

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.688 of 2024

Arising Out of PS. Case No.-43 Year-2020 Thana- BANGAWON District- Saharsa

Sunita Devi (Female), W/O Late Dinesh Kumar Dinkar, aged about 40 years,
Resident of Village-Gamhariya, O.P.-Patarghat, P.S.-Saurbazar, District-
Saharsa, Bihar

... .. Appellant/s

Versus

1. The State of Bihar
2. Amrendra Kumar Singh @ Panna Singh S/O Thakur Prasad Singh, R/O Village-Gamhariya, O.P.-Bajjnathpur, P.S.-Saurbazar, Distt-Saharsa, Bihar
Presently residing at Village-Pama, O.P.-Patarghat, P.S.-Saurbazar, Distt-Saharsa
3. Gajendra Yadav, S/O Lakshmi Yadav, resident of Dumrail, P.S. and District-Saharsa
4. Sanjeev Yadav, S/O Rameshwar Yadav, R/O-Dumrail, P.S. and District-Saharsa
5. Dezi Kumari, W/O- Late Dinkar Kumar Dinkar, resident of Village-Gamhariya, O.P.-Bajjnathpur, P.S.-Saurbazaar, District-Saharsa, Bihar

... .. Respondent/s

Appearance :

For the Appellant	:	Mr. Sanjeev Kumar, Advocate Mr. Ashish Kumar Sinha, Advocate
For the State	:	Mr. Abhimanyu Sharma, APP
For the Respondent	:	Mr. N. K. Agrawal, Senior Advocate Mr. Pawan Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA)

Date: 10-02-2025

Heard Mr. Ashish Kumar Singh, learned counsel
for the appellant, Mr. N. K. Agrawal and Mr. Pawan Kumar,
learned counsels for the respondents and Mr. Abhimanyu
Sharma, learned APP for the State.

2. The present appeal has been directed against



the judgment and order of acquittal dated 19.10.2023 passed by Learned Sessions Judge, Saharsa in Bangaon P.S. Case No. 43 of 2020, dated 05.07.2020, Session Trial No. 207 of 2021 in which the learned trial Court acquitted the respondents from the charges leveled against them under Sections 302/34, 120B/34 and 201/34 of the Indian Penal Code (hereinafter referred as 'IPC').

Prosecution Case

3. The Prosecution case in brief is that, the FIR has been lodged upon the *farbeyan* of one Dezi Kumari stating therein that her husband ("the deceased") was allegedly murdered by the deceased's first wife Sunita Devi in furtherance of a conspiracy with her two brothers and one brother-in-law. The informant stated that Sunita Devi had earlier filed a case against the deceased which was still sub-judice. She stated that on 03.07.2020, the deceased took a Scorpio vehicle on hire and went to Bhagalpur and while returning back he called the informant at around 1 PM to inform her that he would be taking the vehicle to Patna on hire for three days. The informant however found that the deceased had actually gone to Gamharia village and from there he left for Patna. On the same night at around 11 PM, the informant's daughter fell sick and she called



the deceased to inform him but his phone was out of network coverage. The next day, on 04.07.2020 at around 10-11 AM she tried calling her husband again but the phone was not reachable. She went to Saurbazaar to get her daughter treated and from there itself she left for Gamharia village where her brother-in-law showed her a viral Whatsapp image of her deceased husband beside the Scorpio vehicle. The Whatsapp image showed the place where the deceased' body was found to be Meghdhagra Ghat under Bangaon P.S. On reaching the place she saw the dead body of her husband, Dinesh Kumar Dinkar and fainted there itself. She gave her statement to the police on 05.07.2020 in which she alleged that Sunita Devi, the deceased' first wife had killed her husband in conspiracy with her brothers and brother-in-law.

4. On the basis of the *fardbeyan* the Bangaon Police Station lodged an F.I.R. bearing P.S. Case No. 43 of 2020 under Sections 302/34, 120B/34 and 201/34 of the IPC and Section 27 of the Arms Act against 1. Sunita Devi, 2. Roushan Yadav, 3. Anil Yadav, 4. Brother-in-law of Sunita Devi.

5. During the investigation, police submitted charge sheet no. 92 of 2020 dated 25.10.2020, under Sections 302, 201 and 120 (B) of IPC and Section 27 of Arms Act against



1. Gajendra Yadav, 2. Sanjeev Kumar Yadav, 3. Amendra Kumar Singh @ Panna Singh, 4. Raushan Kumar and 5. Informant Dezi Kumari and further supplementary investigation against the named persons in the F.I.R was continued. The final form was submitted vide supplementary charge sheet no. 105 of 2020 dated 25.10.2020 and named persons in the F.I.R were not sent-up for the trial. The Additional Chief Judicial Magistrate was pleased to take cognizance under Sections 302, 201 and 120(B)/34 of IPC and Section 27 of the Arms Act against the accused named in the charge-sheet and the case was committed to the Court of Sessions vide order dated 08.09.2021 passed by learned Additional Chief Judicial Magistrate. The record was received in the Sessions Court on 15.09.2021. Out of the five accused persons, one accused Raushan Kumar was absent for a long time and after declaring him as absconder in the case, a supplementary case was opened in the Sessions Court for his trial vide order dated 27.04.2023.

6. The charge was framed on 10.05.2023 under Sections 302/34, 120 B, and 201 of IPC and Section 27 of the Arms Act against all the rest four accused persons namely 1. Amendra Kumar Singh @ Panna Singh, 2. Gajendra Yadav, 3. Sanjeev Yadav, and 4. Dezi Kumari.



Analysis of Prosecution Witnesses:

7. On behalf of the prosecution, altogether thirteen witnesses were examined and several documents were exhibited during the course of trial. The statement of the accused has been recorded under Section 313 of the Cr.P.C in which they have denied the allegations raised against them and put up a defence of innocence. The list of the prosecution witnesses as well as the documents exhibited on behalf of the prosecution are being shown here-under in a tabular form:-

List of Prosecution Witnesses

PW- 1	Vikash Kumar
PW- 2	Fulia Devi @ Fulariya Devi
PW- 3	Kundan Kumar Yadav (brother of deceased)
PW- 4	Dr. Masrur Alam (Medical Officer)
PW- 5	Ramqubal Paswan (First Investigating Officer)
PW- 6	Saroj Kumar (Third Investigating Officer)
PW- 7	Manglesh Kumar Madhukar (Technical Cell in-charge)
PW- 8	Manoj Kumar
PW- 9	Budhan Kumar @ Budhan Tanti
PW- 10	Jay Kumar
PW- 11	Asha Devi
PW- 12	Jayram Sharma (Second Investigating Officer)
PW- 13	Soni Kumari



List of Exhibits by Prosecution:

Ext. P-1	Post-mortem report
Ext. P-2	Signature of Ramiqubal Paswan on the <i>fardbeyan</i>
Ext. P-3	Endorsement by SHO for registering the FIR and taking up the investigation
Ext. P-4	Formal F.I.R
Ext. P-5	Attested/certificated documents of CDR/ SDR, location and documents related to the technical support of related mobile numbers
Ext. P-6	Signature of Seizure witness Budhan Kumar @ Budhan Tanti on seizure list
Ext. P-7	Signature of Seizure witness namely Ajay Kumar upon the seizure list
Ext. P-8	Signature of Asha Devi on <i>fardbeyan</i>
Ext. P-9	Signature of informant on <i>fardbeyan</i>
Ext. P-10	Seizure list exhibited by PW-12 Second I.O. Jayram Sharma
Ext. P-11	Carbon-copy of inquest report

Findings of the Trial Court

8. The learned trial Court after analyzing the evidences on the record found that there was no direct evidences which could establish that the four-accused were involved in the alleged murder of the deceased. The second wife of the deceased who was the informant in the present case, named Sunita Devi the first wife of the deceased in her *fardbeyan*.



However, on investigation it was found that the informant herself was involved in the commission of the offence. There was no eye-witness to the alleged occurrence. In the absence of any direct evidence, the accused could be convicted if there was sufficient circumstantial evidence. However, the trial Court found that the evidence adduced by the prosecution did not fully establish the chain of events so as to prove the guilt of the accused and also exclude any other theory of the crime. The trial Court relied upon the judgment of the Hon'ble Supreme Court in *State of Punjab v. Kewal Krishnan, Criminal Appeal No. 2128 of 2014* wherein it was stated that:

“17. This is a case based on circumstantial evidence. It is trite law that to convict an accused on the basis of circumstantial evidence, the prosecution must prove beyond reasonable doubt each of the incriminating circumstances on which it proposes to rely; the circumstance(s) relied upon must be of a definite tendency unerringly pointing towards accused's guilt and must form a chain so far complete that there is no escape from the conclusion that within all human probability it is the accused and no one else who had committed the crime and they (it) must exclude all other hypothesis inconsistent with his guilt and consistent with his innocence.”

8.i. The trial Court also relied on the decision of this Court on *Ashok Chaudhary vs The State Of Bihar, Criminal Appeal (DB) No.446 of 2015*, wherein it was stated as



follows:

“In the case of Shailendra Rajdev Pasvan & Ors. Vs. State of Gujarat & Ors, reported in (2020) 14 SCC 750, wherein the Hon'ble Supreme Court has observed in Paragraph-17 as under:

“17. It is well settled by now that in a case based on circumstantial evidence the courts ought to have a conscientious approach and conviction ought to be recorded only in case all the links of the chain are complete pointing to the guilt of the accused. Each link unless connected together to form a chain may Patna High Court CR. APP (DB) No.446 of 2015 dt.04-09-2023 suggest suspicion but the same in itself cannot take place of proof and will not be sufficient to convict the accused.”

29. Thus, it has been observed by the Hon'ble Supreme Court that each link, unless connected together to form a chain, may suggest suspicion but the same in itself cannot take place of proof and will not be sufficient to convict the accused. It is further revealed from the observations made by the Hon'ble Supreme Court in the aforesaid decisions that the circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who had committed the crime. 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.”

8.ii. Based on the above contentions, the trial

Court found that the guilt of the accused persons was not proved beyond all reasonable doubt and hence the trial Court acquitted



all the four co-accused from the charges leveled against them.

Submission on behalf of the Appellant

9. The Learned counsel for the appellant has assailed the impugned judgment saying that the judgment is based on mere conjectures and surmises and is against the materials available on the record. Learned trial Court failed to consider and appreciate the prosecution witnesses who have fully supported the prosecution case. The evidence on record does not support the finding arrived at.

9.i. Learned counsel for the appellant further submitted that in the present case during the course of investigation after scrutiny of the call details, police found the involvement of informant herself along with other accused persons who were not named in the FIR in the commission of the offence. He next submits that during the course of investigation I.O. of the present case submitted charge-sheet under Sections 302, 201 and 120(B)/34 of the IPC and Section 27 of the Arms Act against the informant of the present case along with other co-accused and upon the same learned Court of Magistrate was pleased to take cognizance and summon all four accused persons not named in the FIR but in absence of any eye-witness and direct evidence learned trial Court has not



carefully examined other circumstantial evidence in right perspective and not corroborated with each other and has been pleased to pass the judgment in a mechanical manner. The judgment of the learned trial Court acquitting respondents of the charges is bad and the same is liable to be interfered with.

Submission on behalf of Respondent/State

10. The appeal has been opposed by the learned senior counsel for the respondent no. 2 Mr. N. K. Agrawal assisted by Mr. Pawan Kumar and learned Additional Public Prosecutor for the State Mr. Abhimanyu Sharma. Learned Additional Public Prosecutor for the State has submitted that on a bare perusal of the impugned judgment, it would appear that on the basis of the confessional statements of the accused/respondents, the police recovered a country made pistol from the place of occurrence but no weapon was mentioned in the seizure list prepared by the police and neither was the weapon produced before the trial Court. He further submitted that PW-9 and 10 who were independent witnesses, in presence of whom the recovery was made have also stated in Para-3 of their cross-examination that no recovery was made in presence of them and that the police made them sign blank pages.

10.i. Learned counsel for the respondent no. 2



submitted that the statement of the witnesses mentioned in the seizure list was not taken by the police and the charge-sheet with respect to Bangaon P.S. Case no. 52 of 2020 under Section 25(1-B) (a) of Arms Act was submitted without obtaining the approval of the District Magistrate and thus the recovery of the country made pistol becomes doubtful. The certified copies of the CDR/SDR reports submitted by PW-7 do not mention the details of the mobile numbers. Further, although the CDR report showed that maximum calls were made between the deceased and Respondent No. 4 Sanjeev Kumar, there is no evidence on record which shows the details of the conversation or that it was the respondent himself who had talked to the deceased.

10.ii. He further submitted that PW-6 Saroj Kumar who was one of the Investigating Officers in the present case stated in Para-15 of his cross-examination that he did not verify the voice of the accused/respondents as to whether it was they who talked to the deceased on the date of occurrence. Further when the accused were arrested, their voice was not sent for verification. PW-13, daughter of the deceased is the only witness who has stated that there was an illicit relationship between Gajendra Yadav and Dezi Kumari. As per her statement she got to know about their relationship from her grandmother,



PW-2 but the latter did not mention anything about it in her statement before the Court. He next submits that there are material inconsistencies between PW-13's statements which she made before the police and her statements before the Court.

10.iii. On the strength of the aforementioned submissions, learned Additional Public Prosecutor and learned counsel for the respondent no. 2 submitted that no interference is required with the impugned judgment of the learned trial Court.

Consideration

11. We have heard learned counsel for the appellant, learned counsel for the respondent and learned Additional Public Prosecutor for the State as also perused the trial courts records.

12. Before we proceed to consider the rival submissions of the parties, it would be necessary to appreciate the evidences available on the record.

13. PW-1, Vikash Kumar turned hostile. PW-2, Fulia Devi @ Fulariya Devi is the mother of the deceased who has stated in her examination-in-chief that her son had first married Sunita Devi and they had one daughter. She stated that Respondent No. 3 Gajendra Yadav and Respondent No. 5 Dezi



Kumari used to physically assault her son. Dezi Kumari had allegedly made the deceased transfer land in her name and had also taken the vehicle after which she murdered the deceased. She identified Respondent Nos. 3 and 5 namely Gajendra Yadav and Dezi Kumari.

13.i. In her cross-examination she stated that she had not seen the papers of the land which she stated was transferred by her deceased son to Dezi Kumari.

14. PW-3 Kundan Kumar brother of the deceased in his examination-in-chief has stated that the occurrence took place at the night of 03.07.2020. He stated that Respondent No. 3 Gajendra Yadav used to visit the deceased's house. Dezi Kumari later started living in a rented place belonging to Gajendra Yadav in Saharsa. The first wife of the deceased, Sunita Devi used to live at her maternal home in Laxmipur with her daughter. One day there was an altercation between Dezi Kumari and the deceased Dinesh Kumar Dinkar following which Dezi Kumari threatened him. He stated that the dead body of his brother was recovered from the jungle behind Devna Mandir.

14.i. In Para-7 of his cross-examination he stated that the deceased had filed a case against PW-3 himself. In Para-



10 he stated that he was not aware if his deceased brother was involved in buying and selling of land in Ghamaria with Gajendra Yadav but later stated that his deceased brother had sold his land to Gajendra Yadav. In Para-12 of his cross-examination he stated that he did not see the occurrence.

15. PW-4 Dr. Mashrur Alam stated in his examination-in-chief that on 04.07.2020 he was posted as Medical Officer at Sadar Hospital, Saharsa. At 2:35 PM on the same day, he conducted the postmortem of the deceased Dinesh Kumar Dinkar and found the following:

External Examination:- Obese built, Hair black, eye closed, mouth closed.

Rigormortis was present in all four limbs. Blood discharge was present on both nostrils, forehead and left side of occipital area of head.

Entry wound- There was a round 1cm x 1cm size wound with inverted margin with blacking and charring in left side of occipital area of head. There was multiple small burn wound of bullet gun powder was present over left side of neck and cheek.

Exit wound:- There was a stellate shaped 1.5" x 1" size wound with everted margin with fractured bone 1" left of centre of forehead.

Degloving injury of skin (slippage of epidermis over dermis) of size 4" x 3" over right forearm and 3" x 2" over right arm was present. (produced due to handling of body)



Internal Examination:- On opening of skull-
Brain matter was severely damaged.

Associated fractures in occipital and frontal
bone.

Opening of chest- Lung-congested. Heart-
Right chamber filled with blood and left
chamber empty.

On opening of abdomen-Stomach and small
Intestine contains partially digested food.

Liver, Spleen, Kidney-All NAD.

Time elapsed since death- within 24 hours.

Cause of death- Injury to vital organ
"Brain" caused by firearm injury.

After postmortem examination dead body
with belongings was handed over to
concerned chowkidar and inquest crossed
and counter signed by me and attached with
this P.M. report.

15.i. In his cross-examination, he stated that he
did not write the names of any family member of the deceased
who identified the dead body.

16. PW-5 Ramiqbal Paswan who was the First
Investigating officer in the present case stated in his
examination-in-chief that he recorded the *fardbeyan* of Dezi
Kumari and lodged the F.I.R. which is marked as Exhibit P-
2/P/W-5. He stated that the place of occurrence was located near
a canal near the jungle east of the village Devna on the paved
road going towards Bangaon from Meghdaghara Ghat to the
north. The body of the deceased was found near the paved road
in a Scorpio vehicle bearing registration number BR-11-PB-



1388. From the place of occurrence he went to Santnagar where he conducted investigation and the statement of the informant was taken again. He stated that he recorded the statement of the mother of the informant, Asha Devi also. Following this, raids were conducted on the named accused and thereafter the postmortem report was prepared.

16.i. He stated that he could not find the owner of the Scorpio vehicle. He further stated that he sent the mobile numbers of the deceased and the informant to the Technical In-charge branch for getting the CDR/SDR reports. After this, he was transferred from Saharsa to Supaul and he handed over the investigation to PW-12 Jayram Sharma.

16.ii. In his cross-examination he stated that the dead body was identified by Respondent No. 5 Dezi Kumari. In Para-5 of his cross-examination he stated that Inquest report and the Seizure list did not have the P.S. Case No. mentioned on it.

17. PW-6 Saroj Kumar was the third Investigating Officer in the present case and stated that on 20.07.2020 he was posted as S.H.O at Bangaon P.S. and took over the investigation of Bangaon P.S. Case No. 43 of 2020. He received the CDR report from the Superintendent of Police and recorded the same in the case diary. He stated that based on



analysis of the CDR, it was found that maximum number of calls were made between the deceased and Respondent No. 4 Sanjeev Kumar on the date of occurrence. Following this Respondent No. 4 was arrested for questioning. On the basis of the confessional statement of Respondent No. 4 Gajendra Yadav was arrested. Both the accused admitted their involvement in the occurrence in their confessional statements.

17.i. On the basis of the confessional statement of Gajendra Yadav, Amarendra Kumar Singh @ Panna Singh and Roshan Kumar were arrested, who admitted in their confessional statement that they had committed the murder of the deceased for money. They also admitted that they had thrown the firearm used in the incident in the bushes near the place of occurrence. Based on this PW- 6 took the two arrested accused Panna Singh and Roshan Kumar to the place of occurrence and conducted the search of the place of occurrence. A country-made pistol covered with mud was recovered from the bushes near the place of occurrence, in which a bullet was loaded, which had a bump on its bottom. After the recovery, the senior police officer was informed about it and the recovered items were seized after preparing a formal seizure list.

17.ii. As per the instructions of the senior officer,



in the light of the recovered firearm, a separate F.I.R was registered against Amarendra Kumar Singh @ Panna Singh and Roshan Kumar under Bangaon P.S. Case No. 52 of 2020, dated 03.08.2020 under Section 25 (1-B) of Arms Act. The criminal history of the accused Amarendra Kumar and Roshan Kumar was recorded in the case diary. In Para-5 of his examination-in-chief, he stated that on the basis of statements of witnesses, observation notes, report- 2 and investigation of the case, charge-sheet number 92 of 2020 dated 25.10.2020 was submitted against the non-FIR accused Gajendra Yadav, Sanjeev Kumar, Roshan Kumar, Amarendra Kumar @ Panna Singh and Dezi Kumari under Sections 302, 201 and 120B/34 of the IPC and Section 27 of the Arms Act. The earlier investigation was closed by submitting final report number- 105 of 2020 dated 18.12.2020, showing that no case was made against the FIR accused persons namely, Sunita Devi, Roshan Yadav, Anil Yadav. In Para- 6, the PW-6 has identified accused Amarendra Singh @ Panna Singh, Sanjeev Yadav and Gajendra Yadav. He has not identified Dezi Kumari.

17.iii. In Para-7 of the cross-examination, PW-6 stated that he did not have the details of the conversation that took place between the deceased and Respondent No. 4, nor was



it recorded in the diary. In Para-8 he stated that he was not made aware of the fact that the deceased Dinesh Kumar Dinkar had lodged a case against his younger brother Kundan Yadav in Sirbazar (Bajinathpur OP) police station case number 379 of 2015, under Sections 341, 323, 324, 354A, 379, 448, 504 and 506 of the IPC. In Para-9, he stated that he was not not aware that Sunita Devi had also filed a case against the deceased Dinesh Kumar Dinkar and Respondent No. 5 Dezi Kumari in Mahila Thana vide case number-41 of 2014, dated 15.03.2014, under Sections 498A, 494, 323 and 379/34 of the IPC, whose GR number is- 3262 of 2014. In Para-10, he stated that Sunita Devi's daughter informed that Sunita Devi had filed a maintenance case against the deceased Dinesh Kumar Dinkar. He further stated that they did not conduct any investigation in this regard. In Para-11, he stated that no criminal antecedents of accused Dezi Kumari were found. In Para-14 of his cross-examination he stated that he did not inspect the place of occurrence during the investigation.

17.iv. He further stated that he recorded Soni Kumari's statement but she did not mention anything about the accused named in the charge-sheet. He also stated that he did not verify the voice of the accused as to whether it was them



who talked to the deceased on the date of occurrence. When the accused were arrested, their voice was not tested. In Para-16, he stated that no criminal antecedents of Gajendra Yadav and Sanjeev Kumar were found.

18. PW-7 is the Technical branch in-charge Manglesh Kumar Madhukar. He stated in his examination-in-chief that on 25.10.2020, he was posted as technical branch in-charge, Superintendent of Police Office, Saharsa. The CDR/SDR, location and other technical support related documents of the mobile numbers related to this case were taken out by him from the government computer which was a Windows 10 computer of Dell company which had 8 GB RAM and it was used under his supervision. He stated that the certificated copy related to it was issued by him and also typed and signed by him. The certificated copy was marked as Exhibit-P-5/PW-7 by the prosecution.

18.i. In Para-2 of his cross-examination he stated that the CDR/SDR and the location of the mobile numbers were not mentioned in the certificated copy. He further stated that the Investigating Officer did not record his statement.

19. PW-8 Manoj Kumar is cousin brother of the deceased. He stated in his examination-in-chief that the



occurrence took place on 03.07.2020 and his brother was murdered under a conspiracy between Dezi Kumari and Gajendra Yadav. He stated that the murder was committed over property dispute. The deceased, Dinesh Kumar Dinkar had two wives and his second wife got him killed. In Para-2, PW-8 stated that he only identified two of the accused, namely, Dezi Kumari and Gajendra Yadav and did not recognize the other two accused.

19.i. In Para-3 of his cross-examination he stated that he was not an eye-witness to the occurrence. In Para-5 he stated that he did not know whether Sunita Devi had filed Mahila Thana Case No. 41 of 2014 against her husband Dinesh Kumar Dinkar and Dezy Kumari or not. He knew that Sunita Devi had filed a maintenance case 169 of 2014 against the deceased but did not know that it was dismissed on 05.02.2016. After that, she filed another maintenance case 29 of 2016. In Para-6 he stated that when the deceased threw Sunita Devi out of his house, she went to her maternal home in Laxmipur and was living there with her daughter. He was not aware that she was earning her livelihood by cooking khichdi in a school there.

19.ii. In Para-7 he stated that the deceased had sold land to Gajendra Yadav while he was alive but he was not



aware whether Gajendra Yadav used to visit the deceased's place to give him money in the capacity of buyer. He further stated that he did not know whether Gajendra Yadav used to go there for the purpose of giving money or for some other purpose. He stated that there were ten people's houses between his house and the deceased Dinesh's house. In Para-12 he stated that he got the information of Dinesh Kumar's death from Facebook. He saw his dead body and stated that he signed the inquest report but then stated that he did not sign the inquest report.

19.iii. In Para-16 he stated that he did not inform the police about the death of the deceased after getting the information about the same. He also stated in Para-17 that the police did not make him sign any document at the place of occurrence.

20. PW-9 Bhudan Kumar @ Bhudan Tanti and PW-10 Ajay Kumar are independent witnesses in the present case who signed the seizure list prepared by the Investigating officer on 04.07.2020.

20.i. In their cross-examination they both stated that the police made both of them put their signature on a blank page each and no recovery was made in presence of them. They



further stated that the police did not take their statement.

21. PW-11, Asha Devi is the mother of the informant who is respondent no. 5, Dezi Kumari. She stated that she was present in the police station when the informant gave her *fardbeyan*. In Para-2 she stated that she did not recognize any accused other than her daughter.

22. PW-12 Jayaram Sharma stated that he was posted as S.I. at Bangaon P.S. on 13.07.2020 and took over the investigation of the present case from Ramiqbal Paswan provisionally. On 20.07.2020 he handed over the investigation to PW-6 S.I. Saroj Kumar. In Para-4 of his examination-in-chief he stated that he recognized the accused by their face but did not know their names.

22.i. In Para-5 of his cross-examination he stated that he did not conduct any investigation. He further stated that any information that what he said was hearsay. He stated that both the postmortem report and the seizure list was not prepared in front of him. In Para-6 of his cross-examination he stated that he did not question any witnesses and neither apprehend any of the accused.

23. PW-13 Soni Kumari, who is the daughter of the appellant and the deceased. She stated in her examination-



in-chief that the incident took place on 03.07.2020. Her father had married twice and he and her step-mother Dezi Kumari together assaulted her mother, the appellant and drove her away. After that her mother took her to her maternal village Laxmipur. After she stated that her step-mother got some land transferred to her name by swindling her deceased father and also got some land transferred in the name of Respondent No. 3 Gajendra Yadav. After that when her father was buying a Scorpio, Dezi Kumari got that purchased in her name too.

23.i. She stated that Dezi Kumari started living in a rented house in Saharsa and was in an illicit relationship with the room owner Gajendra Yadav. When the deceased got to know about his wife's illicit relationship there was a rift between them. The deceased asked Dezi Kumari to vacate the room where she was staying in Saharsa but she refused to do so. Thereafter the deceased physically assaulted Dezi Kumari. PW-13 further stated that her grandmother had heard Gajendra Yadav and Dezi Kumari talking where they conspired to murder the deceased. She stated that Gajendra Yadav talked to some criminals for murdering her father.

23.ii. In Para-6 of her cross-examination she stated that she had filed a title suit bearing case no. 273 of 2022



against her grand-mother, paternal uncle, Dezy Kumari and a few others got her grandmother to transfer some land in her name. In Para-7 she stated that she had never heard any conversation between Gajendra Yadav and Dezi Kumari. In Para-9 she stated that her father had said that he was purchasing the Scorpio vehicle in his own name. In Para-15 she stated that she got the information of her father's death on 04.07.2020 by a message on a Whatsapp group but she did not inform anyone of her father's murder.

23.iii. In Para-17 of her cross-examination she stated that on 04.07.2020 she was not aware as to how her father had been murdered and after 15-16 days when she got to know, she filed a complaint in the police station but no FIR was lodged on the complaint and she was also not given a copy of the complaint. In Para-18 she stated that she did not sign any documents. She stated that she was aware of the illicit relationship between Gajendra Yadav and Dezi Kumari atleast a year before her father's death but out of fear that her father might be murdered she did not tell anyone about it. In Para-20 she stated that she was not an eye-witness to the alleged occurrence and that she gave her statement based on hearsay.

24. Out of the 13 witnesses presented by the



prosecution, it appears that PW-1 was declared hostile by the prosecution and hence it is clear that he did not support the occurrence. None of the prosecution witnesses have seen the alleged occurrence, thus, there is no direct evidence on record which points out the guilt of the Respondents. PW-2 is the mother of the deceased who has alleged that Gajendra Yadav and Dezi Kumari murdered her son but she is not an eye-witness to the said occurrence. The allegation that Dezi Kumari forcefully made the deceased transfer his land in her name is also not supported by PW-2's statement as she stated in Para-4 of her cross-examination that she never saw the documents related to the land. PW-3 stated in Para-10 of his cross-examination that he was not aware if his deceased brother was involved in buying and selling of land in Ghamaria with Gajendra Yadav but later stated that his deceased brother had sold his land to Gajendra Yadav.

25. In Para-18 of his cross-examination he stated that the police made him sign some papers but he was not aware of the contents of the documents as he was illiterate. PW-4 who is the Medical Officer stated in his medical report that the cause of death was brain injury caused by a firearm. On the basis of the confessional statements of the accused/respondents, the



police recovered a country made pistol from the place of occurrence but no weapon was mentioned in the seizure list prepared by the police and neither was the weapon produced before the trial Court. PW-9 and 10 are independent witnesses of seizure list and no report of ballistic report regarding said firearm used in assault of deceased is present and also stated in Para-3 of their cross-examination that no recovery was made in presence of them and that the police made them sign blank paper.

26. The certificated documents of the CDR/SDR reports submitted by PW-7 do not mention the details of the mobile numbers. Further, although the CDR report showed that maximum calls were made between the deceased and Respondent No. 4 Sanjeev Kumar, there is no evidence on record which shows the details of the conversation or that it was the respondent himself who had talked to the deceased. PW-6, Saroj Kumar who was one of the Investigating Officers in the present case stated in Para-15 of his cross-examination that he did not verify the voice of the accused/respondents as to whether it was them who talked to the deceased on the date of occurrence.

27. Further when the accused were arrested, their



voice was not sent for verification. PW-13 daughter of the deceased is the only witness who has stated that there was an illicit relationship between Gajendra Yadav and Dezi Kumari. As per her statement she got to know about their relationship from her paternal grandmother PW-2 but the latter did not mention anything about it in her statement before the Court. There are material inconsistencies between PW-13's statements which she made before the police and her statements before the Court.

28. Although it has been established that the deceased was murdered however, none of the evidence presented by the prosecution establishes that the accused/respondents were guilty of commission of the offence. There is no eye-witness in the present case and thus in the absence of any direct evidence, the prosecution could establish the guilt of the accused/respondents by way of circumstantial evidence provided that the circumstances brought forward by the prosecution are consistent with each other and the links are connected to each other and are complete in the eyes of the Court to prove the accused guilty beyond all reasonable doubt. However, in the instant case no such circumstantial evidence has come on record which shows that the said murder was



committed by the accused/respondents because in the case of circumstantial evidence, the chain of evidence should be complete in all respects so as to prove the guilt of the accused. Although circumstantial evidence is not defined in the Cr.P.C, the Hon'ble Supreme Court has laid down the *Pansheel* with respect to conviction on the basis of circumstantial evidence. In the landmark case of ***Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116***, the Apex Court held as follows:

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 Maharashtra¹⁹ 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.

29. Thus, on the basis of the evidence based on record and the ratio laid down by the Hon'ble Supreme Court in various cases on circumstantial evidence, it is held that the charges against the accused/respondent is not proved beyond all reasonable doubt and the necessary elements mentioned in the charged sections are lacking to hold them guilty under the charged sections. In the totality of the circumstances which are appearing from the evidences on the record, we are of the considered opinion that the learned trial Court has not committed any error in appreciation of the evidences.



30. It is a case of acquittal in which the presumption of innocence of the accused is, in fact, affirmed by the learned trial Court. There is no reason for this Court to take a view that the accused/Respondent No. 2 is guilty of the charge in question. In fact, this Court is of the opinion that the prosecution has failed before the learned trial Court to prove the charges leveled against the respondent as opined by the learned trial Court.

31. We find no reason to interfere with the impugned judgment of the learned trial Court. Accordingly, this appeal is dismissed.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

Brajesh Kumar/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	15.02.2025
Transmission Date	15.02.2025

