY



**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

**Date : 24-03-2025**

Both these appeals, filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'), are directed against the judgment of conviction dated 30.07.1996 and order of sentence dated 31.07.1996, passed by learned 2<sup>nd</sup> Additional District & Sessions Judge, Saran, Chapra in Sessions Trial No.917 of 1994/31 of 1994, arising out of Rivilganj P.S. Case No.126/93, whereby the appellants have been convicted for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code and they have been sentenced to undergo imprisonment for life.

2. The prosecution case, in brief, is that on 13.12.1993 at 04:00 A.M., the *fardbeyan* of the informant, namely, Srinath Singh was recorded by A.S.I. on the embankment of village Raipura, Nawada wherein it is alleged that on 12.12.1993 at 05:00 P.M., his son Lagan Deo Singh (deceased) had gone to Rivilganj market along with four accused persons, namely, Sarba Singh, Upendra Singh, Nag Narayan Singh and Amresh Singh. The deceased did not return home till 08:00 P.M. in the night. At about 10:00 P.M.,



Ramashankar Singh came to his house, called him and told that the guardians of the above named four accused persons had come to his house and asked him to inquire from the informant whether his son has returned to his house or not, because their sons had already returned home at 07:30 P.M. They told their guardians that someone had shot the deceased on the embankment while he was returning to his house. The informant along with Ramashankar Singh, his nephew Amod Singh and others went to Raipura, Nawada embankment. Thereafter they saw the dead body of Lagan Deo Singh having gun shot injuries on his head and chest lying by the side of the embankment towards west. The dead body was lying in pool of blood. The bicycle was also near the dead body. It is further alleged by the informant that he has land dispute with the accused persons, namely, Lalan Singh, Satyendra Singh and Ganesh Singh. These three accused persons always threatened to do away with the son of the informant. It is alleged that the accused persons who had gone to Rivilganj market along with his son and the accused persons who are his *pattidars* and others have conspired and killed the deceased while he was returning to his house from Rivilganj market at a lonely place on Raipura, Nawada embankment.



2.1. After registration of the FIR, the Investigating Officer started investigation and during course of investigation, the Investigating Officer had recorded the statement of the witnesses and also collected other materials. After investigation was concluded, he filed charge-sheet against the appellants-accused before the concerned Magistrate Court. As the case was exclusively triable by Court of Sessions, the concerned Magistrate committed the same to the Sessions Court under Section 209 of the Code where the same was registered as Sessions Trial No.917 of 1994/31 of 1994.

2.2. During course of trial, the prosecution has examined 13 witnesses, namely, PW-1 Srinath Singh, PW-2 Ramashankar Singh, PW-3 Ahilya Kumari, PW-4 Dhaneshwara Devi, PW-5 Meera Devi, PW-6 Parnu Devi, PW-7 Manohar Thakur, PW-8 Harendra Kumar Singh, PW-9 Ramnath Singh, PW-10 Sunil Kumar, PW-11 Amod Kumar Singh, PW-12 Shankar Ravidas and PW-13 Awadh Kishore Singh.

3. Heard Mr. Shivendra Kishore, learned Senior Counsel assisted by Mr. Saroj Kumar for the appellants as also Mr. Ajay Kumar Thakur, learned counsel for the appellants in Criminal Appeal (DB) No.328 of 1996, Mr. Bindhyachal Singh, learned Senior Counsel assisted by Mr. Kumar Awnish Ankit,



for the appellants in Criminal Appeal (DB) No.335 of 1996, Mr. Sujit Kumar Singh, learned APP for the State as well as Mr. Nishant Kumar Sinha, learned counsel appearing on behalf of the informant in both the appeals.

4. Mr. Ajay Kumar Thakur, learned counsel for the appellants appearing in Criminal Appeal (DB) No.328 of 1996 would mainly submit that present is a case of circumstantial evidence and there is no eye-witness to the incident in question. It is further submitted that the prosecution has tried to place the theory of last seen together so far as the present appellants are concerned. However, from the evidence led by the prosecution, it can be said that there are major contradictions and inconsistencies even in the said theory of last seen together. Mr. Thakur would further contend that the appellants herein have been arrested from their houses. Thus, from the conduct of the appellants, it cannot be said that the appellants killed the deceased. It is pointed out from the deposition given by the informant (PW-1), who is father of the deceased, that in para-20, the said witness has admitted that he did not see the deceased talking to the appellants in the market. It is further submitted that the said witness has further admitted that his son was talking to some other person. However, he did not identify the



said person. Learned counsel for the appellants further submits that in para-17, PW-1 has stated that he had not talked with his son in the market and he had seen him from a distance who was talking with someone in the market and at that time 15-20 persons were present at the chowk/market.

4.1. Mr. Ajay Kumar Thakur, learned counsel for the appellants would further submit that even PW-2 has stated in para-10 that he saw only Satyendra Singh at Rivilganj market between 03:00-05:00 P.M. and in para-22, he had further stated that he had not stated to Darogaji that on that day he met Srinath Singh (informant) in the market. Further the said witness has stated that he returned from the market from the same road and due to dark night, dead body was not visible on the embankment. The said witness has also admitted that the family of the informant had no enmity with the accused Sarba Singh, Upendra Singh, Nag Narayan Singh and Amresh Singh.

4.2. Mr. Thakur, learned counsel for the appellants also submits that from the deposition of the prosecution witnesses, it is evident that the present appellants had no enmity either with the deceased or with the family of the deceased and, in fact, the present appellants were good friends of the deceased. At this stage, learned counsel has referred the deposition given



by PW-5, who is wife of the deceased. It is submitted that in para-20, she has stated that her father-in-law (PW-1) was asking the four appellants to be the witnesses.

4.3. Learned counsel thereafter referred the deposition given by PW-12, the Investigating Officer, who has stated that on 13.12.1993 at 02:45 A.M., Dafadar Dilram Ram and Chowkidar Narayan Ram came at the police station and informed that they have heard the sound of firing towards Nawada village for which Station Diary Entry No.183, dated 13.12.1993 (Ext.3) was instituted. Learned counsel further submits that the Investigating Officer, PW-12, has also deposed that after recording the fardbeyan, he left for the police station where he instituted the FIR, prepared Panchnama of the dead body and started writing the case diary. However, he started writing the case diary at 02:45 A.M. whereas the FIR was lodged at 07:30 A.M. Prior to that, inquest report was prepared at 06:00 A.M. wherein there is reference of police station case number. Learned counsel for the appellants, therefore, urged that even prior to lodging of the formal FIR at 07:30 A.M., police station case number has been referred in the inquest report which creates doubts and, in fact, the prosecution has suppressed the initial version.



4.4. Learned counsel for the appellants lastly contended that the prosecution has failed to prove the motive on the part of the present appellants to kill the deceased. At this stage, it is submitted that in the case of circumstantial evidence motive assumes importance and in the present case, it is not the case of the prosecution that the present appellants hatched a conspiracy with other appellants of other appeal, i.e., the co-accused. Learned counsel for the appellants, therefore, urged that the present appeal be allowed and the impugned judgment of conviction and order of sentence be quashed and set aside.

5. Mr. Bindhyachal Singh, learned Senior Advocate appearing in Criminal Appeal (DB) No.335 of 1996 broadly supported the submissions canvassed by Mr. Ajay Kumar Thakur, learned counsel for the appellants appearing in Criminal Appeal (DB) No.328 of 1996. However, learned Senior Advocate for the appellants further submits that none of the prosecution witnesses has stated that they have seen the present appellants in company with the deceased on the date of incident. The prosecution has alleged motive on the part of the present appellants for commission of the crime. However, mere motive would not be sufficient to substantiate the allegation and establish the guilt of the accused in absence of any corroborative



legal and admissible evidence. It is further submitted that motive howsoever strong would not be sufficient to convict the accused persons unless the prosecution proves its case against the appellants beyond all reasonable doubt on the basis of legal and admissible evidence. Mr. Singh, learned Senior Advocate further submits that motive as well as enmity is a double edged sword and it may not only be indicative of the commission of the crime but also compelling factor for the false implication of the appellants. Learned Senior Advocate would submit that in the present case, there is no evidence led by the prosecution connecting the present appellants with the incident in question.

5.1. Learned Senior Advocate, therefore, urged that the prosecution has miserably failed to complete the chain of circumstances from which it can be established that the present appellants have killed the deceased. Learned Senior Advocate, therefore, urged that the present appeal be allowed and thereby the impugned judgment of conviction and order of sentence be quashed and set aside.

6. On the other hand, Mr. Nishant Kumar Sinha, learned counsel for the informant has vehemently opposed the present appeals. Learned counsel would submit that though the present is a case of circumstantial evidence, the prosecution has



completed the chain of circumstances from which it is established that the appellants have committed the alleged offence. Learned counsel for the informant further submits that so far as appellants of Criminal Appeal (DB) No.328 of 1996 are concerned, they came to the house of the deceased and thereafter the deceased left the house in company with the said appellants. The deceased was lastly seen in company with the said appellants and thereafter his dead body was found. The prosecution has proved the said aspect by leading cogent evidence before the Trial Court. At this stage, learned counsel further submits that so far as appellants of Criminal Appeal (DB) No.335 of 1996 are concerned, the prosecution has proved the motive on their part to kill the deceased. The prosecution witnesses have specifically deposed with regard to the same before the Trial Court. Learned counsel for the informant, therefore, urged that the prosecution has proved the case against all these appellants beyond all reasonable doubt and, therefore, the Trial Court has not committed any error while passing the impugned judgment of conviction and order of sentence and, therefore, both the appeals be dismissed.

7. Learned APP has also supported the submissions canvassed by learned Advocate appearing for the informant.



8. We have considered the submissions canvassed by learned Advocates appearing for the parties. We have also perused the evidence led by the prosecution before the Trial Court. From the materials placed on record, it transpires that the prosecution has examined 13 witnesses. At this stage, we would like to appreciate the entire relevant extract of the depositions of the prosecution-witnesses.

9. PW-1, Srinath Singh, who is informant of the case, has deposed in his examination-in-chief that the occurrence is of 12.12.1993. Sarba Singh, Amresh Singh, Upendra Singh and Nag Narayan Singh came at his door at 05:00 P.M. and called his son. His son went to Rivilganj market with them. After half an hour, he also went to the market and saw his son with Amresh Singh, Sarba Singh, Nag Narayan Singh, Upendra Singh, Lalan Singh, Ganesh Singh and Satyenra Singh. They all were talking. He returned to his home at 7 O' clock. It is further deposed by this witness in his examination-in-chief that on the same day, Ramashankar Singh came to his house at 10:00 P.M. and asked whether his son came to the house or not. He replied that we are also concerned that why his son did not return home. At which, Ramashankar Singh told that Jitendra Singh, Vikram Singh, Chandeshwar Singh and Bachchu



Singh asked him to inquire whether Lagandeo Singh has returned to his house or not and their sons had already returned home and firing took place on the embankment. It is further deposed that he went to the embankment along with his family and villagers. The persons with whom his son went to the market and their family members had not gone to the embankment. The dead body of his son Lagandeo was lying on the embankment. He saw gun shot injuries on the upper side of left ear and beside the right ear. He also saw injury on the right side of chest. Darogaji came to the embankment at 04:00 A.M., recorded his statement and he put his signature on the same (Ext.1). It is further deposed that on 11<sup>th</sup> of December, Satyendra Singh, Lalan Singh and Ganesh Singh came at his door and threatened him. Case was also going on with them. He has no enmity in the village besides them. Darogaji recorded his re-statement. The said witness claims to identify Satyendra Singh, Nag Narayan Singh and Lalan Singh in doc. He also claims to identify those who had not come.

9.1. The said witness has stated in his cross-examination that he has no enmity with Sarba Singh, Upendra Singh, Nag Narayan Singh and Amresh Singh. He had not seen them coming to his house before 5 O' clock on that day. In para-



20 of his cross-examination, he has stated that he had not talked with Sarba, Upendra, Nag Narayan or Amresh nor he had seen his son talking with the accused persons in the market. His son was talking to someone else other than the accused persons whom he did not identify. He has denied the suggestion that four accused persons had not gone with his son to Rivilganj market nor he himself had gone to Rivilganj market. He has further denied the suggestion of giving false deposition and that the accused persons have been implicated in this case for some oblique purpose. The said witness has denied having knowledge that Lalan Singh is the Principal of Lalan Singh Sanskrit College, Godna. He has stated that Ganesh Singh practices as an Advocate at Chapra. Satyendra Singh is an employee in B.S.F. He has denied the suggestion that he was intentionally concealing that a case was lodged against his son by Laxman Yadav of demanding extortion on 14.03.1991 and having snatched his bicycle. He has admitted that a civil case was lodged by accused Lalan Singh and Ganesh Singh against him for grabbing 2 *Dhurs* of land. He has denied to have stated in his fardbeyan that on 11<sup>th</sup> December, 1993, Satyendra, Lalan and Ganesh Singh had come to his door and stated that though you have constructed the house but you will not succeed to get your



daughter married rather he would be finished. He had given his second statement before Darogaji 2-1/2 hours after his first statement which was recorded at 04:00 A.M. Darogaji had recorded the statement of his nephew Ramashankar Singh. The dead body was taken out at 6 O' clock. He has denied the suggestion that as the land dispute was going on, he intentionally implicated the accused persons.

10. PW-2, Ramashankar Singh has deposed in his examination-in-chief that the incident is of 12.12.1993. He received information of this incident at 10:15 P.M. He was sleeping at that time and some persons were knocking at the door. When he opened the door, Bachchu Singh, Vikrama Singh and Jitendra Singh were standing outside. Vikrama Singh took him to his house situated at a distance of 100 yards towards east. There Vikrama Singh informed him that Amresh, Sarba and Nag Narayan have come and have informed that an incident of firing has taken place on embankment near Raipura, Nawada and requested him to inquire whether Upendra and Lagan Deo had arrived or not and they waited there. He had also informed that while all the five, i.e., Amresh, Sarba, Nag Narayan, Upendra and Lagan Deo were coming, the incident of firing had taken place. It is further deposed that he first went to the house of



accused Upendra Singh and knocked at his door. The mother, father, aunt of Upendra and Upendra himself came outside. He asked Upendra as to whether Lagan Deo has come there or not upon which Upendra informed in a frightened voice that they came running and he does not know about Lagan Deo. The witness then went to the house of Lagan Deo and inquired about him when the father of Lagan Deo replied that Lagan Deo had not returned. Upon this the deponent narrated about the incident on which the family members of Lagan Deo started weeping. After that, they altogether about 50 persons went to the embankment. While on way, the bicycle was seen in the light of lantern. The dead body of Lagan Deo was also lying there. There was a mark of bullet injury above the left ear and another bullet mark on the right side of chest. The bicycle was lying beside the deceased, the watch was there on his wrist and slippers were also in his legs. To his knowledge, Lagan Deo had enmity with Lalan Singh, Ganesh Singh and Satyendra Singh due to land dispute. Darogaji prepared the inquest report of the deceased in his presence upon which he put his signature. He identifies his signature and that of Srinath (Exts.1/2 and 1/3). He has further deposed that he runs a shop at Rivilganj market and goes to the shop at 08:00 A.M. and returns between 08:00 and



09:00 P.M. On the day of incident, he had seen accused Satyendra Singh thrice in Rivilganj market between 03:00-05:00 P.M. He had met Lagan Deo's father at about 06:00 P.M. Darogaji had recorded his statement on 14<sup>th</sup> December. He identifies accused Upendra Singh and Lalan Singh present in court and claims to identify others by face.

10.1. The said witness has stated in his cross-examination in para-17 that they, about 15 persons, had gone to the embankment at 11:00 P.M. In para-21 the said witness has stated that Darogaji had talked to him, Srinarayan Singh, Arun Singh etc. and Shankar Singh for about 1-1½ hours. A sepoy, he, his nephew Raju Singh, Arun Singh and Vir Narayan Singh stayed with the dead body and others went to the village with Darogaji. Darogaji again came to the place of occurrence at 04:00-04:15 A.M. Darogaji had recorded the statement of Srinath Singh at the place of occurrence. He had not recorded the statement of anyone else. Darogaji remained with the dead body till 07:00-07:15 A.M. Thereafter he went to the police station. Until Darogaji was present at the place of occurrence, he had not recorded his statement. He has further stated that he had stated before Darogaji to have seen Satyendra Singh thrice at Rivilganj market on the relevant date, he is not sure whether he



had had noted it down or not. He has denied to have stated before Darogaji that he had met Srinath Singh in the market on that day. He had not stated in his statement as to when Sarba Singh, Upendra Singh, Nag Narayan and Amresh Singh had returned from the market. He has denied the suggestion of false implication due to land dispute. In his further cross-examination, the said witness has stated that the dead body was discovered by the northern side of embankment. Due to darkness at the embankment, dead body was not visible. He had returned from the market at 08:35 in the night. He had returned from the market alone. On that day, he had not met deceased Lagan Deo at any place. He has no knowledge about enmity between Srinath Singh and his family and accused Sarba Singh, Upendra Singh, Nag Narayan Singh and Amresh Singh. On 13.12.1993, he had to stay at home. On the same day all these four accused persons were apprehended by the police. He has denied the suggestion of giving totally false deposition. He has also denied the suggestion that he had not met Vikrama Singh and Jitendra Singh nor he had talked to them and being an agnate, he had given false deposition to favour them.

11. PW-3, Ahilya Kumari has deposed in her examination-in-chief that the incident is of 12<sup>th</sup> December, 1993.



That night, Ramashankar Singh had come to her house at 10:00 P.M. and called her father. All the family members came out. Ramashankar Singh inquired whether Lagan Deo had come home or not. Her father replied that he has not come. At this, Ramashankar Singh narrated the incident of firing at the embankment in which Lagan Deo was shot at and others fled away. Hearing this, her father, her cousin Ramashankar Singh and many others from the village went in search of Lagan Deo towards the embankment. She has further deposed that her family had enmity with Lalan Singh, Ganesh Singh and Satyendra Singh as they were obstructing construction of her house. They had also filed a case. Before the incident, Lalan Singh, Ganesh Singh and Satyendra Singh had threatened her family by stating that though the construction of house is complete but they will not allow the marriage to happen rather there will be a last rite before the marriage. Due to the incident, her marriage could not take place. Darogaji had recorded her statement. She claims to identify all the accused persons.

11.1. The said witness has stated in her cross-examination that she had not gone to the embankment. Her father and Ramashankar Singh went with the dead body from Rivilganj to Chapra and returned on Monday at night. She has



further stated that Lalan Singh had lodged a case before this incident against her brother and her father. On the day of occurrence, her deceased brother was playing cards with the four accused persons on the northern side of her door. They played till about 01:30 P.M. At that night, her family members and village people had heard the sound of firing at 07:30 P.M. On being asked whether after the threat given before the incident when her brother did not return till 10:00 P.M. and the sound of firing was heard if her family members had discussed about the incident or not, she replies 'No'. She further stated that when her brother did not return till 10:00 P.M., none of her family members had gone to search him. They did not even go to the houses of the four accused whether they returned to their houses or not. She has denied the suggestion to have given false deposition.

12. PW-4, Dhaneshwara Devi has deposed in her examination-in-chief that about eight and a half months ago on a Sunday in the Hindi month of Aghan, accused Sarba, Amresh, Nag Narayan and Upendra asked his deceased nephew Lagan Deo to go with them to the market. Lagan Deo went with them on a bicycle. When he did not return till 08:00 P.M., they slept. In the rest of his chief, she has supported the version of the



informant. She has further stated that Darogaji had recorded her statement. She had taken the names of all the seven accused persons in her statement. She claims to identify all of them.

12.1. The said witness has stated in her cross-examination that none from the families of Sarba, Upendra, Nag Narayan and Amresh took part in the last rituals of Lagan Deo. On that day in the afternoon, aforesaid four accused persons were playing cards with Lagan Deo. She had seen them playing cards. She has further stated that she saw them together at 5 O' clock. None of her family members had enmity with these four accused persons. She has admitted that she had stated in her statement to Darogaji that Sarba, Nag Narayan, Amresh and Upendra had come to her house and taken Lagan Deo with them. She has denied the suggestion that she had given false deposition.

13. PW-5, Meera Devi, who is wife of the deceased, has deposed in her examination-in-chief that her husband was murdered approximately eight months ago in the month of *Aghan*. One day before the incident, Lalan Singh, Ganesh Singh and Satyendra Singh had threatened of dire consequences and said that they will not allow them to complete the construction of the house. The marriage of her sister-in-law



was fixed but could not take place. On the date of incident, she had seen Sarba Singh, Amresh Singh, Upendra Singh and Jag Narayan Singh taking bath at the well situated in front of her house at about 02:00 P.M. At about 05:00 P.M., they again visited her house and took her husband with them to Rivilganj. When he did not return till 08:00 P.M., she informed the same to her father-in-law who said that all the seven will come together. Ramashankar Singh came at night. Upon his call, all of her family members came outside the house. He informed that Lagan Deo has received bullet injury at Raipura embankment whereas he, Sarba, Upendra Amresh and Jag Narayan returned to their houses. Her father-in-law, brother-in-law etc. went to the embankment. Her brother-in-law informed that his elder brother has received bullet injuries and is no more. There was prior enmity with the three accused who had threatened one day before the incident. She has further stated that Darogaji had recorded her statement. She claims to identify all the accused persons.

13.1. The said witness has stated in her cross-examination that in the night of incident, Darogaji had come to her house and she had told him about the threat given. At that time, only her statement was recorded. She has denied the



suggestion that she was tutored to give such statement before Darogaji. She has further stated that the wife of the elder brother of Sarba Singh's father was her aunt (*Fua*). Accused Lalan Singh had negotiated her marriage. Her father-in-law had requested Sarba, Jag Narayan, Amresh and Upendra to depose in this case. She has denied the suggestion that she has falsely implicated these four accused persons on the instruction of her father-in-law.

14. Depositions of PW-6, Parnu Devi, PW-8, Harendra Kumar Singh and PW-9, Ram Nath Singh need not be gone into as they are tendered witnesses and have not supported the prosecution case.

15. PW-7, Manohar Thakur is the doctor who has deposed in his examination-in-chief that on 13.12.1993, he was posted as Civil Assistant Surgeon at Sadar Hospital, Chapra. He had conducted *post mortem* examination on the dead body of the deceased and found following *ante mortem* injuries:-

**“(A) On External Examination:**

1. Rigor mortis present in all four limbs.
2. One circular hole on right temple size  $\frac{3}{4}$ ” x  $\frac{3}{4}$ ” with charred inverted margins which was communicating with an oval averted margin wound on left post-oracular area of skull,



size about 1" in diameter.

3. One circular hole on left upper back about  $\frac{3}{4}$ " in diameter with charred inverted margin which was communicating with an oval averted margined wound on right upper chest, size about  $\frac{1}{2}$ " in diameter.

**(B) On Dissection:**

1. Brain walls was pulp along and around the track mentioned in injury no. 2 of part A of the report.

2. Both chest cavities and pericardial cavity was full of clotted blood, right lung had a hole underlying the injury on right upper chest mentioned in injury no. 3 of part A of this report.

3. Pulmonary trunk was ruptured"

In his opinion death has been caused from haemorrhage and shock from above mentioned injuries which have been caused by firearms. Time elapsed since death – within 24 hours of P.M.

15.1. In his cross-examination, the said witness has stated that charring and burning are two different things. He did not find burns or gun powder over the injuries. Burns cannot be possible by a fire-arm. Only a ballistic expert can say that if a man is fired by a fire-arm from a close range say a maximum



three feet what type of injury it would produce. He cannot say from what distance the fire was made to produce the injuries with charred margins. On dissection, he did not find any pillet, bullet or any foreign body.

16. PW-10, Sunil Kumar has deposed in his examination-in-chief that he was handed over the charge of investigation by ASI, Shankar Ravidas on 28.12.1993. After taking charge of investigation of this case, he examined the prosecution witnesses who were investigated by his predecessor also. According to para-70 of the case diary, he investigated four accused persons together on 29.12.1993 at village Nawada. During investigation, he was informed that the deceased was of noble character and he had no enmity with anyone and he was running a hotel in Banaras Cant. He completed the investigation and finding ample evidence against the accused persons submitted charge-sheet against them.

16.1. The said witness has stated in his cross-examination that he had not visited the place of occurrence. He had not gone to Banaras. He was not posted at Rivilganj P.S. in 1991. He was posted there from June, 1993 to September, 1994. In para-8 he has stated that witness Ramashankar Singh had not stated in his re-statement that he had seen Satyendra Singh



thrice at Rivilganj market. He had recorded the statement of Ramashankar. He has further stated that this witness (Ramashankar Singh) had not stated before him that Vikram told him that Amresh, Sarba, Nag Narayan, Upendra and Lagan Deo were returning when the firing took place and when they knocked at the door of Upendra, he said that we have returned home but he does not know about him (Lagan Deo). He has further stated that he recorded the statements of four witnesses together in para-70. He has further stated that neither Ahilya Devi nor Daneshwari Devi nor Meera Devi supported the sequence of events as claimed by the prosecution. He has denied the suggestion that he did not conduct proper investigation in this case.

17. PW-11, Amod Kumar Singh has deposed in his examination-in-chief that the deceased was his cousin brother. The incident is of 12.12.1993 during night hours. He has supported the version of the informant regarding the manner of occurrence. He has further stated that the concerned Jamadar came at 04:00 A.M. and recorded the statement of Srinath Singh which was counter signed by Srinath Singh and this witness also put his signature on the same. He identifies his signature (Ext.1/4). After recording the fardbeyan, Jamadar Saheb went to



the police station and again came that day and recorded his statement at about 08:00-08:30 A.M. in village. He had arrested accused Sarba Singh, Upendra Singh, Amresh Singh and Nag Narayan Singh before recording the statement of this witness. His family had prior enmity with Lalan Singh, Ganesh Singh and Jitendra Singh in connection with construction of the house. Lalan Singh and Gopal Singh had filed Civil Suit No.161/92 under Sections 107, 144 and 188 of CPC. The marriage of his sister was fixed but before it could take place, the incident took place. He has identified accused Upendra Singh and Lalan Singh, present in court and claims to identify other accused persons.

17.1. The said witness has denied the suggestion in his cross-examination that as the four accused, namely, Sarba Singh, Nag Narayan Singh, Upendra Singh and Amresh Singh did not agree to depose in this case, they were falsely implicated in this case. He has denied the suggestion that he has given false deposition. He has also denied the suggestion that as the aforesaid accused persons, namely, Lalan Singh, Satyendra Singh and Ganesh Singh were creating hindrance in construction of the house, he had falsely implicated them.

18. PW-12, Shankar Ravidas, who is the



Investigating Officer of this case, has deposed in his examination-in-chief that on 13.12.1993 at 02:45 A.M., Dafadar Dilram Ram and Chowkidar Narayan Ram came to the police station and informed that firing took place near village Nawada. On such information, he recorded Sanha No.183 (Ext.3), dated 13.12.1993. He claims to identify his signature on the Sanha (Ext.1/5). After recording the Sanha, he proceeded towards village Nawada at 04:00 A.M. and reached on the embankment. He saw seven persons of village Nawada and the dead body was lying near embankment in the left side. He recorded the statement of Srinath Singh (informant) at the place of occurrence. He also prepared the inquest report at the place of occurrence. It is further deposed by this witness in his examination-in-chief that after recording the fardbeyan, he proceeded for the police station and registered the formal FIR (Ext.6). Thereafter he recorded the re-statement of the informant. He arrested accused Sarba Singh, Amresh Singh, Upendra Singh and Nag Narayan Singh from village Nawada and went to the place of occurrence. He recorded the statement of Amod Singh in village Nawada. The said witness has inspected the place of occurrence. He found the dead body on the western side of the embankment. He found bullet injuries in



chest and temporal region of the deceased. He also found blood on the ground. He sent the dead body of the deceased for *post mortem*. On the same day, he went to the houses of accused, Lalan, Satyendra and Ganesh but they were found absconding. He again went to arrest them but they were found absconding. He filed application in the court of learned CJM for getting non-bailable warrant of arrest and after getting the same, he again raided the houses of the accused, but they were found absconding. During the course of investigation, he recorded the statements of Amod Singh, Ramashankar Singh, Ahilya Kumari, Shankar Singh, Prithvi Singh, Arun Singh, Rajnath Singh, Parbhu Devi, Nita Devi and Dhaneshwari Devi. Thereafter he procured the *post mortem* report. It is further stated that on the order of S.H.O., Sunil Kumar, he handed over the case diary to him and thereafter Sunil Kumar further investigated the case.

18.1. The said witness has stated in his cross-examination that this case was supervised by the Superintendent of Police in which he had not found sufficient evidence against accused, Lalan Singh, Ganesh Singh and Satyendra Singh. Sanha was registered in this case on the report of Chowkidar and Dafadar in his presence. During course of investigation, their statements were not recorded. After recording the



fardbeyan, he registered the case at the police station. He had Panchnama of the dead body at 06:00 A.M. He had arrested accused, Sarba Singh, Amresh Singh, Upendra Singh and Nag Narayan Singh from their houses. The date and place of their arrest is not mentioned in the case diary. He had recorded the statement of Ramashankar Singh on 14.12.1993 along with Ahilya Kumari. On 17.12.1993, he also recorded the statements of Shankar Singh, Prithvi Singh, Arun Singh and Dhaneshwari Devi. The informant had not stated in his fardbeyan that he had followed his son after half an hour of his departure and had seen him talking with Amresh Singh, Sarba Singh, Nag Narayan Singh, Upendra Singh, Lalan Singh, Ganesh Singh and Satyendra Singh in the market. It is further stated by him that witness Ramashankar Singh had not stated before him in his statement that he had seen Satyendra Singh thrice at Rivilganj market. Witness Ahilya Kumari had not stated in her statement that though the construction of house is complete but now last rite is to follow rather she had stated about the threat given. Witness Dhaneshwar Devi had not stated in her statement that Lalan Singh, Ganesh Singh and Satyendra Singh had threatened Lagan Deo by saying that they will not allow the marriage of his sister to be organized. Witness Meera Devi though had not



stated in her statement about the threat given but she had mentioned that the accused persons were saying that they will not allow to complete the construction. In his further cross-examination, the said witness has stated that he was in charge of investigation when Sanha No.183, dated 13.12.1993 was registered. He had signed the same at 02:45 A.M. There is no mention in the said Sanha that Lagan Deo Singh has received bullet injury or that he has been killed. The Sanha does not bear the signatures of either Dafadar Dilram Rai or Chowkidar Narayan Rai. After this, handing over the charge of station diary, he proceeded for the place of occurrence. It took him 2-3 hours to reach the place of occurrence from Rivilganj. He had not recorded anyone's statement before reaching the place of occurrence. The distance of the place of occurrence from Rivilganj police station is 2 kms. He had gone to the place of occurrence on foot. He had started writing the case diary at 02:45 A.M. in the night of 13.12.1993. Neither in this Sanha nor in the Sanha recorded after this, he had written to have proceeded for village Raipura or Nawada. Both the Sanhas are before him at the time of giving evidence. He had started writing the case diary before recording the statement of informant, Srinath Singh. When he started writing the case diary



at 04:00 A.M. again on 13.12.1993, he wrote that he returned to the police station after recording the fardbeyan of Srinath Singh and registered Rivilganj P.S. Case No.126/93 on that basis. In his further cross-examination, the said witness has stated that he registered the case on 13.12.1993 at 07:30. He conducted the inquest on 13.12.1993 at 06:00 A.M. and wrote Rivilganj P.S. Case No.126/93 in column no.1 of the inquest. He completed the said inquest at the place of occurrence. He investigated this case till 28.12.1993. It is stated by this witness in his cross-examination that Srinath had not stated in his fardbeyan that Ramashankar Singh told him that Jitendra Singh, Vikram Singh, Chandeshwar Singh and Bachchu Singh had asked him to inquire whether Lagan Deo came to his house or not and that firing took place on the embankment. Witness Ramashankar had stated in his statement that Vikram told that firing took place while Amresh, Sarba, Nag Narayan, Upendra and Lagandeo were returning. Witness Ahilya Kumari had not stated in her statement that Ramashankar told that Nag Narayan, Sarba, and father of Amresh went to his house and told that their sons have come and Lagan Deo was shot on the embankment. PW-12 has further stated that he recorded the statement of Dhaneshwari Devi on 17.12.1993. He recorded the statement of Amod Kumar



Singh before arresting the accused persons. He did not find any criminal antecedent of accused Sarba, Nag Narayan, Upendra and Amresh. The said witness has denied the suggestion that he has not done proper investigation in the case.

19. PW-13, Awadh Kishore Singh is a practicing advocate and has attested Ext.1/5.

20. We have re-appreciated the entire relevant evidence led by the prosecution before the Trial Court. We have also considered the submissions canvassed by learned counsel appearing for the parties. It is not in dispute that the present is a case of circumstantial evidence and there is no eye-witness to the incident in question. As per the case of the prosecution, son of the informant had gone to Rivilganj market at about 05:00 p.m. on 12.12.1993 along with his friends, i.e., the appellants of Criminal Appeal (DB) No.328 of 1996. However, the deceased did not return home till 08:00 p.m. Thereafter at about 10:00 p.m., one Ramashankar Singh came to his house and told that the guardians of the aforesaid appellants had come to his house and asked him to inquire from the informant whether his son has returned to his house or not, because their sons had already returned home at 07:30 P.M. It was also told that someone had shot the deceased on the embankment while he was returning to



his house. Thus, from the said information given by the informant, it transpires that the guardians of the concerned appellants-accused themselves informed about the incident which took place. It would further reveal from the evidence that the said appellants-accused were arrested from their houses. Thus, while considering the case against the said accused, their conduct is also required to be kept in mind.

21. Now, it is the case of the prosecution witnesses and more particularly PW-1, who is the informant, that when he went to the market, he saw his son with the aforesaid accused. They all were talking. However, it is pertinent to note that during cross-examination in para-20, the said witness has admitted that he did not see the deceased talking to the said appellants-accused in the market. The said witness further admitted that his son was talking to some other person. However, he did not identify the said person. It would further reveal from para-27 of deposition of PW-1 that he has stated that he had not talked with his son in the market and he had seen him from a distance who was talking with someone in the market. Thus, from the aforesaid deposition given by PW-1, it can be said that the deceased was talking with some unknown persons in the market and, therefore, it cannot be said that the



deceased was lastly seen in company with the said appellants-accused. There are all chances that after leaving the house at 05:00 p.m. with the aforesaid appellants-accused, he was in company with some other unknown persons as admitted by PW-1 and, in fact, the deceased was talking with the said persons. Thus, we are of the view that the theory of last seen together placed by the prosecution before the Trial Court *qua* the said appellants-accused is concerned, the same is misconceived.

22. Further, from the deposition given by PW-5, who is wife of the deceased, it is revealed that in para-20 of her deposition, she has stated that her father-in-law, i.e., PW-1 was asking the four appellants to be the witnesses, therefore, it appears that when the said appellants did not agree with regard to the said suggestion, they have been implicated in the incident in question. At this stage, it is relevant to note that PW-2 has admitted that the family of the informant had no enmity with the aforesaid appellants-accused and, in fact, from the evidence led by the prosecution, it is revealed that the said appellants had no enmity either with the deceased or with the family of the deceased and, in fact, appellants and deceased were good friends.

23. It further transpires from the evidence that the



prosecution has miserably failed to prove the motive on the part of the first set of appellants to kill the deceased. At this stage, it is relevant to observe that in the case of circumstantial evidence, motive assumes importance. However, as observed hereinabove, the prosecution has failed to prove the motive on the part of the first set of appellants to kill the deceased.

24. On the point of motive assuming importance the Hon'ble Supreme Court in the case of ***Ravi Sharma Vs. State (Government of NCT of Delhi) & Anr***, reported in (2022) 8 SCC 536, has observed in Para-14 as under:

*14. When we deal with a case of circumstantial evidence, as aforesaid, motive assumes significance. Though, the motive may pale into insignificance in a case involving eyewitnesses, it may not be so when an accused is implicated based upon the circumstantial evidence. This position of law has been dealt with by this Court in Tarseem Kumar v. Delhi Admn. [Tarseem Kumar v. Delhi Admn., 1994 Supp (3) SCC 367 : 1994 SCC (Cri) 1735] in the following terms : (SCC p. 371, para 8)*

*“8. Normally, there is a motive behind every criminal act and that is why investigating agency as well as the court while examining the complicity of an accused try to ascertain as to what was the motive on the part of the accused to commit the crime in question. It has been repeatedly pointed out by this Court that where the case of the prosecution has been proved beyond all reasonable doubts on basis of the materials*



*produced before the court, the motive loses its importance. But in a case which is based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. Of course, if each of the circumstances proved on behalf of the prosecution is accepted by the court for purpose of recording a finding that it was the accused who committed the crime in question, even in absence of proof of a motive for commission of such a crime, the accused can be convicted. But the investigating agency as well as the court should ascertain as far as possible as to what was the immediate impelling motive on the part of the accused which led him to commit the crime in question."*

25. Now, so far as the appellants of Criminal Appeal (DB) No.335 of 1996 are concerned, from the evidence led by the prosecution, it would reveal that none of the prosecution witnesses has stated that they have seen the said appellants in company with the deceased on the date of incident. There is no evidence connecting these appellants with the incident in question. The only aspect, which has been alleged by the prosecution against these appellants, is that they were having motive to kill the deceased. We are of the view that mere motive would not be sufficient to substantiate the allegation and establish the guilt of the accused in absence of any corroborative and legal evidence.

26. Now, at this stage, we would like to refer the



deposition given by PW-12, the Investigating Officer. The said witness has stated that on 13.12.1993 at 02:45 A.M., Dafadar Dilram Ram and Chowkidar Narayan Ram came at the police station and informed that they have heard the sound of firing towards Nawada village for which Station Diary Entry No.183, dated 13.12.1993 (Ext.3) was instituted. Thereafter the said witness came to the place of occurrence and, in fact, from his deposition, it is revealed that he started writing the case diary at 02:45 a.m. At this stage, it is pertinent to note that the informant lodged the FIR at 07:30 a.m. Prior to that, the inquest report was prepared at 06:00 a.m. If the said inquest report is carefully seen, it transpires that in the inquest report, there is reference of police station case number. It is pertinent to observe at this stage that formal FIR with police station case number was registered at 07:30 a.m. Thus, prior to registration of the formal FIR at 07:30 a.m., the inquest report, which was prepared at 06:00 a.m., there was reference of said police station case number, which creates a doubt and it is the specific case of the defence/appellants herein that the prosecution has suppressed the initial version.

27. At this stage, we would like to refer the decision rendered by the Hon'ble Supreme Court in the case of *Sharad*



***Birdhichand Sarda v. State of Maharashtra***, reported in ***AIR 1984 SC 1622***, wherein the Hon'ble Supreme Court has observed in paragraph nos. 150 to 160 as under:

*“150. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a court.*

*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 Sahab Rao 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.*

*154. It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in The King v. Horry, (1952) NZLR 111, thus:*

*“Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for.”*

*155. Lord Goddard slightly modified the expression ‘morally certain’ by ‘such circumstances as render the commission of the crime certain’.*

*156. This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. Horry’s case (supra) was approved by this Court in Anant Chintaman Lagu v. State of Bombay, (1960) 2 SCR 460 : (AIR 1960 SC 500). Lagu’s case as also the principles enunciated by this Court in Hanumant’s case (supra) have been uniformly and consistently followed in all later*



*decisions of this Court without any single exception. To quote a few cases — Tufail case (1969) 3 SCC 198 (supra), Ramgopal's case (AIR 1972 SC 656) (supra), Chandrakant Nyalchand Seth v. State of Bombay (Criminal Appeal No 120 of 1957 decided on 19-2-1958), Dharambir Singh v. State of Punjab (Criminal Appeal No 98 of 1958 decided on 4-11-1958). There are a number of other cases where although Hanumant's case has not been expressly noticed but the same principles have been expounded and reiterated, as in Naseem Ahmed v. Delhi Administration, (1974) 2 SCR 694 (696) : (AIR 1974 SC 691 at p. 693), Mohan Lal Pangasa v. State of U.P., AIR 1974 SC 1144 (1146), Shankarlal Gyarsilal Dixit v. State of Maharashtra, (1981) 2 SCR 384 (390) : (AIR 1981 SC 765 at p. 767) and M.G. Agarwal v. State of Maharashtra, (1963) 2 SCR 405 (419) : (AIR 1963 SC 200 at p. 206) a five-Judge Bench decision.*

*157. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor-General relying on a decision of this Court in Deonandan Mishra v. State of Bihar, (1955) 2 SCR 570 (582) : (AIR 1955 SC 801 at p. 806), to supplement his argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor General we are unable to agree with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus:*

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



*additional link which completes the chain.”*

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

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

*159. If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was examined in Shankarlal's case (AIR 1981 SC 765) (supra) where this Court observed thus:*

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

*160. This Court, therefore, has in no way departed from the five conditions laid down in Hanumant's case (AIR 1952 SC 343) (supra). Unfortunately, however, the high Court also seems to have misconstrued this decision and used the so-called false defence put up by the appellant as one of the additional circumstances connected with the chain. There is*



*a vital difference between an incomplete chain of circumstances and a circumstance which, after the chain is complete, is added to it merely to reinforce the conclusion of the Court. When the prosecution is unable to prove any of the essential principles laid down in Hanumant's case, the High Court cannot supply the weakness or the lacuna by taking aid of or recourse to a false defence or a false plea. We are, therefore, unable to accept the argument of the Additional Solicitor-General.*

27.1. Thus, from the aforesaid decision rendered by the Hon'ble Supreme Court, it can be said that in the case of circumstantial evidence, there must be a chain of evidence. Further the circumstances from which the conclusion of guilt is to be drawn should be fully established and should exclude every possible hypothesis, except the one to be proved, e.g. 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.

28. We would also like to refer and rely upon the decision rendered by the Hon'ble Supreme Court in the case of **Reena Hazarika Vs. State of Assam**, reported in **(2019) 3 SCC 289**, wherein the Hon'ble Supreme Court has observed in paragraph 9 as under:

*“9. The essentials of circumstantial evidence stand well established by precedents and we do not*



*consider it necessary to reiterate the same and burden the order unnecessarily. Suffice it to observe that in a case of circumstantial evidence the prosecution is required to establish the continuity in the links of the chain of circumstances, so as to lead to the only and inescapable conclusion of the accused being the assailant, inconsistent or incompatible with the possibility of any other hypothesis compatible with the innocence of the accused. Mere invocation of the last-seen theory, sans the facts and evidence in a case, will not suffice to shift the onus upon the accused under Section 106 of the Evidence Act, 1872 unless the prosecution first establishes a prima facie case. If the links in the chain of circumstances itself are not complete, and the prosecution is unable to establish a prima facie case, leaving open the possibility that the occurrence may have taken place in some other manner, the onus will not shift to the accused, and the benefit of doubt will have to be given.”*

29. Keeping in view the aforesaid decisions rendered by the Hon'ble Supreme Court, if the evidence led by the prosecution is examined, we are of the view that the prosecution has failed to complete the chain of circumstances and it cannot be said on the basis of the evidence led by the prosecution that the present appellants have killed the deceased. Thus, the prosecution has failed to prove the case against the appellants of both these appeals beyond reasonable doubt and, therefore, we are of the view that the Trial Court has committed grave error while passing the impugned judgment of conviction and order of sentence. Hence, the interference is required in the



said impugned judgment of conviction and order of sentence.

30. Accordingly, the impugned judgment of conviction dated 30.07.1996 and order of sentence dated 31.07.1996, passed by learned 2<sup>nd</sup> Additional District & Sessions Judge, Saran, Chapra in Sessions Trial No.917 of 1994/31 of 1994, arising out of Rivilganj P.S. Case No.126/93 is set aside.

31. All the appellants of both the appeals are acquitted of the charges levelled against them. Since the appellants of both the appeals are on bail, they are discharged from the liabilities of their respective bail bonds.

32. Both these appeals stand allowed.

**(Vipul M. Pancholi, J.)**

**(Alok Kumar Pandey, J.)**

*Sanjay/-*

|                   |            |
|-------------------|------------|
| AFR/NAFR          | A.F.R.     |
| CAV DATE          | NA         |
| Uploading Date    | 10.04.2025 |
| Transmission Date | 10.04.2025 |

