

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.728 of 2018

Arising Out of PS. Case No.-69 Year-2010 Thana- CHANAN District- Lakhisarai

Manoj Mandal Son of Late Falo Mandal @ Faldeo Mandal, resident of
Village- Revta, P.S.- Chanan, District- Lakhisarai.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr. S.K.Lal, Senior Advocate Mr. Rabi Bhushan, Advocate Ms. Rakhi Kumari, Advocate Mr. Pritish Kumar Lal, Advocate Mr. Ankit Kumar Jha, Advocate
For the Respondent State:		Mr. Satya Narayan Prasad, APP
For the Informant	:	Mr. Jai Prakash Singh, Advocate Mr. Anil Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 28-04-2025

The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Code') against the impugned judgment of conviction and the order of sentence dated 24.04.2018, passed by learned Fast Track Court No.II, Civil Court, Lakhisarai, in Sessions Trial No. 474 of 2011, arising out of Lakhisarai (Chanan) P.S. Case No. 69 of 2010 (G.R.No.1483 of 2010/Trial No.318 of 18), whereby the concerned Trial Court has convicted and sentenced the present appellant to undergo R.I. for life for the offences punishable under



Section 302/34 of the Indian Penal Code and also imposed a fine of Rs. 25,000/- and, on failure to deposit the same, the appellant shall serve simple imprisonment for three months. Further, the appellant shall have to undergo five years of rigorous imprisonment each for the offences punishable under Section 120B and 201 of the Indian Penal Code. All the sentences have been directed to run concurrently.

FACTUAL MATRIX:

2. The prosecution story, in a nutshell, is as under:-

2.1. *Fard-beyan* of Satish Kumar Mandal, son of Ram Jiwan Ray @ Ram Jee Mandal (deceased) came to be recorded on 28.12.2010 at 12:30 P.M. In the said *fard-beyan*, the informant has mainly stated that his deceased father had gone in the night of 27.12.2010 at the place of Doman Yadav of Village-Kheta for panchayat. After panchayat, he came back at the house at 10:00 PM and after having eaten the food, he again went out of the house and did not return in the night. Today, in the morning, the informant came to know from the villagers that ½ KM to the west from Bhalui Halt, in front of village Kheta, a mangled dead body was lying on the railway track. The informant went to the place of occurrence along with villagers and in presence of the villagers he identified the dead body as the body of his father. The head of the



body was 10 feet away from the corpus on the western railway track after having been severed by the train. Most of the parts of the body was badly damaged. It is stated in the *fard-beyan* that deceased father of the informant often used to go to the place of Manju Devi, wife of Late Chandradeo Mandal of village Kheta for '*khane-peene*'. One of the uncles of the informant, namely, Manoj Mandal was very close to the said lady. During last panchayat elections the mother of the informant and his aunt, wife of Manoj Mandal, were candidates for the post of Mukhiya. In that election the mother of the informant and his aunt both lost. From then, the uncle of the informant, Manoj Mandal became bitter enemy of his father. The informant has stated that his father has been eliminated by his uncle Manoj Mandal with the help of Manju Devi in her house to pave his way in the next elections and the dead body has been kept on the railway track to conceal it. Due to passing of train, the dead body of his father as mingled. On the basis of the aforesaid *fard-beyan* given by informant (Satish Kumar Mandal), formal FIR came to be registered in Lakhi Sarai (Chanan) Police Station at 16:30 hours against two named accused persons for the offences under Sections 302/201/34 of the IPC.

2.2. After registration of the F.I.R., the Investigating Agency carried out the investigation and, during the course of the



investigation, the Investigating Officer recorded the statement of the witnesses and collected the necessary evidence. Prior to that inquest report was prepared on the spot and dead body of the deceased was sent for conducting the post mortem.

2.3. The Investigating Officer arrested the accused/appellant herein and thereafter filed the charge-sheet against the appellant/accused before the concerned Magistrate Court. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the same to the Sessions Court under Section 209 of the Code, where the same was registered as Sessions Trial No.474 of 2011.

2.4. At the trial, the prosecution examined 15 witnesses and also produced documentary evidence. Thereafter, further statement of the accused was recorded under Section 313 of the Code and after completion of the trial, the Trial Court passed the impugned judgment and order against which the appellant has preferred the present appeal.

3. Heard Mr. S.K. Lal, learned Senior Advocate assisted by Mr. Ravi Bhushan, learned counsel for the appellant, Mr. Satya Narayan Prasad, learned APP for the Respondent-State and Mr. Jai Prakash Singh, learned counsel for the informant.



SUBMISSIONS ON BEHALF OF THE

APPELLANT:-

4. Learned counsel for the appellant would mainly contend that, in the present case, there is no eye-witness to the incident in question and the case of the prosecution rests on circumstantial evidence. It is further submitted that the prosecution has failed to complete the chain of circumstances from which it can be established that the present appellant has committed the alleged offence, despite which the trial court has recorded the order of conviction and, therefore, the impugned order be quashed and set aside.

4.1. Learned counsel referred the deposition of the prosecution witnesses and thereafter submitted that the prosecution has mainly placed reliance upon deposition given by PW 3, Dasrath Mandal, who has deposed before the court that in the morning of 28.12.2010 when he was going to catch a train, he saw the present appellant with other three accused, i.e., Manju Devi, Ranju Devi and Mona Devi. They were taking the dead body in a gunny bag. He also saw the droplets of blood on their body. Learned counsel also submits that during the cross-examination, the said witness stated that he informed the son of the deceased, i.e., the informant, with regard to the aforesaid incident. However,



though the *fard-beyan* of the informant was recorded at 12:30 PM on 28.12.2010, he did not disclose the said fact to the police in the said *fard-beyan*. Learned counsel, therefore, submitted that PW 3 can at best be termed as chance witness.

4.2. Learned counsel would thereafter contend that PW 5 has deposed that at about 11:00 PM on 27.12.2010, when he was going to his house, he saw three persons taking liquor in the house of Manju Devi. However, he could not identify them. Thereafter, when he reached near the house, he heard Ramji (deceased) and Manju talking about going to the village to eat fish. Learned counsel submits that, however, during cross-examination, the said witness deposed that he reached at the railway station at 05:00 AM, when he came to know about the killing. He came to know that the dead body was of Ramji. Learned counsel submits that though the said witness saw Manju Devi and deceased at the house of Manju Devi, he did not disclose the said aspect to the informant. Thus, the conduct of the said witness was not natural and the said witness can also be termed as chance witness.

4.3. Learned counsel further submits that, similarly, PW 6 deposed that he woke up at 01:30 AM in the night for urination and he saw that his buffalo was not in the shed. Therefore, he went in search of the buffalo. However, when he



went near the house of Manju Devi, he saw from the window that 10-15 persons were in the house. He identified the present appellant, Manju Devi, Ranju Devi and Mona Devi. The said witness further stated that they were saying that 'he is dead, throw him'. Thereafter, the said witness returned to his house. Learned counsel submits that during cross-examination, the said witness has admitted that his statement was recorded after ten days. Learned counsel, therefore, contended that the said witness is also a chance witness.

4.4. Learned counsel further submits that even the conduct of PW 10, who is the uncle of the informant, is also not natural. Though he came to know at 03:00 AM that some persons were putting dead body in a gunny bag, he did not inform the police. Further, in the morning, he came to know that the dead body was of Ramji. He did not inform to the son of the deceased, i.e., the informant.

4.5. Similarly, learned counsel submits that PW 11 is not an eye-witness and he got the information in the early morning at 05:00-05:45 AM and, therefore, he reached near the railway track. His *fard-beyan* was recorded at about 12:30 PM.

4.6. Learned counsel submits that PW 14 is another chance witness, who had stated before the court that he saw the



present appellant and the five persons near the house of Manju Devi. They were taking liquor and they offered liquor to him. It is stated that the present appellant told that Ramji is to be killed. It is submitted by the learned Advocate that during cross-examination, the said witness has admitted that he gave such information to the police after 15 days and two days thereafter he filed an affidavit in the court. Further, the said witness has admitted that the informant had beaten him for giving evidence.

4.7. Learned counsel further submits that PW 15, the IO, has admitted during cross-examination that though he seized the grinding stones, the blood found on the said grinding stone was not sent for necessary analysis to the FSL.

4.8. Learned counsel for the appellant also contended that even from the deposition given by PW 12, the Doctor who had conducted the post mortem examination of the dead body of the deceased, it can be said that the present is a case of accident and the prosecution has failed to prove the homicidal death of the deceased.

4.9. Learned counsel for the appellant, therefore, urged that the prosecution has failed to prove the case of the appellant beyond reasonable doubt, and hence, the impugned



judgment of conviction and the order of sentence be quashed and set aside.

SUBMISSIONS ON BEHALF OF THE STATE AND
INFORMANT:-

5. On the other hand, learned counsel appearing for the informant and the learned APP for the Respondent-State have opposed the appeal. Mr. Jai Prakash Singh, learned counsel, at the outset, submits that the informant of the present case has been killed by the present appellant for which the wife of the informant has filed separate FIR under Section 302 of the IPC against the present appellant. Thus, he appears on behalf of the wife of the informant. Learned Advocates for the respondents would mainly contend that though the present is a case of circumstantial evidence, the prosecution is able to complete the chain of circumstances by leading cogent evidence from which it is established that the present appellant with the help of three other co-accused has committed the alleged offence. Learned counsels for the respondents have mainly placed reliance upon the deposition given by PW 3, PW 4, PW 5, PW 6, PW 8, PW 10, PW 11. Learned counsels also referred the deposition given by PW 12, the Doctor, as well as PW 15, the IO. Learned Advocates submit that because of the enmity between the parties with regard to the



election of Mukhiya, the incident took place. It is submitted that one of the prosecution witnesses had seen deceased Ramji in company of Manju Devi at the house of Manju Devi. Further, another prosecution witness consumed liquor with the present appellant and the others at the house of Manju Devi and at that time appellant said that Ramji will be killed. It is also contended that another witness also deposed before the court that when he woke up at 01:30 AM in the night for urination, he did not find his buffalo in the shed and, therefore, when he went in search of the buffalo and came near the house of Manju Devi, he saw from window the appellant in company with Manju Devi, Ranju Devi and Mona Devi. They were talking that he is finished. Thereafter, another prosecution witness has seen the persons putting the dead body of the deceased in a gunny bag. Similarly, another witness also saw the said incident in the early morning at 03:30 AM. It is further submitted that thereafter the dead body of the deceased was found near the railway track at about 05:00-05:45 AM. Learned counsels, therefore, urged that from the aforesaid chain of events, it can be said that the appellant herein killed the deceased with the help of other co-accused. Thus, the prosecution has proved the case against the appellant beyond reasonable doubt. Therefore, the



trial court has not committed any error in passing the impugned judgment of conviction and the order of sentence.

5.1. Learned counsel for the informant has submitted that the present appellant has been convicted for committing murder of the present informant. Therefore, when the appellant has been convicted in another case, this appeal be dismissed.

**DISCUSSION WITH REGARD TO THE
DEPOSITION OF THE PROSECUTION WITNESSES:-**

6. At this stage, we would appreciate the relevant evidence given by the witnesses. PW 1, namely, Bikash Kumar, who is the son of the deceased. He has mainly deposed in his examination-in-chief that the incident took place on 27.12.2010 at about 12:00 at night. In the morning of 28.12.2010, he heard a *hulla* that his father has been killed. He went and identified the body of his father, which was lying on Mananpur railway track with head separated from body. He has deposed that his mother and aunt contested the election for Mukhiya in the year 2006 and both lost. His uncle had threatened his father for the same. He has deposed that on 27.12.2010 at 10:00 PM, Manju Devi had taken his father with her and his father was killed at Manju Devi's house. In the killing of his father Manoj Mandal, Manju Devi, Meena



Devi and Rinku Devi are involved. He has further deposed that he had seen blood stains from the house of Manju Devi up to the railway track. After killing his father, the dead body was carried in a gunny bag. Blood stains were also there, where the head of his father was smashed. The place where blood had spilled was mud-pasted. He has also deposed that his uncle was having illicit physical relation with Manju Devi.

6.1. In his cross-examination, PW 1 has deposed that his deceased father has four sons and no daughter. Only one son is married. His mother died prior to the death of his father. His father had also married third time but with whom, he does not know. His father was not having any illicit relationship with anyone after third marriage. He came to know about the death of his father on 28.12.2010 in the morning. Having come to know, he came near the dead body of his father. He also saw other family members near the dead body in the morning of 28.12.2010. He did not go to police station, police itself came. He does not know whether his family members went to the police station. He came to know about the death of his father from Ravi Mandal and Anil Kumar. He has further deposed that he came to know about the incident in the morning at 05:00 AM and he went to the railway track along with the village people. He and his brother Satish were



present in the house. Both are unmarried. He further deposed that his father was in the service of Bihar Police and because of some heinous criminal charges he was dismissed from service. He saw that the dead body of his father was in two pieces. Head and body were separated. He does not know who informed the police. Railway police reached at the place in the morning at 08:00 AM. He has further deposed that his aunt (wife of the appellant) contested the election for the post of Mukhiya in 2006. He does not know as to how many votes she secured, however, she secured lesser votes than his mother. He has deposed that earlier, in 2006, the appellant became Mukhiya.

7. PW 2, Satya Narayan Mandal, has deposed in his examination-in-chief that the incident took place 10-11 months earlier. He went at the place of occurrence at around 07:00 AM and saw that the deceased came under the running train and was cut into pieces. He deposed that he did see the appellant there, but did not see Manju Devi. He has also deposed that that he saw drops of blood up to the house of Manju Devi. He has denied the suggestion that to save Manju Devi, he is refusing to say that he saw Manju Devi at the place of occurrence. He also denied that the appellant was nervous at the place of occurrence. He also denied



that the dead body was thrown on the railway track to conceal it after killing the deceased at the house of Manju Devi.

7.1. In his cross-examination, PW 2 deposed that his statement was recorded by the police. Wife of Manoj Mandal (appellant) and the wife of Ramji (Deceased) contested the election of Mukhiya. Manoj Mandal was elected as Mukhiya of the Panchayat before 2006. Son and daughter-in-law of Manju Devi reside in the village. He does not have any knowledge about the incident and he did not see anything with his own eyes.

8. PW 3, Dasrath Mandal, has deposed in his examination-in-chief that the incident is of 27.12.2010. On that day, a *panchayati* was being held in the village at Singhiya Asthan in which he and 50-100 people were there. There itself Manju Devi came to call Ramji Mandal, upon which Ramji Mandal left *Panchayati* and went with Manju Devi. In the morning of 28.12.2010, when PW 3 was going to catch a train, he saw that Manju Devi, Ranju Devi, Mona Devi and Manoj Mandal were taking a dead body in a gunny bag. PW 3 saw them from a distance of 10 feet. Droplets of blood were there on their body. A *hulla* took place at the halt and when he reached there, he saw separated head and body of Ramji lying there. He deposed that he cannot say how the killing was done. He did not see wherefrom



the body was brought, but he saw the drops of blood up to the house of Manju Devi. When he went to the house of Manju Devi, he saw that the house was applied with the paste of mud and blood and flesh were there on the grinding stones. He deposed that he does not know about the reason of the incident. Ramji and Manoj were on inimical terms because of Mukhiya elections.

8.1. In his cross-examination PW 3 has deposed that he resides in the village. Manju Devi resides in the village with her son and daughter-in-law. Manju Devi has a grocery shop and she also sells liquor. He has mainly deposed in his cross-examination that *panchayati* started at 08:00 PM and when Ramji left, *Panchayati* ended after taking the decision. The accused of the present case were not present in *Panchayat*. He has deposed in paragraph 8 of his cross-examination that he got up at around 02:00 AM on 28.12.2010 and finished his daily chores, but did not take bath. It takes 25-30 minutes to reach Bhalui Halt from the village on foot. He left for station at 03:30 AM as he watched the wall clock. The way to station was dark. He does not wear spectacles. He can see 10-15 feet in dark. He reached station at 04:00 AM. After seeing the incident, he did not go to his destination. He reached to his village from station at 10:00 AM. He stayed there at station for one hour. He has deposed that he can



make out the colour of clothes in night from a distance of 10-15 feet. He can tell about the colour of the clothes worn by the accused. He deposed that police took his statement and he told the police about the colour of the cloth. He further deposed that he met Satish Mandal on 28.12.2010 near the dead body. He again deposed that he saw the accused persons fleeing away after throwing the dead body. Kishan, Ravi Mandal, Ranjit etc. were there. Vikash was also there. Ravindra Mandal was also there. About 500 people were there. Only Satish and Vikash from family were there. He does not know whether Satish went to police station. He did not go to police station. He has deposed that he did not say that Ramji had told that Manju will contest the election for the post of Mukhiya. He said that Ramji was his cousin from extended family. In his further cross-examination, PW 3 deposed that a *panchayati* was held in the village on 27.12.2010 at 10:00 PM. He told the police that Manju Devi came to call Ramji from *panchayati* and took him along. He deposed that he had told the police that while going to station he saw Manju, Rina, Mona and Manoj taking a dead body in a gunny bag and there was blood on their clothes. He also told the police that on hearing the *hulla*, when he went, he saw the dead body of Ramji. He deposed that Janta Express arrives at 04:00 AM. He was going to Lakhisarai.



He did not book a ticket. He cancelled his programme because of the incident. He deposed that he did not inform the son of Ramji about the witness. He saw the dead body at 05:00 AM and identified the dead body to be that of Ramji. Before he reached near the dead body, around 100 people had gathered. He did not seek any other train passing through the said track. He remained there till 10:00 AM. Son of Ramji, Satish, came there at around 06:00-06:30 AM. He had a talk with Satish. After their meeting, the statement of Satish was recorded by police at 11:00 AM. He explained everything to Satish that he watched. He has further deposed that he saw Manoj from front, who was wearing white Kurta and Pyjama and he cannot tell on which side of his cloth blood stain was, however, the blood stain was on the front part. He did not talk to Manoj nor he could comprehend as to whose body was there. He deposed that Janta Express crossed after he reached at the Station.

9. PW-4, Hakim Yadav, has deposed in his examination-in-chief that the incident took place in the night of 27.12.2010. When he woke up in the morning, he came to know that dead body of Ramji Mandal was lying on the railway track near Bhalui Halt. He learnt from people that Manju Devi and Manoj have killed Ramji Mandal and thrown the dead body.



9.1. In his cross-examination, PW 4 deposed that he heard a *hulla* at 05:00 AM when he was at his house. He went to Bhalui Halt along with ten persons of the village. Hundred people had gathered near the dead body. Manoj was present there from before. He stayed there for ten minutes and Manoj was there when he returned. He has deposed that he did not see anyone carrying the dead body nor he saw the occurrence. Police took his statement 15 days after the occurrence and he did not tell the police that the body of Ramji got mingled because of being crushed by the train.

10. PW-5, Dhirendra Mandal, has deposed in his examination-in-chief that the incident is of 27.12.2010. At 11:00 PM in the night he alighted from a train and was going to his house at Rehta. In the way he saw three persons taking liquor in the house of Manju Devi, whom he could not identify. When he marched a few steps, he heard Ramji and Manju talking to go to the village to eat fish. He thereafter left for his house. In the morning, he came to know that Ramji has been killed. He went to the station to see the dead body of Ramji, where thousands of people were there.

10.1. In his cross-examination, PW 5 deposed that he did not see Ramji Mandal being killed. He came to know about



the killing when he reached at the railway station at 05:00 AM. He has deposed that the dead body was lying on the railway track 5-10 yards from Kali Mandir, where two Up and Down lines each are there. He saw that the head, one hand and one leg were separated from the dead body and a gunny bag was lying there. Little blood was spilled near the hand, feet and neck of the dead body and nowhere near the railway track blood was there. He stayed there for around half an hour. He did not meet the son of Ramji on that day. He met the son of Ramji after two-three days. The jute bag was 3'x2-1/2' in size and the stitching was cut from the middle. He deposed that people were saying that the appellant has killed the deceased. He has further deposed in his cross-examination that he told the police that because the wives of the appellant and deceased contested the election and both were defeated, their relationship was strained. He deposed that he did not say that the wife of Ramji died after the election and that Ramji had married Manju Devi in Court to make her contest the next election with which Manoj was angry. He also deposed that after death of his wife Ramji, Mandal married a second wife, who used to live in the house. He denied that the sons of Ramji Mandal were angry with him for the second marriage and, therefore, they killed Ramji.



11. PW 6, Ranjeet Mandal, has mainly deposed in his examination-in-chief that the incident took place 10-1/2 months ago. At 01:30 AM in the night, when he woke up for urination, he saw that his buffalo was not there in the shed. He went in search of it. In course of search, he went near the house of Manju Devi, where on hearing some commotion, he saw that a window was open. He saw through that window that 10-15 persons were there, out of whom, he identified Manju Devi, Ranju Devi, Mona Devi and Manoj Mandal. Some of them were having axe in their hand and they were saying that he is dead, throw him. Thereafter, he returned back to his home. In the morning, he heard *hulla* that dead body of Ramji is lying on track. When he went to the track, he saw streak of blood from the house of Manju. He saw that the head and body were separated and there were axe injuries on the body.

11.1. In his cross-examination, he deposed that his statement was recorded by *Daroga* 10 days after the occurrence. He further deposed that the house of Manju is situated one km. east from his house. House of Manju is of brick and he cannot say how many rooms are there in it. The house is having boundary on all the four directions. He did not go near the house of Manju and straightway came back to his house. He did not wake up other



male members in the house. Out of fear, he left searching for buffalo and did not tell about it to his family members. He went to the track after hearing *hulla*. Thousands of persons gathered at the place of occurrence. He reached near the body at 06:00 AM. He did not identify any one in the crowd. He saw Manoj Mandal near the dead body. The deceased and Manoj Mandal are full brothers. The deceased was his caste-man. He himself deposed that he is rustic and he has nothing to do with Manju Devi. He has deposed that Manju did not have any relationship with Ramji and he had never seen them sitting together.

12. PW-7, Rajendra Mandal, has deposed in his examination-in-chief, that the occurrence took place in the night of 27.12.2010. When he woke up in the morning, he saw people running. He also went to the railway halt and saw that the dead body of Ramji Mandal was in mingled condition. The head was smashed by grinding stones. The dead body was thrown there. No blood was found on the track. He saw the blood stains on the way up to the house of Manju. The murder of Ranji Mandal was committed because of election. The villagers told that Manju etc. have killed him.

12.1. PW 7 has deposed in his cross-examination that he did not see the occurrence with his eyes. He came to know



from the villagers that Ramji has been killed by someone. The defeat of wife of Ramji and wife of Manoj in the elections is the reason for the differences between them. He deposed that he does not know that Ramji wished to get Manju contest the election. He did not see the family of Ramji near the dead body.

13. PW 8, Rabindra Mandal, has deposed in his examination-in-chief that the occurrence took place on 27.12.2010 at 01:30-02:00 AM. He came to know about the murder of Ramji Mandal at 05:00 AM. He had gone to see the dead body at Bhalui Halt, the body of Ramji Mandal was cut by axes and the head was smashed with grinding stones (*lodha*). Police reached at 09:00 AM and removed the dead body. One blood stained jute bag was recovered from there. Seizure list was prepared and he put his signature on the seizure list. Police went to the house of Manju Devi and he also went with police and saw the blood stains on the way up to the house. Daroga entered the house after breaking open the lock and the deponent saw that bloodstained hairs were there on the grinding stones and blood on the soil. He put his signature on the seizure list. He has deposed that on account of election, there was difference between the two brothers and because of that Manoj and Manju have caused the killing together.



13.1. In his cross-examination PW 8 has deposed that police took his statement at his house after ten days. He did not tell the police that he came to know about the murder of Ramji at 05:00 AM. He told the police that body of Ramji was cut with an axe and his head was smashed by grinding stones and that the body was thrown. He went to the house of Manju Devi with police. He saw the streak of blood on the way. He did not tell the police that there was blood, hair and mud on the grinding stones, but he told that there was mud on it. He deposed that he reached near the dead body in 15 minutes, where 50 persons were present from before. He deposed that Manoj is full brother of Ramji and distance of the police station is 06 kms. from the place of occurrence and Raghubir Mandal, *Sarpanch*, had informed the police on telephone. He deposed that he heard about the murder from Janardan Saw and Gopal Singh. Janardan Saw and Gopal Singh were not present near the dead body. He has deposed that Ramji was the strongman of the village. The family members of Ramji used to become Mukhiya, the daughter-in-law of Ramji is the present Mukhiya. Before that Manoj Mandal was the Mukhiya. There was dispute between the two brothers for the last two-three years for the post of Mukhiya.



14. PW 9, Ashok Dass, has deposed in his examination-in-chief that the occurrence took place on 28.12.2010. He woke up at 05:30 AM, he saw crowd gathered near the railway track. He went near the railway track at 06:00 AM and saw that a dead body was lying beside the track and one blood stained jute bag was also lying there. People were saying that the dead body was of Ramji Mandal and no blood was there. Police arrived and, in course of investigation, at many places blood was found up to the house of Manju Devi. Police reached at the house of Manju Devi and took away the grinding stone, which was blood stained. He deposed that people were saying that some one dumped Ramji here and also saying that Manju Devi and others have killed and thrown the body. The reason behind the occurrence is the differences between Manoj and Ramji over election.

14.1. In his cross-examination, PW 9 deposed that he had not seen the occurrence with his own eyes. The head was separated from the body and rest of the body was alright. A gunny bag of the size of sugar bag with blood stains at three-four places was lying near the dead body. He has deposed that his statement was taken by the police ten days after the occurrence at his house and he did not tell the police that as the wives of Ramji and Manoj lost the election, Manoj killed Ramji in collusion with Manju. He



further deposed that he saw coat and pant on the dead body and the full pant did not contain any stain. He deposed that daughter-in-law of Ramji is the Mukhiya at present and no one dares speak against them because of their influence.

15. PW 10, Krishna Nandan Mandal, has deposed in his examination-in-chief that the occurrence took place on 28.12.2010. In the morning, at 03:00 AM, while he was going to receive his brother-in-law from halt, he saw some persons standing near the house of Manju Devi and they were putting a dead body in the gunny bag. He straightaway went to the halt. He saw the dead body of Ramji and the gunny bag lying near the halt. His nephew Satish informed the police on telephone. Dy. S.P. arrived and sent the dead body for *post mortem*. The Dy. S.P. recovered blood stained grinding stone (*lodhi*) from the house of Manju Devi and seizure list was prepared, on which he put his signature.

15.1. In his cross examination, PW 10 has deposed that his statement was recorded by the police 8-10 days after the occurrence. He has deposed that he told the police that he woke up at 03:30 AM to go to the halt and that he saw the appellant near the house of Manju Devi with rifle. He identified Mona, Manju, Ranju and Manoj, who were tying the dead body in the gunny bag. He straightaway went to the halt and saw the dead body of Ramji and



the bag near the track. He has deposed that he had gone to receive his brother-in-law, who arrived by Howrah-Janta Express at 04:00 AM, which was on time. He did not go to his house with his brother-in-law and stayed at the Halt. Satish reached near him at 05:15 AM and 10-20 minutes thereafter, he called the police. He has further deposed that Dy.S.P. went to the house of Manju Devi at 10:30 AM, which was locked and the Dy.S.P. himself broke open the lock of the house. Many persons entered into the house of Manju Devi. He saw blood on the grinding stones. Blood stain was there only on the pestle. The mortar was of the size 8"x1" and the pestle was of 8"x4", having weight of 70-75 kg. In paragraph 12 of his cross-examination, PW 10 has deposed that he has personal knowledge of the occurrence. He came to know about the murder of Ramji Mandal at 03:00 AM on 28.12.2010. He saw the dead body at 05:00 AM. He deposed that he cannot tell whether there was enmity between Ramji and Manoj. The police made inquiry from him 10 days after the occurrence. He told the police that the wives of Ramji and Manoj had contested the 2006 Panchayat elections for the post of Mukhiya and both were defeated. He did not tell the police that Manoj and Ramji became ardent enemy of each other thereafter. He has deposed that after defeat in the election, Manoj and Manju killed Ramji. Ramji is his cousin. He



has also deposed that Manoj Mandal and Ramji Mandal were not on visiting terms before the elections. He has deposed that he saw the dead body of Ramji cut into three parts. Head, body and one hand were separated. The head was completely smashed. He deposed that the statement of Satish, son of the deceased, was not recorded in his presence. He met Satish after his statement was recorded. He told Satish, at 06:00 AM, that he saw the dead body being put in the gunny bag. He stayed at the house of Manju Devi with Dy. S.P. for 20-25 minutes. He did not see blood spilled near the place where the body was put in the gunny bag, however, he saw that paste of mud/cow dung was applied in the courtyard was.

16. PW 11, Satish Kumar Mandal, is the informant and the son of the deceased. He has deposed in his examination-in-chief that the occurrence took place in the night of 27.12.2010. His father had returned home from a *panchayat*. One woman called his father, thereafter his father did not return back and in the morning he came to know that a dead body is lying on the railway track. He went there along with the villagers and identified the dead body of his father. He also saw the blood stained gunny bag lying beside the railway track. The head was badly smashed. No blood was there on the track. Blood was found up to the house of Manju Devi. Police seized the blood stained gunny bag, a seizure list was



prepared and PW 11 put his signature on the seizure list. He came to know about the names of the assailants and the reason for the occurrence was the 2006 Mukhiya elections, which was contested by the mother of PW 11 and wife of Manoj, in which both lost. He has deposed that his statement was recorded at the railway track, on which he put his signature. Raghubir Mandal and Deveshwar Mandal also put their signature.

16.1. PW 11 has deposed in his cross-examination that the distance between the house of his father and that of Manoj is 100 feet and he had not seen Manju Devi visiting Manoj. He has deposed that his re-statement was recorded two days after the occurrence. He saw the blood stains from railway track to the house of Manju Devi and he had given that statement before the police during his statement and re-statement. He denied that, for the first time, he is deposing about having seen the blood stains, in the court. He was informed on telephone by someone about the discovery of the dead body at 05:45 AM. Rinku Devi is the present Mukhiya, who is his elder sister-in-law. He has deposed that he gave his *fard-beyan* to the S.H.O, Chanan, at the railway track, where the dead body of his father was lying and after reading the same he put his signature. He has further deposed that he told in his *fard-beyan* that a jute bag was lying on the track and that the



head of the dead body was smashed. He could not recall whether he had said in his *fard-beyan* that blood was there on track and that blood was spread from the track to the house of Manju. He has also deposed that he came to know that a dead body was lying at 05:00-05:45 AM, when he was at his house from Ravi Kumar and village people and wife of Raj Kumar also informed him. He reached near the dead body at 06:00 AM. He has deposed that he does not have any document regarding the enmity with Manoj Mandal. He denied that he has lodged this case on the basis of suspicion.

17. PW 12, Dr. Nagina Paswan has deposed that he was posted as M.O. at Sadar Hospital, Jamui on 28.12.2010. On that day, at 02:45 p.m., he conducted the *post mortem* examination of the dead body the deceased and found the following *ante mortem* injuries:-

“1. External appearance - Eyes were closed, mouth open.

Rigor Mortis present.

(I) Injuries- Amputation of skull from neck- margin sharp and regular.

(ii) Multiple lacerated wound on the skull. Brain material is expult out. Mutilation of the skull bone.

(iii) Lacerated wound on the right thigh 6” x 2” x 2” x muscle tear.



(iv) Lacerated wound on the posterior surface of right foot. Fracture of lower end of right tibia and fibula.

(v) Lacerated and crushed wound on the lower third of left thigh of whole left leg. Muscle teared.

(vi) Lacerated and crushed wound on left hand from elbow to upper portion of left fore-arm- muscle teared.

(vii) Incised wound on the left side of lower abdomen illic region 3" x 1/2". Muscle and skin ruptured.

2. On dissection:-

Skull- Multiple fracture of both parietal bone, frontal bone and occipital bone.

(i) Brain matter absent.

(ii) Chest and abdomen- lungs pale, heart empty, liver, spleen and kidney were pale. Intestine- teared.

Time since death- within 6-36 hours.

Cause of death- hemorrhage and shock due to above injuries caused by sharp-cutting weapon in inj. No. I & II and rest are caused by hard and blunt substance."

17.1. PW 12 has deposed in his cross-examination that presence of *rigor mortis* shows that the death of the deceased was caused within two days and not within 3 days. Injury No.1 and 2 are caused by sharp cutting. He has deposed that he did not find



both hand and leg separated from the body. The injuries are possible from hand and wheel of the train. *Rigor mortis* remains in body beyond 36 hours.

18. PW 13, Kamlesh Rai, was the Sub-Inspector posted in Railway Police, Jamui. He has deposed in his examination-in-chief that he received a memo. for taking action from the Station Master, Jamui, of the dead body lying ½ km. away west to the Bhelahi Halt near Pole No. 402. He prepared the inquest report.

18.1. In his cross-examination, PW 13 has deposed that he reached at the place of occurrence at 06:45 AM and remained there for 4-5 hours. He contacted the local police at 07:15 AM, which came at 09:30 AM. He did not hand over the dead body to the local police as the dead body was recovered from the jurisdiction of railway. He has further deposed that he took the statement of Satish Kumar Mandal, the son of the deceased at 08:40 AM and also procured his signature on the inquest report.

19. PW 14, Sikandra Rajak, has deposed in his examination-in-chief that the occurrence took place on 27.12.2010, when he was coming to his house at Rehta from Bhalui Halt. The house of Manju Devi is situated in the way. He saw that Manoj and others, five persons, were taking liquor, they offered him liquor



and he also took it. Manoj told that Ramji is to be killed. He took liquor for one hour and left for his house when he was threatened not to reveal the plan to anyone. In the morning, he got an information that dead body of Ramji is lying on the railway track. He deposed that he gave an information about the incident to the police, whereupon he was told to go to court and he has filed an affidavit in the court.

19.1. In his cross-examination, PW -14 has deposed that he had never taken liquor with Manoj earlier. He does not know before whom he got the affidavit prepared. The affidavit was prepared by Satish Mandal. He told the police in his statement that five persons were taking liquor near the house of Manju. He also told the police that he was offered liquor by them and he consumed liquor and that he had told the police that Manoj has told to kill Ramji. Manoj was Mukhiya of his panchayat. He consumed liquor at 09:00 PM with Manoj, both contained in pouch and bottle in a plastic glass, which was thrown there. He felt intoxicated, however, he reached home at 10:100-10:30 PM. All the family members had slept by then and the door was opened by father and mother also got up, but neither father nor the mother asked as to where he consumed liquor and so he did not tell them. He has further deposed that he gave written information to the



police 15 days after the occurrence and two days' thereafter filed affidavit in the court. He has also deposed that Satish Mandal had beaten him for giving evidence. He denied that he was beaten by Satish for not swearing the affidavit and that he is giving evidence under duress. Wife of Satish became Mukhiya three-four months after the occurrence.

20. PW 15, Atul Kumar Mishra, who is the Investigating Officer, has deposed in his examination-in-chief that on 28.12.2010, he was posted as S.H.O. of Chanan Police Station. He had recorded the *fardbeyan* of Satish Mandal, son of the deceased. He has stated that the location of the incident where the alleged murder was committed was Manju Devi's house in Ward No. 7 at Village-Revta. There was a hand-pump to the east of the courtyard, about 3 ft. south of which, grinding stones were kept with blood stains on it. The grinding stones were seized and were marked as Exhibit-1. The seizure list is in his handwriting and signature and is marked as exhibit-6. The second place, where the body was found is ½ kms. west of Bhalui Halt in down line of the railway track near Pole No. 402/2, which goes east to Jamui and west to Kiul. The body of the deceased Ramji Mandal was found in mutilated condition on the same down track. A jute sac was found next to the body, which had blood-stains on it, the seizure



list of which was prepared by S.I. Kamlesh Rai and marked as exhibit-2. The map of the place of occurrence was prepared which is mentioned in the case diary and is marked as exhibit-9. The statement of the informant was taken. The statement of Ravindra Mandal, Prameshwar Mandal, Vikash Kumar, Krishna Nandan Mandal, Satya Narayan, Rajendra Mandal and Ashok Das were taken. He recorded the confessional statement of Manju Devi, Ranju Devi and Mona Devi, which are marked as exhibit-8, 8/1 and 8/2. The criminal history of Manoj Mandal was found which is recorded in Para-37.

20.1. In his cross-examination, in Para-16, PW 15 deposed that the place of occurrence was inspected before recording the *fard-beyan*. He reached the place of occurrence at 09:00 AM. He has written that the information about this incident was received at 04:30 AM, after which, upon reaching the spot he took the actions in accordance with the Rules. He has further deposed that the inquest report of the body was not prepared because it was under the jurisdiction of the Railways. He had seized the grinding stones, but he cannot tell at what time. He had found clothes on the dead body, but there were no blood stains on the clothes. The blood marks on the grinding stones were not examined. Without examination of the blood, he cannot say



whether it was of a human or of an animal. The dead body was found in the middle of the down railway track. He had not marked the spot on the map, where the jute sac was found. He had not marked the spot where the grinding stones were found. The distance between the mortar and the pestle has not been mentioned in the map. He did not mention in the case diary that he had seen the dead body on the track. No eye-witness turned up to give evidence against Manoj Mandal. Though witness told that Manoj Mandal was having relationship with Manju, but PW 15 could not find any evidence in that regard. PW 15 has deposed that it was Jamui Police which reached at the place of occurrence first and by then Railway police had not started any investigation. The Railway Police gave enquiry report verbally when the dead body was still on the place of occurrence. Railway Police did not hand over the dead body to them, rather postmortem report received by the Railway Police was handed over to PW 15. He deposed that he received *fard-beyan* on 28th at 04:30 PM and the case was registered at the same time. He also took the statements of independent witnesses. He has further deposed in paragraph 27 of his cross examination that he did not get the blood found on the grinding stones matched with the blood of Ramji Mandal. He did not record the statement of the persons claiming to be the eye-



witness. He has also deposed in paragraph 29 of his cross examination that he did not find any other evidence against Manju Devi, non-FIR accused and other accused and the non-FIR accused have been implicated in this case because of the enmity on account of the elections. Manju Devi does not have any influence over the village he earns her livelihood from running a shop in her house with her son and daughter-in-law. He denied that it is not true that the dead body was not of Ramji but of any unidentified person and he has not caused investigation in the case and has completed the case diary in one day.

OBSERVATION AND REASONING:-

21. We have considered the entire evidence led by the prosecution and re-appreciated the same. From the evidence led by the prosecution, it transpires that the *fard-beyan* of the informant, Satish Kumar Mandal, who is the son of the deceased, was recorded at 12:30 PM on 28.12.2010. In the said *fard-beyan*, the informant has stated that his father had gone in the night of 27.12.2010. However, he did not return and, in the morning, he came to know that one dead body was lying near the railway track and when he reached the said place, he identified the dead body as body of his father. Thereafter, he has shown suspicion that his father often used to go to the place of Manju Devi. The present



appellant, who is uncle of the informant, was very close to the said lady and in the last panchayat election, mother of the informant and the wife of the present appellant were candidates for the post of Mukhiya and both of them lost the said election and, therefore, the appellant was having enmity with the father of the informant, who is his brother.

21.1. At this stage, it is pertinent to note that the said *fard-beyan* was recorded at 12:30 PM. Prior to that, the prosecution witnesses, who had either consumed liquor with the appellant in the house of Manju Devi or who have seen the appellant in the company of other co-accused in the house of Manju Devi, talking about killing of someone or the witness who had seen the appellant and others putting the dead body in the gunny bag, did not disclose the said aspect either to the informant or to the police after the recovery of the dead body.

21.2. PW 1 is the son of the deceased. As per his deposition, he heard *hulla* that his father has been killed and, therefore, he went and identified the body of his father, which was lying near the railway track. The said witness, though deposed that on 27.12.2010 at about 10:00 P.M., Manju Devi had taken his father with her and thereafter his father was killed at Manju Devi's house. During cross-examination, he has stated that his father had



married third time. He came to know about the incident in the morning at about 05:00 AM. The said witness further admitted that railway police reached at the place in the morning at 08:00 AM.

21.3. PW 2 went at the place of occurrence at about 07:00 AM. However, he stated that he did not see the appellant and Manju Devi at the said place. He further deposed that he saw drop of blood up to the house of Manju Devi. The said witness admitted during cross-examination that the wife of the appellant and wife of the deceased contested the election of Mukhiya. He further admitted that he did not have any knowledge of the incident and he did not see anything with his own eyes.

21.4. PW 3, Dasrath Mandal, is the witness upon which the prosecution has mainly placed reliance. The said witness has stated in examination-in-chief that in the morning of 28.12.2010, when he was going to catch a train, he saw that the present appellant and the three co-accused were taking a dead body in a gunny bag. He saw them from a distance of 10 feet. However, during cross-examination, the said witness has stated that he got up at around 02:00 AM on 28.11.2010 and finished his daily chores. He further deposed that he left for the station at about 03:30 AM. Further, he also stated that it takes 20-25 minutes to reach Bhalui Halt from the village on foot. He reached station at



04:00 AM, however, after seeing the incident, he did not go to his destination. It is relevant to note that though the said witness saw the present appellant with three other co-accused taking a dead body in a gunny bag, he did not disclose the said aspect to the informant immediately. Further, from his cross-examination, it is also revealed that the informant came at around 06:00-06:30 AM at the place of occurrence and he had a talk with the informant. However, surprisingly, the informant, whose *fard-beyan* was recorded at 12:30 PM, has not narrated the aforesaid story while giving his *fard-beyan* to the police. This witness has also specifically stated that he explained everything to Satish (informant) that he watched the incident. We are, therefore, of the view that this witness can be termed as a chance witness.

21.5. PW 4 learnt from the people that Manju Devi and Manoj have killed Ramji Mandal and have thrown the dead body. Thus, this witness is a hearsay witness and, in fact, during cross examination, he admitted that his statement was recorded by the police 15 days after the occurrence. Similarly, PW 5 has, though deposed that he saw three persons taking liquor in the house of Manju Devi, he did not identify them. However, thereafter he has further stated that he heard Ramji and Manju talking to go to village to eat fish. However, it is pertinent to note



that the said witness has not stated anything about the presence of the appellant at the said place.

21.6. PW 6, Ranjit Mandal is another witness, upon which the prosecution has placed reliance. As per the version given by the said witness, he woke up for urination at 01:30 AM in the night and at that time he saw that his buffalo was not there in the shed. In course of search of his buffalo, he went near the house of Manju Devi and saw from window inside the house and found 10-15 persons present there, out of whom he identified the present appellant, Manju Devi, Ranju Devi and Mona Devi, some of them were having axe in their hand and they were saying that he is dead, throw him. Thereafter, he returned back to his house. In the morning, on *hulla* that the dead body of Ramji was lying on the track, he reached to the track. However, during cross-examination, the said witness has admitted that the house of Manju Devi is of brick and he cannot say how many rooms are there in it. Further, the house is having boundary on all the four directions. He further stated that he did not go near the house. However, it is pertinent to note that the said witness, in paragraph 4, admitted that his statement was recorded by the police after ten days. We are, therefore, of the view that this witness is a got up witness and also termed as chance witness whose presence near the house of Manju



Devi was not natural. Further, his conduct is also unnatural. Though he went to the place of occurrence early in the morning, he did not inform the informant or any other person with regard to the incident which he saw during night.

21.7. PW 7 has also admitted that he did not see the occurrence with his eyes. The said witness talked about the differences between the family of the deceased and the family of the appellant due to panchayat election.

21.8. PW 8 is the seizure list witness, who put his signature on the seizure list. As per his deposition, *Darogaji* prepared the seizure list and grinding stone was seized. However, he has stated that his statement was recorded after ten days.

21.9. PW 9 is also a hearsay witness. He deposed that the people were saying that someone dumped Ramji at the said place and also saying that Manju Devi and others have killed and thrown the body. During cross-examination, the said witness has said that daughter-in-law of Ramji (deceased) is the Mukhiya at the present and no one dares to speak against them because of their influence. Thus, from the aforesaid, it can be said that wife of the informant and the family of the deceased are very influential persons.



21.10. PW 10 is another witness upon which the prosecution has mainly placed reliance. As per his deposition, on 28.12.2010 in the morning at 03:00 AM, while he was going to receive his brother-in-law from the halt, he saw some persons standing near the house of Manju Devi and they were putting a dead body in a gunny bag. He saw dead body of Ramji and the gunny bag lying near the halt. However, during cross-examination, the said witness has admitted that the police made enquiry from him ten days after the occurrence. Further, the said witness informed that he told Satish (informant) at 06:00 AM that he saw the dead body being put in the gunny bag. However, surprisingly, the informant did not state about the said aspect in his *fard-beyan*, which was given at 12:30 PM. We are of the view that the aforesaid witness is also a chance witness and his presence at the place occurrence during night hours was not natural.

21.11. PW 11 is the informant. However, admittedly, he is not an eye-witness to the occurrence in question. The said witness talked about the enmity between the parties because of panchayat election.

21.12. PW 12 is the Doctor, who had conducted the *post mortem* of the dead body of the deceased. From the deposition of the said witness, it cannot be said that the deceased died



because of the accident. The prosecution has proved the homicidal death of the deceased. However, it is pertinent to note that there is no eye-witness to the occurrence in question and the prosecution has to complete the chain of circumstances from which it can be established that the present appellant has killed the deceased with the help of three other accused.

21.13. PW 13 was the Sub Inspector posted in Railway Police. The said witness prepared the inquest report and during cross-examination, he stated that he reached at the place of occurrence at 06:45 AM, remained there for 4-5 hours. He contacted the local police. Further, it is relevant to note that the said witness specifically admitted that he took the statement of Satish (informant) the son of the deceased at 08:40 AM and also procured his signature on the inquest report. Thus, from the deposition of this witness, it can be said that the statement of the informant was recorded at 08:40 AM. However, what was the version of the informant before the Railway Police has not been produced by the prosecution before the court. Thus, it appears that the prosecution has suppressed the first version of the informant.

21.14. Yet another witness, i.e. PW 14, upon which the prosecution has mainly placed reliance, has deposed that when he was coming to his house, near the house of Manju Devi, he saw



Manoj (appellant) and other five persons were taking liquor. They offered him liquor and, therefore, he also consumed it. At that time, Manoj told that Ramji is to be killed. However, it is relevant to observe at this stage that the said witness has admitted during cross-examination that he gave written information to the police after 15 days of occurrence and two days thereafter he filed an affidavit in the court. He has further admitted that he does not know before whom he got the affidavit prepared but the affidavit was got prepared by Satish Mandal (informant). It is relevant to note that the said witness also reached at the place of occurrence. The said witness has also admitted that Satish Mandal (informant) had beaten him for giving evidence. We are, therefore, of the view that this witness is also a got up witness and can be termed as a chance witness.

21.15. PW 15 is the IO who has carried out the investigation. The aforesaid witness has seized the grinding stone and he found blood on it, despite which he did not send the same to FSL for necessary analysis. On the contrary, the said witness has admitted in paragraph 27 that he did not get the blood found on the grinding stone matched with the blood of Ramji Mandal (deceased).



CONCLUSION:-

22. Thus from the aforesaid evidence led by the prosecution, it can be said that there is no eye-witness to the occurrence in question and the case of the prosecution rests on circumstantial evidence. Though the prosecution has tried to produce the prosecution witnesses deposing that somebody took liquor with the appellant at the house of Manju Devi, somebody saw the deceased in the company of Manju Devi and another witness had seen keeping the dead body in the gunny bag, the prosecution has failed to complete the chain of circumstances, we are of the view that PW 3, PW 5, PW 6, PW 8, PW 10 are chance witnesses whose presence at the relevant place was not natural. Further, their conduct was also unnatural. Though they had seen particular incident, they did not disclose it to the informant or to the police. Further, the statements of most of the witnesses were recorded after more than ten days.

23. At this stage, we would like to refer decision rendered by the Hon'ble Supreme Court in the case of ***Jarnail Singh v. State of Punjab***, reported in **(2009) 9 SCC 719**. The Hon'ble Supreme Court has observed in paragraphs 21 to 23 as under: -

“21. In *Sachchey Lal Tiwari v. State of U.P.* [(2004) 11 SCC 410 : 2004 SCC (Cri) Supp 105] this Court while considering the evidentiary value of



the chance witness in a case of murder which had taken place in a street and a passerby had deposed that he had witnessed the incident, observed as under:

If the offence is committed in a street only a passerby will be the witness. His evidence cannot be brushed aside lightly or viewed with suspicion on the ground that he was a mere chance witness. However, there must be an explanation for his presence there.

The Court further explained that the expression "chance witness" is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country like India where people are less formal and more casual, at any rate in the matter of explaining their presence.

22. *The evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence (Satbir v. Surat Singh [(1997) 4 SCC 192 : 1997 SCC (Cri) 538], Harjinder Singh v. State of Punjab [(2004) 11 SCC 253 : 2004 SCC (Cri) Supp 28], Acharaparambath Pradeepan v. State of Kerala [(2006) 13 SCC 643 : (2008) 1 SCC (Cri) 241] and Sarvesh Narain Shukla v. Daroga Singh [(2007) 13 SCC 360 : (2009) 1 SCC (Cri) 188]). Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded (vide Shankarlal v. State of Rajasthan [(2004) 10 SCC 632 : 2005 SCC (Cri) 579]).*

23. *Conduct of the chance witness, subsequent to the incident may also be taken into consideration particularly as to whether he has informed anyone else in the village about the incident (vide Thangaiya v. State of T.N. [(2005) 9 SCC 650 : 2005 SCC (Cri) 1284]). Gurcharan Singh (PW 18) met the informant Darshan Singh (PW 4) before lodging the FIR and the fact of conspiracy was not disclosed by Gurcharan Singh (PW 18) and Darshan Singh (PW 4). The fact of conspiracy has not been mentioned in the FIR. Hakam Singh, the other witness on this issue has not been examined by the prosecution. Thus, the High Court was justified in*



discarding the part of the prosecution case relating to conspiracy. However, in the fact situation of the present case, acquittal of the said two co-accused has no bearing, so far as the present appeal is concerned.”

24. In the case of ***Rajesh Yadav v. State of U.P.***, reported in **(2022) 12 SCC 200**, the Hon’ble Supreme Court has observed in paragraph 29 as under: -

29. A chance witness is the one who happens to be at the place of occurrence of an offence by chance, and therefore, not as a matter of course. In other words, he is not expected to be in the said place. A person walking on a street witnessing the commission of an offence can be a chance witness. Merely because a witness happens to see an occurrence by chance, his testimony cannot be eschewed though a little more scrutiny may be required at times. This again is an aspect which is to be looked into in a given case by the court. We do not wish to reiterate the aforesaid position of law which has been clearly laid down by this Court in State of A.P. v. K. Srinivasulu Reddy [State of A.P. v. K. Srinivasulu Reddy, (2003) 12 SCC 660 : 2005 SCC (Cri) 817] : (SCC pp. 665-66, paras 12-13)

“12. Criticism was levelled against the evidence of PWs 4 and 9 who are independent witnesses by labelling them as chance witnesses. The criticism about PWs 4 and 9 being chance witnesses is also without any foundation. They have clearly explained as to how they happened to be at the spot of occurrence and the trial court and the High Court have accepted the same.

13. Coming to the plea of the accused that PWs 4 and 9 were “chance witnesses” who have not explained how they happened to be at the alleged place of occurrence, it has to be noted that the said witnesses were independent witnesses. There was not even a suggestion to the witnesses that they had any animosity towards any of the accused. In a murder trial by describing the independent witnesses as



“chance witnesses” it cannot be implied thereby that their evidence is suspicious and their presence at the scene doubtful. Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a street, only passers-by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere “chance witnesses”. The expression “chance witness” is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country where people are less formal and more casual, at any rate in the matter explaining their presence.”

25. In the case of ***Jasobanta Sahu vs. State of Orissa (Cr. Appeal No. 493 of 2022)***, the Hon’ble Supreme Court has held in paragraph 25 as under: -

“25. It will be relevant to refer to the following observations of this Court in the case of Harbeer Singh vs. Sheeshpal and others I :

“22. The High Court has further noted that there were chance witnesses whose statements should not have been relied upon. The learned counsel for the respondents has specifically submitted that PW 5 and PW 6 are chance witnesses whose presence at the place of occurrence was not natural.

23. The defining attributes of a “chance witness” were explained by Mahajan, J., in Puran v. State of Punjab [Puran v. State of Punjab, (1952) 2 SCC 454 : AIR 1953 SC 459 : 1953 Cri LJ 1925] . It was held that such witnesses have the habit of appearing suddenly on the scene when something is happening and then disappearing after noticing the



occurrence about which they are called later on to give evidence.

24. In Mousam Singha Roy v. State of W.B. [Mousam Singha Roy v. State of W.B., (2003) 12 SCC 377 : 2004 SCC (Cri) Supp 429] , this Court discarded the evidence of chance witnesses while observing that certain glaring contradictions/omissions in the evidence of PW 2 and PW 3 and the absence of their names in the FIR has been very lightly discarded by the courts below. Similarly, Shankarlal v. State of Rajasthan [Shankarlal v. State of Rajasthan, (2004) 10 SCC 632 : 2005 SCC (Cri) 579] and Jarnail Singh v. State of Punjab [Jarnail Singh v. State of Punjab, (2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107] are authorities for the proposition that deposition of a chance witness, whose presence at the place of incident remains doubtful, ought to be discarded. Therefore, for the reasons recorded by the High Court we hold that PW 5 and PW 6 were chance witnesses and their statements have been rightly discarded.”

26. Thus, from the aforesaid decisions rendered by the Hon’ble Supreme Court, it can be said that a chance witness is one who happens to be at a place of occurrence by chance and, therefore, not as a matter of course. In other words, he is not expected to be at the said place. Testimony of such witness is required to be scrutinized closely. Further, the conduct of the chance witness subsequent to the incident may also be taken into consideration, particularly as to whether he has informed anyone else in the village about the incident.

27. Keeping in view the aforesaid decisions rendered by the Hon’ble Supreme Court, if the evidence led by the



prosecution in the present case, as discussed hereinabove, is closely examined, it can be said that the aforesaid witnesses can be termed as chance witnesses and, looking to the fact that they did not disclose about the incident which they had seen, to the informant or any other person, raises doubt with regard to their presence at the place of occurrence. Further, statements of most of the witnesses were recorded after 10-15 days of the occurrence.

28. At this stage, we would also like to refer the decision rendered by the Hon'ble Supreme Court in the case of ***Sharad Birdhichand Sarda v. State of Maharashtra* (AIR 1984 SC 1622)**. The Hon'ble Supreme Court has observed in paragraphs 151 to 154, 158 and 159 as under: -

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

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn



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

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

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

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

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

(2) the facts so established should be consistent only with the hypothesis of



the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

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

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

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

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

*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.”

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.”

29. Keeping in view the aforesaid observations made by the Hon'ble Supreme Court, once again if the evidence led by the prosecution in the present case is examined, we are of the view that the prosecution has failed to complete the chain of circumstances from which it can be established that the present appellant has killed the deceased. Thus, when the prosecution has failed to prove the case against the appellant beyond reasonable



doubt, we are of the view that the Trial Court has committed grave error while passing the impugned judgment of conviction and the order of sentence and, therefore, interference is required in the impugned judgment and order passed by the Trial Court.

30. It is relevant to observe, at this stage, that it is the case of learned counsel for the informant that the present appellant has been convicted in the case filed by the wife of the present informant. In the said case, it has been alleged that the informant of the present case has been killed by the present appellant and others. However, learned counsel for the appellant has placed on record the order dated 20.07.2024 passed in Cr. Appeal (DB) No. 83 of 2020 by this Court, whereby this Court has released the present appellant on bail in connection with the said case relying upon the order passed by the coordinate Bench in case of the co-convict of the said case. Further, in the present case, when the prosecution has failed to complete the chain of circumstances from which it can be established that the appellant has committed the alleged offence and when the prosecution has failed to prove the case against the appellant beyond reasonable doubt, merely because the appellant has been convicted in another case, he cannot be convicted in the present case. The said case will



be examined on its own merits when the same will be listed for its hearing.

31. Accordingly, impugned judgment of conviction and the order of sentence dated 24.04.2018, passed by learned Fast Track Court No.II, Civil Court, Lakhisarai, in Sessions Trial No. 474 of 2011, arising out of Lakhi Sarai (Chanan) P.S. Case No. 69 of 2010 (G.R.No.1483 of 2010/Trial No.318 of 18), are quashed and set aside.

32. The appellant is acquitted of the charges levelled against him by the learned Trial Court. He is directed to be released from jail custody forthwith, if his custody is not required in any other case.

33. The present appeal stands allowed.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

Pawan/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	07.05.2025.
Transmission Date	07.05.2025.

