

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1072 of 2012**

Arising Out of PS. Case No.-48 Year-2007 Thana- DIDARGANJ District- Patna

Shankar Sahni, S/o - Rajendra Sahni, Resident of Bonstar, P.S- Didarganj,
Patna City, District- Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Jai Shankar Pathak, Advocate Ms. Swastika, Adv.
For the State	:	Ms. Shashi Bala Verma, APP

**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT**

(Per: HONOURABLE MR. JUSTICE SHAILENDRA SINGH)

Date : 03-07-2025

Heard Mr. Jai Shankar Pathak, learned counsel assisted by Ms. Swastika, Advocate appearing for the sole appellant and Ms. Shashi Bala Verma, learned APP appearing for the State.

2. The present appeal has been preferred by the sole appellant, namely, Shankar Sahni with a prayer to set aside the judgment dated 18.08.2012 and order of sentence dated 24.08.2012 passed by the court of learned 2nd Additional District & Sessions Judge, Patna City, in connection with Sessions Trial Case No. 108 of 2008 arising out of Didarganj P.S. Case No. 48 of 2007, G.R. No. 696 of 2007, whereby and whereunder the appellant has been convicted for the offences under sections 302



and 201 of the Indian Penal Code (herein-after referred to as the “IPC”) and sentenced to undergo rigorous imprisonment for life under section 302 of the IPC, with fine of Rs. 50,000/- and in default of payment of the same, the appellant has been directed to further undergo rigorous imprisonment for three years. The appellant has also been sentenced to undergo rigorous imprisonment for five years under section 201 of the IPC with fine of Rs. 5,000/- and in default of payment of the same, he has been directed to further undergo rigorous imprisonment for one year. Both the sentences have been directed to run concurrently.

Prosecution Story :-

3. The substance of the prosecution story is as follows:-

As per the informant, namely, Rajendra Sahni (examined as P.W.-8), on 16.04.2007, there was marriage ceremony of the daughter of one Luxmi Sahni, in which he was busy and on that day, in the night between 8 to 9 P.M., his son, namely, Munna Sahni went missing, whereafter he searched for him till late night 2 A.M. The next morning, he heard a *hulla* raised by persons who had gone out to attend the call of nature near the bank of river Ganga whereupon he reached near the electric tower and found the dead body of his son lying on the



western side at a distance of about 10 bamboos from that electric tower. The informant has further alleged that the mouth of his son was full of sand and several persons had assembled there. In the meantime, one boy, namely, Bittu Kumar (PW-9), aged about 10 years, son of one Doman Chaudhary, resident of village Banskothi Digha, who had come to his *nanihal* (parental village of his mother), came and stated before him that Shankar Sahni (appellant), aged about 22 years at that time, son of one Rajendra Sahni, resident of village Banstar, had demanded *Shikhar (a kind of Gutka)* at about 8 P.M. in the last night and due to fear, he fled away from there but the appellant caught hold of Munna Sahni (hereinafter referred to as 'deceased or victim') and according to him, it was he (appellant) who had killed the deceased. As per the informant, upon knowing about the incident from Bittu Kumar, his villagers caught hold of the appellant who confessed his guilt before him and the villagers, namely, Uma Shankar Sahni, Bullu Kumar (not examined), Deepak Kumar (PW-2), Krishna Kumar (PW-5) Tula Sahni (PW-7) and Mani Kumar Sahni (PW-3), all residents of Banstar village and also before others and in the meantime, the police came. As per the informant, when the appellant was caught, besides confessing his guilt, he also revealed the reason behind



his act of murder and he stated that the informant's wife (deceased's mother) had helped in fleeing of his sister 10-15 days before the alleged incident, due to which, being enraged, he has killed the deceased by filling sand in his mouth and pressing his neck and thereafter, he had fled away.

4. Giving the details of the aforesaid facts, the informant recorded his fardbeyan on 17.04.2007 at 7:45 A.M. before a police inspector of Didarganj police station. On that basis, the formal FIR bearing Didarganj P.S. Case No. 48 of 2007 was registered for the offences under sections 302 and 201 of the Indian Penal Code (in short 'IPC') against the sole accused, who is the appellant herein, which set the criminal law in motion.

5. After completion of the investigation, the appellant was chargesheeted for the offences under sections 302 and 201 of IPC vide chargesheet No. 60/07 dated 18.04.2007 which shows that the investigation was completed within 24 hours from the time of registration of FIR. Thereafter, the learned Magistrate took cognizance of the alleged offences, for which the appellant had been chargesheeted, vide order dated 21.04.2007 and finding the alleged offences to be triable by the court of Sessions, he committed the case of the appellant to the



court of Sessions for trial, whereafter the case was numbered as Sessions Trial No. 108 of 2008.

6. The appellant was charged with the offences under sections 302 and 201 of IPC by the trial court and the said charges were read over and explained to him in Hindi, to which he pleaded not guilty and claimed to be tried for the charged offences.

7. During the trial, the prosecution produced and examined the following thirteen witnesses :

PW-1	Uma Shankar Sahni, a villager of the informant
PW-2	Deepak Kumar, a villager of the informant
PW-3	Mani Sahni, a villager of the informant
PW-4	Rajesh Sahni, a villager of the informant
PW-5	Krishna Kumar, a villager of the informant
PW-6	Keshwar Sahni, a villager of the informant
PW-7	Tula Sahni, a villager of the informant
PW-8	Rajendra Sahni, informant
PW-9	Bittu Kumar, the maternal nephew of the deceased
PW-10	Jai Krishna Bihari Prasad, the investigating officer
PW-11	Dr. Radha Raman Singh, who conducted postmortem examination of the deceased
PW-12	Parmanand Singh, a formal witness
PW-13	S.N. Ram, then Judicial Magistrate, who recorded the confessional statement of Shankar Sahni (appellant) under section 164 of Cr.P.C.

8. In documentary evidence, the prosecution proved the following documents and got them marked as exhibits which are as under : -

Ext. -1	The signature of a witness, namely, Uma Shankar Sahni (PW-1) on the fardbeyan
Ext. -1/1	The signature of a witness, namely, Mani Kumar Sahni (PW-3) on the fardbeyan



Ext. -1/ 2	The signature of a witness, namely, Rajesh Sahni (PW-4) on the seizure list
Ext. -2	Written report
Ext. -3	The carbon copy of the inquest report
Ext. -4	The seizure list
Ext. -5	Formal FIR
Ext. -6	Postmortem report of the deceased
Ext. -7	The statement of the accused/appellant recorded under section 164 of Cr.P.C.

9. After the completion of prosecution's evidences, the statement of the appellant was recorded by the trial court under section 313 of the Code of Criminal Procedure (in short 'Cr.P.C.') giving him an opportunity to explain the main circumstances appearing against him from the prosecution's evidences which were denied by him. While recording the said statement, the appellant claimed himself as an innocent person and in respect of his confessional statement recorded under section 164 of Cr.P.C., he stated that owing to the fear of one Moti Sahni, who was the elder uncle of the deceased, he confessed the offences in the court.

10. In defence, the appellant did not give any evidence.

11. While convicting the appellant, the learned trial court mainly took into account the confession made by the appellant before the Judicial Magistrate under section 164 of Cr.P.C. and deemed the material facts stated by the prosecution witnesses PW-1 to PW-9 as having remained unchallenged in



their cross-examination, who supported the case of prosecution in their examination-in-chief.

Submissions made on behalf of the appellant :-

12. Learned counsel appearing for the appellant has argued that in the present matter, there is no eyewitness of the alleged occurrence of murder and the case of prosecution is based on circumstantial evidences but all the links to constitute the complete chain of all alleged material circumstances are not complete, so, in the light of the principles laid down by the Hon'ble Apex Court in the judgment passed in the case of **Sharad Birdhichand Sarda vs. State of Maharashtra** reported in **(1984) 4 SCC 116**, the appellant ought to have not been held guilty by the trial court as the prosecution failed to show that all the alleged circumstances were conclusive and consistent only with the hypothesis of the guilt of the appellant. In support of this submission, the learned counsel has referred to paragraph Nos. 153 and 154 of the said cited judgment, which are being reproduced as under for ready reference :-

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

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

It may be noted here that this Court indicated that the



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

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

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

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

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

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

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

It has been further argued that as per the prosecution story, the appellant firstly took the victim to the shop of one



person, namely, Ajay Kumar, from where the deceased was taken towards the bank of the Ganga river and since then he went missing, so, the said Ajay Kumar was the person who lastly saw the victim in alive position in the company of the appellant and he was the best person to establish the main circumstance of last seen of the deceased with the appellant, which has not been proved by the prosecution by producing and examining the said Ajay Kumar.

Learned counsel further argued that the learned trial court mainly placed reliance upon the appellant's own statement recorded under section 164 of Cr.P.C., deeming it as his confession before the Judicial Magistrate but did not examine the voluntariness and truthfulness of the said confession and further, there was no corroboration to the appellant's said confession by a reliable evidence, so, the approach of the learned trial court while appreciating the appellant's own statement recorded under section 164 of Cr.P.C. was completely wrong and also against the established principles of law. In support of this contention, the learned counsel has placed reliance upon the judgment of the Hon'ble Apex Court passed in the case of **S. Arul Raja vs. State of Tamil Nadu**, reported in **2010 (4) PLJR (SC) 25** and has referred the paragraph No. 43



of the said judgment which is being reproduced as under for ready reference :-

“43. section 164 Cr.P.C. provides guidelines to be followed for taking the statement of the accused as a confession. The one essential condition is that it must be made voluntarily and not under threat or coercion. This Court in Alope Nath Dutta & Ors. vs. State of West Bengal reported in (2007) 12 SCC 230 held as under :-

“87. Confession ordinarily is admissible in evidence. It is a relevant fact. It can be acted upon. Confession may under certain circumstances and subject to law laid down by the superior judiciary from time to time form the basis for conviction. It is, however, trite that for the said purpose the court has to satisfy itself in regard to: (i) voluntariness of the confession; (ii) truthfulness of the confession; (iii) corroboration.

88. This Court in Shankaria v. State of Rajasthan stated the law thus: (SCC p. 443, para 22)

“22. This confession was retracted by the appellant when he was examined at the trial under section 311 CrPC on 14.6.1975. It is well settled that a confession, if voluntarily and truthfully made, is an efficacious proof of guilt. Therefore, when in a capital case the prosecution demands a conviction of the accused, primarily on the basis of his confession recorded under section 164 CrPC, the court must apply a double test:

(1) Whether the confession was perfectly voluntary?

(2) If so, whether it is true and trustworthy?

Satisfaction of the first test is a sine qua non for its admissibility in evidence. If the confession appears to the



court to have been caused by any inducement, threat or promise such as is mentioned in section 24, Evidence Act, it must be excluded and rejected brevi manu. In such a case, the question of proceeding further to apply the second test, does not arise. If the first test is satisfied, the court must, before acting upon the confession reach the finding that what is stated therein is true and reliable. For judging the reliability of such a confession, or for that matter of any substantive piece of evidence, there is no rigid canon of universal application. Even so, one broad method which may be useful in most cases for evaluating a confession may be indicated. The court should carefully examine the confession and compare it with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. If on such examination and comparison, the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the second test”.”

Learned counsel has further argued that in the present matter, prosecution witness Bittu Kumar (PW-9) is said to be the star witness of the prosecution but his evidence cannot be deemed to be admissible in the eye of law due to two reasons. Firstly, his statement was not recorded under section 161 of Cr.P.C. by the I.O. and secondly, he was not a competent witness in light of the provisions contained in section 118 of the Indian Evidence Act as he was a child witness at the time of recording of his evidence and the learned trial court did not examine his competency as a witness in proper manner. In support of this



submission, learned counsel has placed reliance upon the judgment of the Hon'ble Apex Court passed in the case of **Pradeep vs. State of Haryana** reported in **AIR 2023 SC 3245** and has referred to paragraphs Nos. 9, 10 & 11 of the said judgment, which are being reproduced herein below :-

“9. Before recording evidence of a minor, it is the duty of a Judicial Officer to ask preliminary questions to him with a view to ascertain whether the minor can understand the questions put to him and is in a position to give rational answers. The Judge must be satisfied that the minor is able to understand the questions and respond to them and understands the importance of speaking the truth. Therefore, the role of the Judge who records the evidence is very crucial. He has to make a proper preliminary examination of the minor by putting appropriate questions to ascertain whether the minor is capable of understanding the questions put to him and is able to give rational answers. It is advisable to record the preliminary questions and answers so that the Appellate Court can go into the correctness of the opinion of the Trial Court.

10. In the facts of the case, the preliminary examination of the minor is very sketchy. Only three questions were put to the minor on the basis of which the learned Sessions Judge came to the conclusion that the witness was capable of giving answers to each and every question. Therefore, the oath was administered to him. Following are the questions put to him:—

“Q. In which school you are studying?

Ans. I am studying in Govt. Primary School, Barwashni.

Q. What is occupation of your father?

Ans. My father is a Pujari in a Mandir named Hanuman, at Gohanba.

Q. Should one speak truth or false?

Ans. Truth.”

11. We are of the view that the learned Sessions Judge has not done his duty. Nevertheless, we have carefully scrutinised the evidence of the minor witness Ajay. In the



examination-in-chief, he stated that on the night of 30th December 2002, the accused entered his house by breaking a window. While the appellant held his mother by his hands, accused no. 1 assaulted her with a knife. When he tried to rescue his mother, accused no. 1 gave a blow on his back by knife. He stated that he was hiding in the house after the accused fled and he disclosed the incident to milkman Surender who came to the house at 5 a.m. In the examination-in-chief, he deposed about the incident of cutting of crops on their family land by accused nos. 1 and 2, which had taken place 6 to 7 months prior to the date of the offence. He stated that though the accused indulged in the said act, no action was taken as the appellant's father apologised. In the cross-examination when the witness was confronted with his statement recorded by the police, he admitted that this incident was not recorded therein. In the cross-examination, the witness volunteered that the accused present in the Court had murdered his mother and they were drunk. However, he accepted that the allegation that the accused were drunk was not recorded in his statement recorded by the police.”

Submissions made on behalf of the State:-

13. On the other hand, Ms. Shashi Bala Verma, learned APP appearing for the State has argued that though the instant matter is based on circumstantial evidences but all the material circumstances to complete the entire chain were established by the prosecution before the trial court by adducing sufficient number of witnesses and the most important material going against the appellant is his own confession before the Judicial Magistrate and the same gets corroboration from the medical evidence given by Dr. Radha Raman Singh (PW-11), who conducted the postmortem examination over the body of



the deceased and also from the evidence of PW-1, PW-2, PW-3, PW-5 and PW-7, before whom the appellant accepted his guilt when he was first caught by his co-villagers just next day of the victim having gone missing. The said confession is completely reliable and trustworthy and the learned Magistrate complied with all the mandatory requirements mentioned under section 164 of Cr.P.C. while recording the appellant's confession and at that time, the appellant was not under any influence of the police or any person as he was in judicial custody at that time and there are sufficient materials to deem the appellant's confession as having been made by him voluntarily, hence, the learned trial court rightly convicted the appellant for the charged offences and there is no scope to interfere with the same.

Consideration and Analysis:-

14. We have heard both the sides and perused the judgment impugned as well as the evidences adduced by the prosecution which are available on the record of trial court and also gone through the statement of appellant.

15. Before us, the main points for consideration are:-

(i) whether the prosecution succeeded in establishing all the circumstances, which according to the prosecution, are clearly indicative of the guilt of the appellant in



the commission of the alleged murder of the deceased and whether there is no scope of any reasonable doubt and whether the circumstances which are claimed as having been established by the prosecution are so consistent that only hypothesis of the guilt of the appellant can be made;

(ii) Whether the appellant's statement recorded by the Judicial Magistrate (PW-13) comes in the purview of a confession, if yes, then whether it was recorded in proper manner by Magistrate as per the provisions of sections 164 and 281 of Cr.P.C. and whether it can be deemed to be trustworthy, reliable and having been made by the appellant voluntarily without any influence and whether the said confession in itself is sufficient to convict the appellant for the charged offences or not.

16. From the prosecution story, the following main circumstances have emerged out :-

(a) On 16.04.2007, there was a marriage ceremony of the daughter of one person, namely, Luxmi Sahani and on that day, the informant was busy in the said ceremony.

(b) On 16.04.2007, in the night, the informant's son aged about eight years (deceased) went missing, who was searched by the informant and others till late night.



(c) On the morning of 17.04.2007 i.e. the next day of the day when the deceased went missing, the dead body of the deceased was found near an electric tower by the villagers.

(d) The victim's mouth was found filled with sand.

(e) Several persons assembled at the place of occurrence and during the course thereof, one boy namely, Bittu Kumar (PW-9), aged about 10 years, came and revealed the initial alleged role of the appellant in commission of the occurrence.

(f) According to the said Bittu Kumar (PW-9), the appellant first demanded *Shikhar (Gutka)* from him, though he managed to escape by fleeing away but the deceased was taken by the appellant.

(h) The appellant was caught hold by the villagers and before informant and PWs-1, 2, 3, 5, 7 and others, the appellant accepted his guilt.

17. Now, we would discuss the evidences given by the prosecution's witnesses to find out whether the aforesaid circumstances can be deemed as having been established by their evidences or not.

18. The prosecution witness Uma Shankar Sahni (PW-1) deposed in the examination-in-chief that the alleged



occurrence took place on 16.04.2007, on that day, there was a marriage ceremony in the house of Luxmi Sahani and during that course, Munna Sahni (deceased) went missing, who was not found despite searching him and on 17.04.2007, in the morning while he was going towards the bank of Ganga river to attend the call of nature, he heard *hulla* and when he went near the electric tower, he saw the dead body of the deceased lying there. He further deposed that in the meantime, Bittu Kumar (PW-9), maternal grandson of the brother of the informant, came and revealed that in the late last night, the appellant Shankar Sahni told him to bring *Shikhar* and then he (appellant) took the deceased with him to bring Biscuit but he fled away and the deceased was taken by him (appellant). He further stated that on search, the appellant was caught, who suspected that it was the deceased's mother who had helped in fleeing of his sister, so, due to this reason, he had killed the deceased. He further stated in his examination-in-chief that before the police, the appellant accepted his guilt also. This witness identified his signature being made by him on the fardbeyan of the informant, which was marked as Ext.-1. Regarding these facts as stated by this witness in the examination-in-chief, no cross-examination was done by the defence. In the cross-examination only one question



was put to which this witness stated that he had no any enmity with the accused/appellant.

19. The prosecution witness PW-2, namely, Deepak Kumar deposed in his examination-in-chief, similar facts as stated by PW-1 such as regarding the marriage ceremony in the house of one Luxmi Sahni being solemnized on 16.04.2007 as well as the factum of missing of the deceased on that day and regarding the other relevant facts, he deposed that in the morning of 17.04.2017, he and Uma Shankar Sahni (PW-1) went outside to attend the call of nature then he heard a *hulla* about the presence of a dead body and when he went there, Bittu Kumar (PW-9) had also arrived there, who told that in the last night, he (PW-9) and the deceased were playing then the appellant took them to a Gutka shop, from where he managed to flee away but the deceased remained with the appellant. He further deposed that in the course of search, the appellant revealed that he had killed the deceased. Regarding the motive of the appellant to commit the alleged murder as stated by PW-1, the same motive was also revealed by this witness in his examination-in-chief and he stated that the appellant confessed his guilt before the police. This witness also identified the appellant in the court room of the trial court. In the cross-



examination, he stated that he saw the dead body of the deceased lying near the bank of Ganga river and Uma Shankar Sahni (PW-1) had seen the dead body before him. He further stated in his cross-examination that he had no enmity with the appellant. Regarding the material facts upon which the case of the prosecution is based, as stated by this witness in his examination-in-chief, no cross-examination was made by the defence counsel before the trial court.

20. The prosecution witness Mani Sahni (PW-3) stated in his examination-in-chief that the occurrence took place in the night of 16.04.2007, on that day, there was a marriage ceremony of the daughter of Luxmi Sahani and in the meantime, Munna Kumar (deceased) went missing and then he was searched but he was not found in the whole night and on the next day, he (PW-3) got an information that a dead body had been found near the electric tower and upon getting the said information, he went there and identified the dead body as being that of Munna Kumar and at that time, the age of the deceased was 8 years. This witness further deposed in his examination-in-chief that Bittu Kumar (PW-9) came and informed that the deceased had been taken by the appellant to a Gutka shop in the last night and at that time, he (PW-9) managed to flee away but



the deceased was taken by the appellant and on 17.04.2007 during the course of search the appellant was found and on interrogation, the appellant stated that he had killed the victim on account of the deceased's mother having helped in the fleeing of his sister. This witness further stated in his examination-in-chief that the appellant accepted his guilt before the police also. This witness identified his signature on the fardbeyan which was marked as Ext.- '1/1' and he also identified the appellant in the court room. In his cross-examination, he stated that he had no any enmity with the appellant and the dead body was seen at 7 A.M. in the morning near the tower.

21. The prosecution witness Rajesh Sahni (PW-4) is mainly a witness of the seizure of a small rope and a handkerchief. He stated in his examination-in-chief that the alleged occurrence took place on 16.04.2007 and in the morning of 17.04.2007, he heard *hulla* about a dead body being thrown, then he went to the place of occurrence and found the body of the deceased there and after sometime the police arrived and a small rope measuring 1½ to 2 feet and a blue colour handkerchief were seized from the place of occurrence, of which the seizure list was prepared before him. This witness has



identified his signature on the said seizure list which was marked as Ext.- '1/2'. In his cross-examination, he stated that the alleged occurrence took place on 17.04.2007 at 5:00 A.M and at that time he had gone to attend the call of nature, when he heard *hulla*. He further stated that he had no enmity with the appellant.

22. The prosecution witness Krishna Kumar (PW-5) stated in his examination-in-chief that the alleged occurrence took place on 16.04.2007 and on that day, there was a marriage ceremony of the daughter of Luxmi Sahani and he was present in that ceremony. The appellant, Munna Kumar (deceased) and the deceased's family members were also present there. He further stated that the victim's grandmother was searching for the victim and in the morning of 17.04.2007, a dead body was found lying near the electric tower on the bank of river Ganga and thereafter, he and others reached there and identified the dead body as being that of the victim and in the meantime, Bittu Kumar (PW-9) arrived there and revealed that he and the deceased were taken by the appellant to bring *Gutka* but he managed to flee away on the way and the appellant took the deceased with him. He further stated that the mother of the deceased and the appellant's sister did labour work together and



the appellant's sister had fled away with a boy, for which, the appellant suspected the mother of the deceased to be involved in the fleeing of his sister. This witness further stated in his examination-in-chief that during the course of search, the appellant was found and upon interrogation, he accepted before the villagers that he had killed the deceased and in the meantime the police had also arrived, before whom too the appellant accepted his guilt. In his cross-examination, this witness stated that he had no enmity with the appellant and the appellant accepted his guilt before him and others and he had seen the deceased's mouth being filled with sand and there was no previous enmity between the appellant's sister and the deceased's mother.

23. The prosecution witnesses Keshwar Sahni (PW-6) and Tula Sahni (PW-7) deposed almost in the same manner like the abovementioned witnesses and revealed in their cross-examination that they had no enmity with the appellant. In the examination-in-chief they stated that the appellant accepted his guilt in the commission of the alleged murder.

24. The prosecution witness Rajendra Sahni (PW-8) is the informant of the present matter as well as the father of the deceased. In the examination-in-chief, he stated that on



16.04.2007 there was a marriage ceremony of the daughter of Luxmi Sahani, in which he, Munna Kumar (deceased), Bittu Kumar (PW-9) and the appellant were also present and the guests of the marriage came at 8 P.M and after taking the dinner he went to his house at 10 P.M. then he found that his mother was searching for his son (victim). He had also searched for his son but he was not found at that time and on the next day, he heard *hulla* about the dead body of a boy lying near the electric tower, whereafter he went there and saw the dead body of his son and at that time, the persons of his *mohalla* had also come and in the meantime, Bittu Kumar (PW-9) arrived and revealed that he and the deceased (victim) were taken by the appellant for buying *Gutka* and biscuit but he managed to flee away while the victim was taken by the appellant. This witness further deposed in the examination-in-chief that during the course of search, the appellant was found and upon interrogation, the appellant accepted that he had killed the victim. Regarding the motive of the appellant to commit the alleged occurrence, this witness revealed the same reason as stated by other witnesses. He further stated in his examination-in-chief that he informed the police, which arrived and recorded his *fardbeyan* and the same was read over to him and thereafter, he had made his thumb



impression upon it. In his cross-examination, he stated that the incident took place in the night and the dead body of his son was found near the electric tower on the bank of river Ganga and the appellant accepted his guilt before him as well as the people of his mohalla and near the dead body, one rope made of *Nebar*, 1½ hand long and one blue colour handkerchief were recovered. He stated in the cross-examination that he had no enmity with the appellant.

25. The prosecution witness Bittu Kumar (PW-9) is the most important witness of the prosecution. As per the prosecution story, he was the person who saw the victim lastly with the appellant and his evidence is also important with regard to the conduct of the appellant. He deposed in the examination-in-chief that the deceased was his uncle and at the time of the death of the deceased, he was at the house of his maternal grandmother and on that day there was a marriage ceremony of the daughter of Luxmi Sahani and he and the deceased were also present there and they were playing. In the meantime, the appellant came and asked them to accompany him to a shop, whereafter he and the deceased along with the appellant went to the shop of one person, namely, Ajay Ji where the appellant purchased biscuit and *gutka* and after that the appellant asked



them to go towards the bank of river Ganga for walking, he (PW-9) fled away and the deceased was taken away by the appellant and at that time he became afraid so, in the night, he did not tell anyone about the said facts. He had further stated in his examination-in-chief that on the next day, upon hearing *hulla*, he went near the tower and saw the dead body of the deceased lying there and at that time, he revealed before the villagers about the act of the appellant. Only one question was put before this witness in his cross-examination by the defence upon which he stated that the incident had taken place one year back and the appellant killed the deceased near the tower in the night.

26. The prosecution witness Jai Krishna Bihari Prasad (PW-10) is the investigating officer. He deposed in his examination-in-chief that on 17.04.2007 he got the information that one child had been killed and regarding that information, a Sanha bearing No. 420/2007 was entered with date 17.04.2007 and thereafter, for necessary action, he along with Station House Officer (SHO) and other police personnel went to the place of occurrence and the SHO, Suresh Kumar Singh, recorded the *fardbeyan* of the informant at the place of occurrence. This witness has identified the said *fardbeyan* which was marked as



Ext.- '2'. He further stated that the inquest report of the deceased was also prepared by him and he identified the carbon copy of the said inquest report and according to him, the carbon copy was prepared with the original inquest report. The inquest report was exhibited as Ext.- '3'. He stated that he inspected the place of occurrence which was situated behind an iron factory at a distance of 500 *Gaj* from Banstar village and the informant's house was situated at a distance of 500 *Gaj* on the western side of the place of occurrence and 200 *Gaj* on the western side of the electric tower and the dead body was found in a ditch. This witness further stated that the informant himself produced the handkerchief and rope, which were seized by making a seizure list. The said seizure list was proved by this witness and the same was marked as Ext. '4'. In his cross-examination, this witness stated that the rope, which was made of *Puaal* and the handkerchief were found near the dead body.

27. The prosecution witness Dr. Radha Raman Singh (PW-11) is a medical expert who conducted the postmortem examination of the dead body of the deceased and upon external examination, he found multiple abrasions around both angles of mouth, size of which was ranging from 3 cm x 1cm to ½ cm x ½ cm and these were also found on the right side



of face. Upon internal examination, he gave the following findings : -

(i) The viscera were found congested, heart chambers were full, Bladder was empty, stomach content was about 1 ml, some digested rice food stuff.

(ii) In oral cavity, esophagus and in tracheal tube massive amount of soil and sand were found.

(iii) Bruise was found on left parietal region on the area of 3cm x 2cm, on right temporal region on the area of 2 cm x 2 cm, subdural hemorrhage was found.

(iv) Viscera were preserved.

This witness proved the postmortem report which was marked as Ext.- '6' and the defence counsel did not turn up to cross-examine this witness, so, the witness was discharged without any cross-examination.

28. The prosecution witness Parmanand Singh (PW-12) is a formal witness. He identified the signature and contents of the statement recorded under section 164 of Cr.P.C. being in the writing of the then Judicial Magistrate First Class, namely, S.N. Ram, who had recorded the statement of the appellant under section 164 of Cr.P.C. and the same was marked as Ext. - '7' and the Magistrate was examined as PW- '13'.

The prosecution witness S.N. Ram (PW-13) deposed in his examination-in-chief that on 21.04.2007, he was posted as Judicial Magistrate, First Class and on that day, he recorded the



statement of one Shankar Sahni (appellant), which is in his writing and signature. As per this witness, the accused confessed his guilt in Central Jail, Patna and he had recorded his confession. In cross-examination, he stated that the accused was produced before him by the Jail authority for the first time and he had warned him that if he would confess his guilt then the same may be used against him and the same may be the basis of his conviction.

29. At first, we would discuss the evidentiary value of the appellant's confessional statement recorded by the Judicial Magistrate under section 164 of Cr.P.C. It is settled principle of law that a confession recorded under section 164 of the Cr.P.C. is generally admissible as an evidence and can be used to establish the guilt but such confessional statement is not considered as a substantive piece of evidence on its own. It can only be used to corroborate or contradict the statements made in the court and is generally considered only when it has been recorded after having complied with all the mandatory provisions of section 164 of Cr.P.C. and in accordance with the provisions of section 281 of Cr.P.C., thus before placing reliance upon such confession, it has to be seen whether such confession has been made voluntarily without any pressure or threat or



under influence and when both the conditions are fulfilled then it has to be seen whether such confession is true and trustworthy, only thereafter, it can be used as corroborative to other evidences which are against the accused and are indicating his guilt. In this regard, the principles laid down by the Hon'ble Apex Court in the case of **S. Arul Raja (Supra)** are relevant. As per section 164 (4) of the Cr.P.C, every confessional statement under section 164 of the Cr.P.C. is to be recorded in the manner prescribed in section 281 of Cr.P.C., for recording the examination of an accused person and shall be signed by the person making the confession and the Magistrate shall make his memorandum on the foot of such record to the following effect:-

"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him."

In the present matter, Ext.-7, which is said to be the confessional statement of the appellant recorded under section 164 of Cr.P.C., shows that the Magistrate's memorandum as required to be mentioned at the foot of the record of confession, is in a typed format, upon which the concerned Magistrate



simply made his signature and the same does not show the application of his judicial mind to the contents of the typed memorandum.

30. We now come to the manner in which the purported confession of the appellant was recorded. Though at the time of recording the confession, the appellant was in judicial custody and not in police custody and the appellant's counsel has not taken the plea that at the time of recording the confession, the appellant was under any kind of influence, pressure or threat though while recording his statement under section 313 of Cr.P.C. he took the plea that he had made confession in the court due to fear of the uncle of the deceased but in this regard, no evidence was given by him in defence. Nonetheless, if we take into account the spirit of sections 164 and 281 of Cr.P.C. then we find that the confession of an accused should not be recorded in the form of leading questions, since such questions suggest the answer to the person before whom the leading question is put and the leading question can compromise the integrity of the confession and also the accused's right to a fair trial. While recording the confession under section 164 of the Cr.P.C., the Magistrate should allow the accused to express himself freely without prompting or making



suggestion. Though such confession can be recorded in the question and answer form but the leading question must not be asked. In the instant matter, the learned Magistrate simply put one question containing the entire charge which is reproduced *Ad Verbatim* herein below:-

" प्रश्न - आप पर आरोप है कि आप ने 16.04.2007 को 8:00 – 9:00 बजे रात में मुन्ना साहनी पिता राजेंद्र साहनी उम्र 8 वर्ष को गंगा किनारे जाने वाले दुल्लापुर बिजली टावर के पास उसके मुंह में बालू कोचकर व गर्दन दबाकर मार दिया व वह भाग गए तथा लाश को छुपाया। मुन्ना साहनी मृतक पुल राजेंद्र साहनी उम्र 8 वर्ष निवासी मोहल्ला बस्तर थाना दीदारगंज जिला पटना की मैंने जानबूझकर हत्या की जानबूझकर हत्या किया। प्रतिशोध उक्त की भावना से किया है।

उत्तर - जी हां। "

So, the aforesaid manner in which the appellant's confession was recorded, was not proper as the concerned Magistrate simply put a question giving the details of the allegations to the appellant and after asking the said question, the concerned Magistrate became silent which shows that he did not try to find out the voluntariness of such confession and we are of the opinion that when a confessional statement of an accused is to be recorded under section 164 of Cr.P.C., then after giving the necessary warning as required under section 164(2) of Cr.P.C, the questions in the following manner may have been



put :-

(i) सर्वप्रथम अपराधिक घटना का संक्षिप्त विवरण देते हुए लेकिन अभियुक्त के आरोपित कृत्य का उल्लेख नहीं करते हुए यह पूछा जाना चाहिए कि क्या आप जानते हैं कि आप इस अपराध में अभियुक्त हैं ?

(Firstly, while giving a brief details of the alleged crime but without mentioning the alleged act or role of the accused, it should be asked, do you know that you are accused of this crime ?)

Note : - यदि उत्तर सकारात्मक दिया जाता है तो अगला यह प्रश्न पूछा जाना चाहिए :

(If the answer is positive then this question should be asked next:)

(ii) इस अपराध के बारे में आपको क्या जानकारी है ?

(What do you know about this crime?)

(iii) इस मामले से संबंधित अपराध किसके द्वारा किया गया है ?

(Who has committed the said crime related to this case?)

Note: - If in the aforesaid questions, the accused gives an answer in which he accepts or shows the commission of the alleged offence having been committed by him then the following question should also be put to him :-

(iv) उपरोक्त अपराध जिसे आपने अपने द्वारा किया जाना स्वीकार किया है, यह बताएं कि आपने यह अपराध किस तरीके से एवं कब किया है ?



(The above mentioned crime which you have admitted to have been committed by yourself, please state how and when did you commit this crime?)

If the confessional statement of an accused is recorded in the aforesaid manner then the same can be deemed to be proper but in the present matter, the learned Magistrate put only one question giving the details of the entire allegations, upon which, the appellant gave only one answer as "जी हां।", which is not proper, and therefore, we do not deem it fit and proper to place reliance upon the appellant's statement which is said to be of his confessional statement recorded under section 164 of Cr.P.C., upon which the learned trial court has mainly relied while convicting the appellant, which was not proper.

31. Now, we come to the circumstances which are material in the present matter. We have to find out whether all the material circumstances appearing from the prosecution story were sufficiently proved by the prosecution or not. It is an admitted position that there is no direct evidence in this matter and no one has claimed to have seen the commission of the alleged murder of the deceased by the appellant. On 16.04.2007, there was a marriage ceremony of the daughter of one Luxmi Sahani in the village of the informant and on that day in the night at about 08:00 -09:00 P.M., the informant's son namely,



Munna Sahni (victim) aged about 8 years went missing and just next day in the morning, the victim's dead body was found near an electric tower and during the course thereof, one Bittu Kumar (PW-9) aged about 10 years came there and revealed that the appellant took him and the victim to the shop of one Ajay Ji but he managed to flee away while the victim was caught by the appellant and as per the informant, after revealing the alleged act of the appellant by Bittu Kumar (PW-9), the appellant was caught and then the appellant divulged that he had killed the victim by filling sand in the mouth of the victim and pressing his neck and the said confession was made by the appellant before the informant and several co-villagers, of whom, many were examined before the trial court. If we believe the said prosecution story then it appears that it was Bittu Kumar (PW-9) who had lastly seen the victim in the captivity or company of the appellant. Though PW-9 supported his allegation in the court while deposing but the learned counsel appearing for the appellant has argued that his evidence should not be taken into account as admittedly the statement of PW-9 was not recorded by the investigating officer under section 161 of Cr.P.C. and the said fact has been accepted by the learned APP appearing for the State during the course of argument. In view of this contention,



we have perused the record and found that though it is correct to say that the said witness was not examined by I.O. but merely on the said ground, the testimony of PW-9 can not be discarded entirely, nonetheless evidently the veracity of the said witness could not have been tested on account of non-availability of his statement under section 161 of Cr.P.C. which could have been used to contradict him by drawing his attention towards his previous statement during the course of cross-examining him in light of provision contained in section 145 of the Indian Evidence Act and in such a situation, the court evidence of this witness ought to have been examined with great care. In this regard reference be had to a judgment rendered by the Hon'ble Apex Court in the case of **Ram Lakhan Singh & Ors. vs. State of Uttar Pradesh**, reported in (1977) 3 SCC 268, paragraph No. 37 whereof is reproduced herein below :-

“ 37. It is true that no enmity or grudge is suggested against this witness, but we find that this witness was not even examined by the police nor was he cited in the charge-sheet. In a grave charge like the present, it will not be proper to place reliance on a witness who never figured during the investigation and was not named in the charge-sheet. The accused who are entitled to know his earlier version to the police are naturally deprived of an opportunity of effective cross-examination and it will be difficult to give any credence to a statement which was given for the first time in Court after about year of the



occurrence. We cannot, therefore, agree that the High Court was right in accepting the evidence of this witness as lending assurance to the testimony of other witnesses on the basis of which alone perhaps the High Court felt unsafe to convict the accused.”

Yet another aspect of the matter is that although the defence counsel himself remained fully careless while cross-examining PW-9 but the trial court itself discharged its judicial function like a moot spectator and the power conferred under section 165 of the Indian Evidence Act was not exercised by the learned trial court. Moreover, PW-9 was only 10 years old boy at the time of revealing the alleged role of the appellant and in the whole night of 16.04.2007, he remained mum and went to sleep and suddenly, on the next day when the dead body of the victim was found, he appeared and revealed the alleged act of the appellant. Furthermore, during the trial, PW-9 improved his version to some extent and he stated that he and the victim were taken by the appellant to a shop of one person, namely, Ajay Ji where the appellant purchased biscuit and *Gutka* and thereafter, the appellant asked them to go towards Ganga river for walk. But such story was not revealed by PW-9 initially before the informant and other witnesses before whom PW-9 had first revealed the alleged role of the appellant and further the prosecution did not produce the said shopkeeper, namely, Ajay



Ji, who was the best person to prove the factum of last seen of the deceased in the company of the appellant, so, in view of these facts, the theory of last seen, which is the most important part of the entire chain of the alleged circumstances, can not be deemed to have been proved by reliable evidence, thus the prosecution has not been able to succeed in proving the main circumstance which is most important to connect the other links with the entire chain of alleged circumstances. Here, it is important to mention that before the trial court the defence counsel remained careless in cross-examining the prosecution witnesses including the star witness PW-9 as only one or two questions were asked from the material witnesses and no cross-examination was done in respect of the material circumstances which were revealed by the prosecution witnesses in their examination-in-chief and while convicting the appellant, the learned trial court deemed the evidence of these prosecution witnesses as unchallenged and the same was taken into consideration by the trial court while convicting the appellant but it is settled position of law that the primary burden of the prosecution to prove the charged offences beyond reasonable doubt does not shift from the prosecution except in some exceptions and the Hon'ble Apex Court has consistently held



that the burden of proving the guilt of the accused, including in cases where the accused admits guilt under section 164 of the Cr.P.C., rests primarily on the prosecution and the prosecution must prove its case beyond reasonable doubt and an admission by the accused does not automatically relieve the prosecution of its burden. So, in this regard, the trial court's approach was not proper and all the material evidences ought to have been judged independently and judiciously without being prejudiced with the casual approach of defence counsel in cross-examining the prosecution's witnesses.

32. Now, we come to the extra judicial confession of the appellant. It is well settled position of law that the extra judicial confession is considered to be a weak evidence by itself and the same has to be examined with greater care and caution. In this regard, we would like to refer to the principles laid down by the Hon'ble Apex Court in a judgment passed in the case of **Sahadevan and Another vs. State of Tamil Nadu** reported in **(2012) 6 SCC 403**, which have also been reiterated by the Hon'ble Apex Court in a recent judgment passed in the case of **Ramu Appa Mahapatra vs. State of Maharashtra**, reported in **(2025) 3 SCC 565**. The principles laid down in the case of Sahadevan & Another (supra) are being reproduced herein under



: -

“16. by the accused :

(i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

(ii) It should be made voluntarily and should be truthful.

(iii) It should inspire confidence.

(iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law.”

Reference in this regard be also had to the judgments rendered by the Hon’ble Apex Court in the following cases : -

(i) Judgment rendered in the case of **Ratnu Yadav vs. State of Chhattisgarh**, reported in **2024 SCC Online SC 1667**;

(ii) Judgment rendered in the case of **Pawan Kumar Chourasia vs. State of Bihar**, reported in **(2023) 18 SCC 414**;



(iii) Judgment rendered in the case of **Sanjay vs. State of Uttar Pradesh**, reported in **2025 SCC Online SC 572**.

33. In the present matter, the informant has stated in his fardbeyan that when the dead body of the victim was found, the appellant's act of taking the victim in the past night was first revealed by PW-9 and then the appellant was caught and at that time, he accepted his guilt before the prosecution witnesses PW-1, PW-2, PW-3, PW-5, PW-7 and PW-8 and the informant also revealed the cause or the appellant's motive due to which he had killed the victim. No doubt the informant (PW-8) and other witnesses PW-1, PW-2, PW-3, PW-5 and PW-7 before whom the appellant made his confession as per prosecution story, supported the said act of the appellant but all these witnesses did not reveal the time when the appellant was caught, the place from where he was caught and admittedly, the appellant was in the captivity of several co-villagers including the informant when he is said to have accepted his guilt, which raises a serious doubt about the appellant's voluntariness in accepting his guilt, so, on these aspects, the evidence of these witnesses appears to be some what vague and not sufficient to prove the appellant's voluntariness in accepting his guilt. Moreover, as per PW-2, PW-3 and PW-5, the appellant also accepted his guilt before the



police during the course of investigation but the investigating officer said nothing about this and another important aspect is that regarding the place where the dead body of the deceased was seen lying, the evidence of the investigating officer (PW-10) is contradictory to the evidence of other witnesses. PW-10 deposed that he inspected the place of occurrence which was situated behind an iron factory from where the informant's house was situated at a distance of 500 Gaj on the western side and the same was situated at a distance of 200 Gaj towards the western side of the electric tower and the dead body was found in a 12 feet deep ditch. Thus, the evidence of the investigating officer does not corroborate the place of recovery as revealed by the informant and other witnesses as they stated that the dead body was recovered from behind the electric tower and none of them said that the dead body was found in a ditch. Further, as per PW-6, a small rope and one handkerchief were found near the dead body of the deceased but in this regard, the investigating officer made some contradictory statement as he stated in his examination-in-chief that the informant himself produced these articles but in the cross-examination he stated that the same were found near the dead body. The prosecution failed to establish the connection between these seized articles



and the commission of the alleged crime of murder. The important thing is that the alleged occurrence took place in the night of 16.04.2007 and the investigation was started on 17.04.2007 after recording the fardbeyan of the informant, whereafter the chargesheet was filed against the appellant on 18.04.2007 which shows that the entire investigation was completed within 24 hours of its initiation, which further indicates that the investigating officer worked in a very hasty manner without giving reason of such hastiness.

Conclusion : -

34. After having gone through the entire evidences of the prosecution and also taking into account the facts and circumstances having emerged from the prosecution's evidences as discussed above, we are of the view that in this matter, the prosecution failed to prove the factum of the deceased having been last seen in the company of the appellant by reliable and credible evidence, so, the main link to connect other circumstances can be deemed to have not been established by the prosecution by adducing cogent and reliable evidence. So far as the extra judicial confession, which is said to have been made by the appellant before the informant and PW-1, PW-2, PW-3, PW-5 and PW-7 is concerned, the same does not inspire



confidence in the mind of this Court for the reasons discussed herein above and as far as the appellant's confessional statement, which is said to have been recorded under section 164 of Cr.P.C. is concerned, the same also does not appear to have been recorded in a proper manner as we have discussed in paragraph No. '30' and further, it is a settled position of law that the extra judicial confession is considered to be a weak evidence by itself and the confessional statement made under section 164 of the Cr.P.C. can only corroborate or contradict other evidences and the same cannot be considered as substantive piece of evidence on its own strength, although the same can be used to establish the guilt of an accused but only when it has been recorded in a proper manner after complying with all the mandatory conditions mentioned in sections 164 and 281 of the Cr.P.C. and the same appears to have been made voluntarily and also seems reliable in view of other supportive evidences which are lacking in the present matter. As such, we are not persuaded to affirm the judgment impugned convicting the appellant for the charged offences, hence the judgment of conviction and order of sentence dated 18.08.2012 and 24.08.2012, respectively, passed by the learned court of 2nd Additional District & Sessions Judge, Patna City in Sessions Trial Case No.



48 of 2007, are hereby set aside and consequently the present appeal succeeds, hence is allowed.

35. The appellant is in judicial custody and he has served about eighteen years in jail, hence, he is directed to be released forthwith, if his custody is not required in any other case.

36. Let the judgment's copy be sent to the trial court along with the LCR forthwith for needful information and compliance.

(Shailendra Singh, J)

I agree.

(Mohit Kumar Shah, J)

(Mohit Kumar Shah, J)

annu/-

AFR/NAFR	AFR
CAV DATE	08.05.2025
Uploading Date	03.07.2025
Transmission Date	03.07.2025

