



2025:DHC:10562-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 17th NOVEMBER, 2025

IN THE MATTER OF:

+ **CRL.A. 310/2002**

DHURV PARSAD GUPTA

.....Appellant

Through: Mr. Biswajit Kumar Patra and Ms.
Kushboo Gupta, Advocates.

versus

STATE

.....Respondent

Through: Mr. Aashneet Singh, APP for the
State
SI Devender, PS Vikaspuri

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The Appellant has approached this Court challenging the Judgment dated 22.12.2001 and the Order on Sentence dated 14.01.2002 passed by the learned Additional Sessions Judge, Delhi (*hereinafter referred to as "Ld. Trial Court"*) in SC No.24/1999 arising out of FIR No. 662/1998 registered at Police Station Vikaspuri for offences under Section 302, 201 & 34 of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC"*).

2. Shorn of unnecessary details, the facts leading up to the present Appeal are as follows :-

- i. The state machinery sprung into action upon receipt of a complaint filed by one Santram (*hereinafter referred to as "PW-12/Complainant"*), R/o House No.38, Gali No.1, G-I Block, Sai



Enclave, Mohan Garden, Uttam Nagar, Delhi, wherein he stated that his son Deepak was missing.

- ii. As per the story of the prosecution on the night of 08.10.1998 when PW-12/the Complainant returned to his house he did not find his elder son Deepak, aged about 12 years at the time of the incident.
- iii. PW-12/the Complainant made enquiries from his son's friends, who told him that Deepak had been playing with them till 7:00 PM only.
- iv. PW-12/the Complainant was unable to find his son and in order to trace him the PW-12/the Complainant made enquiries regarding his son's whereabouts from people residing in the neighbourhood, including one Sadanand, who was a *Tantrik*. It is stated that Sadanand performed some *tantric* rituals and informed the Complainant that his son had been kidnapped.
- v. On the intervening night of 08.10.1998 and 09.10.1998, at about 3:00 AM, Sadanand in the presence of the Complainant and his neighbours Rajdev Mishra and Lalan Malik, told the Complainant that his son has been murdered.
- vi. Thereafter, the Complainant lodged a complaint at Police Station Vikaspuri that his son had gone missing and continued to search for him.
- vii. On 10.10.1998, the Appellant, Sadanand and some neighbours went to PW-12/the Complainant's house to express their solidarity with him. It is stated that someone in the crowd uttered that the matter had been reported to the police and sniffer dogs would find



- out who the culprits were. Thereafter, the Appellant and Sadanand left the house of PW-12/the Complainant. Their conduct aroused suspicion in the Appellant's mind, and after they left, PW-12/the Complainant along with some neighbours made renewed efforts to trace the whereabouts of his son.
- viii. During their search, they came to know that the Appellant had locked his house and gone away. This made PW-12/the Complainant even more suspicion and he intensified his efforts to search for his son.
- ix. During their search a neighbour by the name Ashok Dubey discovered that there was freshly dug earth on top of the septic tank behind Appellant's house. He informed PW-12/the Complainant about the same. Thereafter, PW-12/the Complainant and some neighbours went to inspect the site.
- x. On removing the mud from the top of the septic tank, a foul stench emanated from inside. The stone covering the septic tank was removed and it was discovered that there was a gunny bag inside it. The said gunny bag appeared to be containing a dead body.
- xi. Subsequent to this discovery, police were informed. PW-26/Inspector Gurbachan Singh, SHO, Police Station Vikaspuri along with other police officials came to the spot. When the PW-26/Inspector Gurbachan Singh opened the gunny bag, it was found to contain the dead body.
- xii. The dead body was clothed in a shirt and Coca-Cola coloured pants and was in an advanced stage of decomposition. Additionally, a cloth was tied around the neck of the dead body.



- xiii. PW-12/the Complainant duly identified the body being of his son, Deepak (*hereinafter referred to as the 'deceased'*).
- xiv. After recording of the statement of PW-12/the Complainant, a *rukka* was sent to the Police Station for registration of an FIR. The site was inspected, photographs were taken and a site plan was prepared by PW-26/Inspector Gurbachan Singh. Thereafter, the gunny bag along with the rope with which the said gunny bag was tied were sealed by him.
- xv. While inspecting the site, PW-26/Inspector Gurbachan Singh, discovered a pit near the Appellant's house that contained mud, which appeared to be similar to the one found on top of the septic tank cover.
- xvi. PW-26/Inspector Gurbachan Singh took samples of mud from both these places i.e. the pit and from the top of the septic tank, sealed them and converted them into parcels *vide* Seizure Memo Ex. PW-8/A. These two parcels, marked Exhibit-1A and Exhibit 1B, were then sent for forensic analysis.
- xvii. While inspecting the courtyard of the Appellant's house, PW-26/Inspector Gurbachan Singh came across a spade. Upon closer inspection it was discovered that the spade had some mud at the edge of its blade. After collecting mud samples, from the said spade it was packaged and marked as Exhibit-2 and sent for forensic analysis. The spade was seized and taken into possession *vide* Seizure Memo Ex. PW-8/C.
- xviii. Inquest proceedings were conducted by PW-26/Inspector Gurbachan Singh, the dead body was sent to Subzi Mandi



- Mortuary for an autopsy and the statements of witnesses were recorded.
- xix. The Appellant was arrested on 16.10.1998 near Uttam Nagar bus terminal, whereafter he was interrogated. During his interrogation, the Appellant made a disclosure statement and led the Police to his house bearing No.29-A and 32, G-I Block, Sai Enclave, Mohan Garden, Delhi.
- xx. From the residential premises of the Appellant a pair of slippers belonging to the deceased was recovered, which was sealed and taken into possession *vide* Ex. PW-12/C. A bundle of rope was also recovered from one of the rooms of the Appellant's house.
- xxi. Thereafter, the Appellant led the Police to Balaji Crossing and at his behest a ransom note was recovered. The police seized the said ransom note.
- xxii. After completing investigation, first chargesheet was filed on 08.01.1999 against the Appellant, Sadanand and Brahamanand and later a supplementary chargesheet was filed only against the Appellant on 14.03.1999.
- xxiii. On 11.05.1999 charges were framed against the Appellant under Section 302, 201 and 34 IPC. Since co-accused Sadanand and Brahamanand could not be traced, they were declared as proclaimed offenders and proceeded against accordingly.
- xxiv. During trial, as many as 26 prosecution witnesses were examined. The statement of the Appellant under Section 313 of the Criminal Procedure Code, 1973 (*hereinafter referred to as the "Cr.P.C."*), was recorded. When he denied the charges levelled against him. In



- his statement the Appellant averred that he was arrested on 13.10.1998, whereas, he was shown to have been arrested on 16.10.1998. He also stated that the slippers and the bundle of rope were not recovered from his house and they have been planted. He further stated that no ransom note or document was recovered at his instance. However, no evidence was led by him in his defence.
- xxv. Since there was no direct evidence which could prove the involvement of the Appellant with the commission of the offence, the entire case of the prosecution was based on circumstantial evidence.
- xxvi. Before the Ld. Trial Court, the prosecution advanced three broad arguments. **Firstly**, it was contended by the prosecution that the overall conduct of the Appellant aroused suspicion. The Appellant, being the neighbour of the Complainant, had left his house in haste after getting to know that the Complainant had lodged a complaint that his son had gone missing. **Secondly**, it was argued that a number of recoveries were made at the behest of the disclosure statement of the Appellant. While the dead body was not recovered at his instance, it was found in a gunny bag inside the septic tank behind his house. Further, a rope, a spade and a pair of slippers allegedly belonging to the deceased were also recovered from his house. The prosecution also placed reliance on the recovery of a ransom note at the instance of the Appellant. **Thirdly**, it was contended that there was enmity between the Appellant and the PW-12/the Complainant, and this enmity was the motive behind the murder of the deceased. It was



argued that Complainant had helped PW-13/Kant Raj, in getting his plot of land back from his brother i.e., the co-accused Sadanand, who had allegedly usurped the same.

3. After perusing the testimonies of the witnesses and the material on record, the Ld. Trial Court held that the recovery of the deceased's slippers, spade and a bundle of rope from the Appellant's house, coupled with the recovery of a ransom note demanding Rs.50,000/- from PW-12 /the Complainant, and the Appellant absconding from his house after coming to know that a missing person complaint has been lodged with the police by PW-12/ the Complainant, established the involvement of the Appellant in the crime.

4. The Ld. Trial Court concluded that the prosecution was able to prove their case beyond reasonable doubt. Therefore, vide its Judgment dated 22.12.2001, the Appellant was convicted for offences under Section 302 and 201 IPC, by the Ld. Trial Court. The relevant portion of the Judgement of conviction reads as under:-

"21. The case of the prosecution mainly rests on the testimonies of PW-3 Shri Lalan Malik, PW-4 Shri Raj Bahadur, PW-5 Shri Choudhary Randhir Singh, PW-8 Shri Raj Dev Mishra, PW-12 Shri Sant Ram, the father of the deceased, and PW13 Shri Kant Raj.

22. Shri Sant Ram, the father of the deceased was examined as PW-12 and he deposed that Deepak, aged about 12 years was his elder son and on 8.10.98, when he returned back home at about 9.00 PM, he did not find his son Deepak in the house and he searched for him, but despite best efforts, his son could not be traced and he contacted Sadanand, the "TANTRIK", who informed him that his son had been kidnapped. On 9.10.98, he lodged the missing report with the police and he again asked Sadanand about the whereabouts



of his son and he was told that his son had been murdered. He added that accused Dhurv Parsad Gupta along with accused Sadanand also came there and on coming to know that he had lodged a report with the police, the accused Dhurv Parsad Gupta with his family and accused Sadanand and Brahmnanand had disappeared from their house after locking the same.

23. He further deposed that during the search of his son, he saw fresh earth dug near the septic tank behind the house of the accused Dhurv Parsad Gupta and he became suspicious and with the help of R.D. Mishra, Lalan Malik, Choudhary Randhir Singh, Harihar Mittal and other persons removed the slab from the septic tank and foul smell emanated from the tank. The gunny bag having the dead body of his son Deepak was recovered from the septic tank and the police was informed. He suspected the involvement of the accused persons Dhurv Parsad Gupta and Sadanand in the murder of his son, since both of them were nursing a grudge against him, as he had helped Kant Raj, brother of accused Sadanand in getting his plot back from accused, Sadanand, who wanted to usurp the same.

24. He further deposed the during the investigation of the case, police has seized the gunny bag as well as, the rope with which, it was found tied and the police has also lifted the sample of the earth and sealed the same. He further added that a Kassi (spade) was found in the house of the accused. Dhurv Parsad Gupta in the court-yard and that Kassi was found having fresh soil on its blade and that fresh soil was also taken into possession by the police and the kassi was also sealed. He further deposed that on 16.10.98, the accused was arrested at his instance and he was interrogated and he made a disclosure statement Ex. PW-12/A. On 16.10.98 he along with the police went to the house of the accused, where a pair of chapples belonging to the



deceased Deepak were recovered and these were also sealed at the spot. Thereafter, the accused led them to a room and got recovered a bundle of rope, which was also sealed in a parcel and was taken into possession. He further added that the accused further led the police party to Balaji Chowk and also got recovered a ransom note Ex. P-1, written by accused Sadanand, which was also taken into possession by the police.

25. This witness was cross-examined at length by ld. defence counsel Shri D.P. Chopra, but nothing favourable could be elicited, which court dis-credit him and witness denied the suggestion that no 'chapples', rope, or, ransom note were recovered at the instance of the accused, or that the ransom note Ex. P-1 is-fabricated by the police.

26. The testimony of this witness thus duly proves that deceased Deepak was son of this witness Santram and on 08.10.98, he did not return back home and his father Sant Ram and other persons searched for him and a missing report was lodged with the police and on coming to know regarding the lodging of the complaint, the accused Dhurv Parsad Gupta disappeared from his house with his family. His testimony also proves that dead body of the deceased Deepak was recovered in a gunny bag from the septic tank, which was at the back side of the house of the accused Dhurv Parsad Gupta and thereafter at the pointing out of the complainant Sant Ram, the accused was arrested. On the disclosure statement of the accused, the chapples of the deceased Deepak and a rope were recovered from the house of family the accused on his pointing out. It is also evidence from the statement of this witness that fresh earth was found dug on the septic tank belonging to the accused and the sample of that earth was taken. A Kassi (spade) was also recovered from the house of the accused and the sample of the fresh earth from the kassi was also taken.



A ransom note Ex. P-1 was also recovered at the instance of this accused.

27 This witness has also deposed that the accused was nursing a grudge against him as he had helped, Kantraj, brother of accused Sadanand, in getting the plot back from accused Sadanand, who wanted to usurp it.

28. The testimony of this witness finds full support on all the material particulars by the remaining witnesses namely Choudhary Randhir Singh examined as PW-5 and Shri Raj Dev Mishra examined as PW-8.

29. The recovery of dead body from the septic tank, has also been duly proved by Choudhary Randhir Singh. while the statement of Shri Rajdev Mishra also duly proves that Deepak, son of Sant Ran was missing and he also search for him along with others and on coming to know regarding the lodging of the report, he found the house of accused Dhurv Parsad Gupta locked. His testimony also corroborate the testimony of Sant Ram with regard to the recovery of the dead body of deceased Deepak from the septic tank of the accused and the recovery of the kassi (spade) and also chapples of the deceased from the house of the accused.

30. The fact that the kassi belonged to the accused Dhurv Parsad Gupta has also been proved by the statement of Shri Raj Bahadur and his testimony also prove that the dead bod of Deepak was also recovered in a gunny bag from the septic tank, which was at the back side of the house of the accused.

31. All these witnesses were also cross examined at length by Ld. defence counsel, but nothing could be elicited, which could help the accused in any way and their testimonies remained corroborative on all the material particulars and trust-earthy throughout.



32. *The sample of the fresh earth, which was taken from the kassi (spade) were sent to C.F.S.L. and as per the report Ex. PW-21/A, the samples were found similar to each other in their general physical characteristic and density etc. This also proves that the earth on the septic tank was dug with the kassi (spade) and dead body of Deepak wan in the thrown in the septic tank after putting the same in the gunny bag.*

33. *The very fact that the chapples belonging to the deceased Deepak and the rope with which, the crime was committed were also recovered from the house of the accused, indicate that it was the accused, and none else, who has committed this crime.*

34. *The ransom note Ex P-1 was also recovered at the instance of the accused, whereby Rs. 50,000/- (Fifty thousand) were demanded from Sant Ram, the father of deceased Deepak.*

35. *The evidence on the record thus establishes beyond any reasonable doubts that :-*

(i) *The accused who was residing in the neighbourhood of the complainant Sant Ram, had disappeared after locking the house, on coming to know that the complaint had been lodged with the police regarding the missing of his son Deepak.*

(ii) *It also stands proved that the dead body of Deepak was recovered in a gunny bag from the septic tank belonging to the accused Dhurv Parsad Gupta and at his instance and on his disclosure statement, the kassi (spade) and the rope and chapples belonging to the deceased were also recovered from his house and ransom note was also recovered at his instance.*



36. All these circumstances prove that the killer of a little boy Deepak, who was only of 12 years of age, was none other than the accused Dhurv Parsad Gupta.

37. When there is no direct evidence and the case of the prosecution mainly rests on the circumstantial evidence, the motive also assumes importance. Ld. state Counsel has contended that the accused was nursing a grudge against the complainant Sant Ram and his motive was also to get money from Sant Ram and in order to substantiate these charges, the prosecution has relied upon the statement of Shri Sant Ram, the complainant. The complainant has categorically stated that he suspected the involvement of the accused Dhurv Parsad Gupta and accused Sadanand in the murder of his son Deepak, as both of them were nursing a grudge against him as he had helped the brother of accused Sadanand namely Kantraj in getting his plot back from accused Sadanand, who wanted to usurp it. The recovery of ransom note on the disclosure statement made by the accused, has also been proved and the motive of the accused for committing the crime, was to get ransom money from the complaint Sant Ram.

38. The evidence on the record, thus proves that accused Dhurv Parsad Gupta along with accused Sadanand and Brahmnanand (both P.O.s) in furtherance of their common intention had committed this crime. The recovery of the kassi (spade), chapples of the deceased and also the rope at the instance of the accused Dhurv Parand Gupta duly proves the guilt of the accused.”



5. *Vide* the Order on Sentence dated 14.01.2002, the Appellant was sentenced to imprisonment for life along with fine of Rs.5,000/- for the offence under Section 302 IPC, with a further term of three months of rigorous imprisonment in default of payment of fine. For the offence under Section 201 IPC, the Appellant was sentenced to undergo rigorous imprisonment for five years and a fine of Rs.1,000/-, and a further term of one month of rigorous imprisonment in case of default of payment.

6. The Appellant has now approached this Court seeking to assail the Judgment of conviction dated 22.12.2001 and Order on Sentence dated 14.01.2002 passed by the Ld. Trial Court.

7. In support of his Appeal, Learned Counsel for the Appellant has advanced the following submissions:-

- i. The Learned Trial Court has erroneously held that the case of the prosecution has been established beyond reasonable doubt. In doing so, the Ld. Trial Court has placed reliance upon the conjoint statements of PW-8/Rajdev Mishra and PW-12/the Complainant, that allegedly proves that the Appellant came to know about the lodging of the missing report at 10.00-11.00 AM on 09.10.1998 and the Appellant was found lying on the cot in his courtyard on 10.10.1998 by PW8
- ii. Learned Counsel for the Appellant has then raised the following inconsistencies in the reasoning of the Ld. Trial Court:-
 - a) Recovery of the dead body from the septic tank belonging to the Appellant does not necessarily prove the commission of the offence by the Appellant. The septic tank was situated



behind the Appellant's house and could have been easily accessed by anyone.

- b) Appellant was not the only resident of the house and about six other individuals were residing with him in the said house. This has been corroborated by the statement of PW-3 /Lallan Malik and PW-4 /Raj Bahadur. PW-4 /Raj Bahadur also stated that 2 to 3 persons used to reside with the Appellant. PW-8 had also deposed that in addition to the Appellant, his brother, wife of his brother, around 3-4 more individuals and about 1-2 children used to reside at the house of the Appellant.
- c) PW-8 /Rajdev Mishra had also deposed that the co-accused Sadanand was present in the house of the Appellant when they first visited at 12:00-12:30 midnight on 08.10.1998 and came to know about the missing boy who after performing the tantrik rituals informed that the boy was kidnapped and thereafter they along with Appellant went in search of the missing boy but Sadanand remained present in the same house and after few hours at about 4.00 AM on 09.10.1998 when they again visited Sadanand, he informed that the boy was murdered.
- iii. With respect to the recovery of spade, Learned Counsel for the Appellant has contended that the same was not recovered at the instance of the Appellant and had been lying in the courtyard of the Appellant's house. He relies on the deposition of PW-4, who has stated that the spade had been borrowed by him for



construction work which was going on inside his house and the Appellant had taken it back in the evening of 08.10.1998. It has also been contended that as per the testimony of the PW-4 /Raj Bahadur, when the Appellant took the spade from him, it had fresh earth marks on its blade. This should be read in context of PW-4 /Raj Bahadur's depositions that he had not washed or cleaned the spade before handing it over to the Appellant.

- iv. Learned Counsel for the Appellant has contended that the pieces of jute strings which were recovered were in a torn and mutilated condition and it cannot be said in any manner whatsoever that the same had been made with the bundle of jute strings which had been recovered from the Appellant's house.
- v. With respect to the recovery of the pair of slippers, Learned Counsel for the Appellant has pointed out that they were recovered lying on the shed near the roof, from the courtyard of the Appellant's house. He also contended that the pair of slippers was not recovered in the presence of independent witnesses despite their availability and also that that the slippers were of an ordinary make and were easily available in the market. When all these factors are taken cumulatively, it casts a serious doubt on the genuineness of the recoveries.
- vi. With respect to the ransom note marked as Ex. PW-26/H, Learned Counsel for the Appellant has argued that the said ransom note was recovered from a pit near Balaji Chowk at about 10:10 PM, that too in the absence of any independent public witnesses. He argues that the same casts a doubt on the integrity of the recovery



- as a whole. He has also pointed out that the said note was purported to be in the handwriting of co-accused Sadanand.
- vii. Learned Counsel for the Appellant has also contended that there is no motive for the Appellant to commit the crime. He contends that there was no enmity between the Appellant and PW-12 /the Complainant. He contended that PW-13 /Kant Raj has clearly stated that there was no enmity between the Appellant and the Complainant. PW-4 /Raj Bahadur has also stated in his deposition that the Appellant did not have any enmity with the father of the deceased.
- viii. Learned Counsel for the Appellant has also argued that in the present case conviction has been based on suspicion and no matter how strong the suspicion may be, it cannot form the sole basis of conviction. Reliance has been placed on the Judgment of Ram Niwas v. State of Haryana, **2022 SCC OnLine SC 1007**.
- ix. Learned Counsel for the Appellant has argued that in the present case there are two probable versions and it is trite law that when two views are possible the one that is contended by the accused should be accepted. In order to substantiate this contention reliance has been placed on Vikramjit Singh v. State of Punjab, **2006 (12) SCC 306**.
- x. Learned Counsel for the Appellant has placed reliance on the Judgment of Sharad Birdhichand Sarda v. State of Mahashtra, **(1984) 4 SCC 116** to contend that the golden principles with respect to conviction of a person on the basis of circumstantial evidence has not been followed. The prosecution has been unable



to prove its case beyond reasonable doubt and therefore given that the case of the prosecution is based purely on circumstantial evidence, the Appellant ought to be given the benefit of doubt and is liable to be acquitted.

8. *Per contra*, learned APP for the State has reiterated the arguments raised before the Ld. Trial Court and contends that the Appellant has been convicted after a thorough appreciation of evidence. He has taken this Court through the evidence recorded before the Trial Court and has vehemently opposed the arguments advanced by the learned Counsel for the Appellant. He states that the case of the prosecution has been proven beyond all reasonable doubt and the conviction should stand.

9. Heard learned Counsels for the parties and perused the material on record.

10. Before the Ld. Trial Court, though as many as 26 witnesses were examined by the prosecution, none of them were eyewitnesses of the actual incident. Further, out of these 26 witnesses, the prosecution primarily relied upon the deposition of PW-8 /Rajdev Mishra, who used to live in the neighbourhood and the deposition of PW-12 /the Complainant. Additionally, the statement of PW-3 /Lalan Malik, PW-4 /Raj Bahadur, PW-5 /Choudhary Randhir Singh and PW-13 /Kant Raj has been heavily relied upon.

11. The case of prosecution must stand or fall on its own legs and cannot derive any strength from the weakness of the defence. Indisputably, in the present case the conviction of the Appellant has been based on circumstantial evidence and in cases like these an onerous duty is cast upon the Courts to be cautious and to ensure that they do not rely on surmises or conjectures. Furthermore, the Courts must be extremely cautious to ensure



that surmises or conjectures are not allowed to take place of legal truth. The Courts in cases such as these need to examine whether the circumstantial evidence casts such an interlocking web that excludes every other reasonable hypothesis consistent with the innocence of the accused and the guilt of the accused is the only possible inference. The Apex Court in the case of Dharm Das Wadhvani v. State of U.P., (1974) 4 SCC 267, while fleshing out the above position, has held as under:

*“12. Shri Nuruddin Ahmed, Counsel for the appellant, rightly stressed that the prosecution edifice was built on circumstantial evidence only since no one had seen the accused mix strychnine with aspirin before serving the doctor. The critical rule of proof by circumstantial evidence, Counsel reminded us, is that such testimony can be the probative basis for conviction only if one rigorous test is satisfied. **The circumstances must make so strong a mesh that the innocence of the accused is wholly excluded and on every reasonable hypothesis the guilt of the accused must be the only inference.** Shri Nuruddin Ahmed suggested some maybes in the case excluding his client's culpability, and contended that the test of incompatibility with the innocence of the accused had not been fulfilled at all here. **As a proposition of law and commonsense, we agree that unlike direct evidence the indirect light circumstances may throw may vary from suspicion to certitude and care must be taken to avoid subjective pitfalls of exaggerating a conjecture into a conviction.**”*

(emphasis supplied)

12. The law regarding circumstantial evidence has been crystallised in the case of Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116, wherein the Apex Court has held as under:



“152. 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) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] . 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 (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625 : AIR 1972 SC 656] . It may be useful to extract what Mahajan, J. has laid down in Hanumant case [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :

“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.”

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.”

13. In the case of Shyamal Ghosh v. State of W.B., (2012) 7 SCC 646, the Apex Court has once again affirmed that the principle that the circumstances from which the conclusion of guilt is to be drawn by the Courts should be fully established and all the facts so established should be consistent with the hypothesis of guilt of the accused. The relevant para of the Judgement of the Apex Court reads as under:-

“64. Even in the cases of circumstantial evidence, the court has to take caution that it does not rely upon conjectures or suspicion and the same should not be permitted to take the place of legal proof. 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 guilt of the accused. 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. (Ref. Mousam Singha Roy v. State of W.B. [(2003) 12 SCC 377 : 2004 SCC (Cri) Supp 429])”

14. In Shailendra Rajdev Pasvan v. State of Gujarat, (2020) 14 SCC 750, the Apex Court has further crystallised and reinforced the law as laid down in Sharad Birdhichand Sarda (supra), and postulated a twofold requirement for cases which rest completely on circumstantial evidence:

“13. Thus, the entire case of the prosecution is based on circumstantial evidence. It is well settled that in a case which rests on circumstantial evidence, law postulates twofold requirements:



(i) Every link in the chain of the circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt.

(ii) All the circumstances must be consistent pointing only towards the guilt of the accused.

14. This Court in *Trimukh Maroti Kirkan v. State of Maharashtra* [*Trimukh Maroti Kirkan v. State of Maharashtra*, (2006) 10 SCC 681 : (2007) 1 SCC (Cri) 80] has enunciated the aforesaid principle as under : (SCC p. 689, para 12)

“12. ... The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.”

15. An examination of the law as laid down by the Apex Court shows that the five/*panchsheel* principles, first articulated in Sharad Birdhichand Sarda (supra), have withstood the test of time and continue to govern the field. These *panchsheel* principles have been re-affirmed by the Apex Court in subsequent decisions [See Nagendra Sah v. State of Bihar, (2021) 10 SCC 725, Guna Mahto v. State of Jharkhand, (2023) 6 SCC 817, Sambhubhai



Raisangbhai Padhiyar v. State of Gujarat, (2025) 2 SCC 399, Ravi v. State of Punjab, (2025) 3 SCC 584].

16. In light of the settled legal principles and in context of the law as laid down by the Apex Court, this Court must assess whether the conviction of the Appellant based on circumstantial evidence can withstand judicial scrutiny. At the outset, it is pertinent to note that the factum of the homicidal death of the deceased is conclusively established by the testimony of PW-10/ Dr. Sarvesh Tandon. Therefore, the same does not warrant any further deliberation.

17. This Court would first like to address the issue of motive of the Appellant for having committed the crime.

18. It is the case of the prosecution that PW-12/ the Complainant had suspected the involvement of the Appellant and co-accused Sadanand in the murder of the deceased as both of them were nursing a grudge against him as he had helped the PW-13/ Kant Raj, who was the brother of co-accused Sadanand in getting his plot back from the co-accused Sadanand. The prosecution has placed heavy reliance on the depositions of PW-8 /Rajdev Mishra and PW-12 /Sant Ram, the Complainant, in their Examination-In-Chief.

19. In his Examination-In-Chief dated 31.09.2000, PW-8/ Rajdev Mishra has deposed as under:

*“.....I know that there was a dispute over a plot within the brothers i.e. xxx Sada Nand, Tantrik and Kant Raj. Sada Nand used to reside with accused Druv Pd. whereas Kant raj was friendly with Sant xxx Ram and used to occasionally visit Sant Ram. **To my knowledge, there was no dispute between Sant Ram and Dhruv Pd.**”*

(emphasis supplied)



20. In his Examination-In-Chief dated 31.09.2000, PW-12 / the Complainant has deposed as under:

“.....I suspected the involvement of accused Dhruv Pd. and Sada Nand in the murder of my son Deepak since both were nursing a grudge against me, as I had helped Kant Raj, brother of accused Sada Nand in getting his plot back from accused Sada Nand who wanted to usurp it.

21. Similarly, in his deposition in his Cross-Examination dated 11.11.1999, PW-8/ Rajdev Mishra has deposed as under:

“The plot belongs to Kant Raj, Sa I was not residing in the locality from 1992 to 1996 so I cannot say if during that period Kant Raj was residing with the accused Dhruv Pd. at his house. I do not know if the marriage of Kant Rak also took place when he was residing there. I also do not know if the marriage of Kant Raj was arranged by accused Druv Pd. and he played an active part in that marriage. I had been seeing Tantrik Sada Nand living with the accused Druv Raj since last three years since the date of incident. It is incorrect to suggest that Sada Nand was living with the accused Druv Pd. for the last three months from the day of incident only. I do not know if the plot referred above belongs to Kant Raj or his wife. I do not know the name of wife of Kant Raj was Parvati. I had not seen her living with Kant Raj. The plot was not belonging to accused Druv Pd. However, I came to know about the dispute over the plot when I was about to purchase it and the accused told me not to do so since there was dispute over it.”

22. The learned Counsel for the Appellant has placed reliance on the testimony of PW-4 /Raj Bahadur and PW-13 /Kant Raj himself to argue that there was no enmity between the Appellant and PW-12 /the Complainant.



PW-4 /Raj Bahadur in his Cross-Examination dated 11.08.1999 has stated that Sant Ram did not have any enmity with anybody and he also stated that he did not have enmity with anyone present in Court that day.

23. Similarly in his Examination-In-Chief dated 04.02.2000, PW-13 /Kant Raj has deposed that he continues to reside in the plot in the room constructed by him. In his Cross-Examination dated 04.02.2000, PW-13 /Kant Raj further deposed that he had not been disposed of his property by the Appellant or Sadanand. The relevant excerpt of his deposition reads as under:

“I had not been dispossessed by the accused and Sada Naad from my room. I was not friend of Sant Ram but on visiting terns as he was a neighbour. It is correct that accused Dhruv Pd. agaisaid, I am not sure that there was enmity between accused Dhruv Pd. and Sant Ram because of my friendly relations with Sant Ram. My statement had been recorded by the police. I am illiterate, I do net remember whether I had told the police that I purchased the plot No. 29B through the accused.”

24. A perusal of the different depositions of various prosecution witnesses makes it abundantly clear that the theory of the Appellant being driven by enmity towards PW-12/ the Complainant does not hold water. PW-8/ Rajdev Mishra, upon whose deposition the prosecution has buttressed the theory of motive, categorically deposed that he was unaware if there was any enmity between PW-12/ the Complainant and the Appellant. What is even more interesting is that PW-13/ Kant Raj whose property PW-12/ the Complainant allegedly assisted in restoring, has deposed that he had not been dispossessed by anyone of his property. Similarly, PW-4 /Raj Bahadur has also deposed that he was not aware if PW-12/ the Complainant had an



enmity with anyone. When these testimonies are juxtaposed against each other, the motive of the Appellant for having committed the crime is rendered uncertain.

25. Arguendo, assuming a land dispute did exist between PW-13 /Kant Raj and his brother i.e. co-accused Sadanand, the connection of that dispute with the Appellant is remote and unestablished. It is also unclear as to how the PW-12 /the Complainant helped PW-13/ Kant Raj in getting his property back, if he did so. Taken cumulatively, motive as a link in the chain of the circumstantial evidence breaks and collapses.

26. While the absence of motive would not *ipso facto* dismember the chain of events, however when it comes to conviction exclusively based on circumstantial evidence, motive is an extremely relevant factor. It is also trite law that when the Court is faced with a situation wherein two different views appear to be reasonably possible, the matter is to be decided in favour of the accused. The Apex Court in Vaibhav v. State of Maharashtra, (2025) 8 SCC 315, has observed as under:-

“33. We may now come to the next aspect of the case i.e. absence of motive and consequence thereof. It is trite law that in a case based on circumstantial evidence, motive is relevant. However, it is not conclusive of the matter. There is no rule of law that the absence of motive would ipso facto dismember the chain of evidence and would lead to automatic acquittal of the accused. It is so because the weight of other evidence needs to be seen and if the remaining evidence is sufficient to prove guilt, motive may not hold relevance. But a complete absence of motive is certainly a circumstance which may weigh in favour of the accused. During appreciation of evidence wherein favourable and unfavourable circumstances are sifted and weighed against each other, this circumstance



ought to be incorporated as one leaning in favour of the accused.

34. In Anwar Ali v. State of H.P. [Anwar Ali v. State of H.P., (2020) 10 SCC 166 : (2021) 1 SCC (Cri) 395] , this Court analysed the position of law thus : (SCC p. 190, para 24)

“24. Now so far as the submission on behalf of the accused that in the present case the prosecution has failed to establish and prove the motive and therefore the accused deserves acquittal is concerned, it is true that the absence of proving the motive cannot be a ground to reject the prosecution case. It is also true and as held by this Court in Suresh Chandra Bahri v. State of Bihar [Suresh Chandra Bahri v. State of Bihar, 1995 Supp (1) SCC 80 : 1995 SCC (Cri) 60] that if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. However, at the same time, as observed by this Court in Babu [Babu v. State of Kerala, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179] , absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. In paras 25 and 26, it is observed and held as under : (SCC pp. 200-201)

‘25. In State of U.P. v. Kishanpal [State of U.P. v. Kishanpal, (2008) 16 SCC 73 : (2010) 4 SCC (Cri) 182] , this Court examined the importance of motive in cases of circumstantial evidence and observed : (SCC pp. 87-88, paras 38-39)

“38. ... the motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to



explain what actually promoted or excited them to commit the particular crime.

39. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction.”

26. This Court has also held that the absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. (Vide Pannayar v. State of T.N. [Pannayar v. State of T.N., (2009) 9 SCC 152 : (2009) 3 SCC (Civ) 638 : (2010) 2 SCC (Cri) 1480])’ ”

35. In the subsequent decision in Shivaji Chintappa Patil v. State of Maharashtra [Shivaji Chintappa Patil v. State of Maharashtra, (2021) 5 SCC 626 : (2021) 2 SCC (Cri) 679] , this Court relied upon the decision in Anwar Ali and observed as under : (SCC p. 635, para 27)



“27. Though in a case of direct evidence, motive would not be relevant, in a case of circumstantial evidence, motive plays an important link to complete the chain of circumstances. The motive....”

36. More recently, in Nandu Singh v. State of M.P. [Nandu Singh v. State of M.P., (2022) 19 SCC 301], the position was reiterated by this Court in the following words : (SCC p. 304, para 9)

“9. In a case based on substantial evidence, motive assumes great significance. It is not as if motive alone becomes the crucial link in the case to be established by the prosecution and in its absence the case of prosecution must be discarded. But, at the same time, complete absence of motive assumes a different complexion and such absence definitely weighs in favour of the accused.”

37. Thus, a complete absence of motive, although not conclusive, is a relevant factor which weighs in favour of the accused. No doubt, the final effect of such absence on the outcome of the case shall depend upon the quality and weight of surrounding evidence. In the present case, the testimonies of prosecution witnesses have invariably revealed that the appellant and the deceased were friends and there was no ill-will between them. Even the father of the deceased has testified to that effect. The relevance of motive in a case of homicide has been a subject of prolonged discussion. Ordinarily, in cases involving direct evidence of the commission of crime, motive has little role to play as presence or absence of motive is immaterial if the commission of the crime stands proved through other evidence. Even otherwise, motiveless crimes are not unknown to the society.



38. However, in cases purely based on circumstantial evidence, the absence of motive could raise serious questions and might even render the chain of evidence as doubtful. It is so because the presence of motive does the job of explaining the circumstantial evidence. For instance, in the facts of the present case, any evidence of enmity between the appellant and the deceased would have made suspicious the act of the appellant of taking the deceased to his home prior to his death. However, since the evidence suggests that they were friends, the fact that the appellant brought him home could not be termed as per se incriminating. Therefore, motive explains the circumstances on record and enables the court to draw better inference in a case based on circumstantial evidence.

XXX

43. Momentarily, even if it is believed that the view taken by the courts below is a possible view, it ought to have been examined whether a reasonable counter view was possible in the case. It is a time-tested proposition of law that when a court is faced with a situation wherein two different views appear to be reasonably possible, the matter is to be decided in favour of the accused. The benefit of a counter possibility goes to the accused in such cases.”

27. A perusal of the law as laid down by the Apex Court demonstrates that in case of circumstantial evidence, motive plays an important link to complete the chain of circumstances. While its absence may not be fatal to the case of the prosecution, its absence should weigh in favour of the accused. Similarly, in cases where the conviction is based on circumstantial evidence and the prosecution places heavily on motive, not being able to prove its existence beyond reasonable doubt ought to weaken the prosecution's case. In the present case, the Ld. Trial Court has placed significant reliance on motive as one of the chains to link the circumstantial



evidence. However, having gone through the deposition of the witnesses, this Court is of the view that prosecution has been unable to establish that the Appellant had any motive for committing the murder of the deceased. As noted above, it is unclear as to what the role of PW-12/ the Complainant was in restoring the property of PW-13 /Kant Raj to his possession, what was the role of Appellant and why was the Appellant aggrieved with PW-12 /the Complainant.

28. This Court would now turn its attention to the conduct of the Appellant. As noted above, it had been argued by the prosecution before the Ld. Trial Court that the accused disappeared from his house after coming to know that a missing person report had been filed by PW-12/the Complainant regarding missing of his son. The Ld. Trial Court, after perusing the material on record, has drawn an inference that the conduct of the Appellant was suspicious and he had indeed disappeared after locking his house upon coming to know that PW-12/ the Complainant had a missing person based on a conjoint reading of the statements of PW-12/ the Complainant and PW-8/ Rajdev Mishra. Contrary thereto, it has been argued on behalf of the learned Counsel for the Appellant that the Appellant was not absconding or trying to hide.

29. Learned Counsel for the Appellant has argued that the Appellant was not absconding or trying to hide, and the same is apparent from the fact that the PW-12 /the Complainant was informed about the presence of the Appellant in the area by PW-13 /Kant Raj. He has also argued that PW-12/Complainant and other Police officials had seen the Appellant in Vikas Puri area. It has also been contended that no efforts were made by the Police to trace the Appellant to trace out the other accused persons and the



Appellant has been made a scape goat. Furthermore, in the present case the allegation that the Appellant was absconding is a mere suspicion and devoid of any conclusive proof that has been established by means of compelling evidence.

30. Assuming, on a demurrer that the conduct of the Appellant did create a strong suspicion it cannot be said that strong suspicion is in the nature of conclusive proof. However strong the suspicion may be, it needs to be corroborated in context of the overall factors and circumstances of the case. In Guna Mahto v. State of Jharkhand, (2023) 6 SCC 817, the Apex Court has reiterated that, suspicion, no matter how strong, cannot replace and requirement of legal proof and cannot in any manner whatsoever replace reasonable doubt. The relevant excerpt reads as under:-

*“16. The courts below presumptively, proceeded with the acquired assumption of the guilt of the accused for the reason that he was lastly seen with the deceased, and lodged a false report, forgetting that as per the version of the father of the deceased, father of the accused had himself apprised him of his missing daughter, at least two days prior to the incident. **Doubt and suspicion cannot form basis of guilt of the accused. The circumstances linking the accused to the crime are not proven at all, much less beyond reasonable doubt.***

17. We may reiterate that, suspicion howsoever grave it may be, remains only a doubtful pigment in the story canvassed by the prosecution for establishing its case beyond any reasonable doubt. [Venkatesh v. State of Karnataka [Venkatesh v. State of Karnataka, (2022) 16 SCC 797 : 2022 SCC OnLine SC 765] ; Shatrughna Baban Meshram v. State of Maharashtra [Shatrughna Baban Meshram v. State of Maharashtra, (2021) 1 SCC 596 : (2021) 1 SCC (Cri)



555] ; Pappu v. State of U.P. [Pappu v. State of U.P., (2022) 10 SCC 321 : (2023) 1 SCC (Cri) 192]]. Save and except for the above, there is no evidence : ocular, circumstantial or otherwise, which could establish the guilt of the accused. There is no discovery of any fact linking the accused to the crime sought to be proved, much less, established by the prosecution beyond reasonable doubt.”

(emphasis supplied)

31. While the conduct of the Appellant is a relevant piece of information, it must be considered along with other vital evidence. Absconding or mere allegation that the Appellant was absconding or even assuming that the Appellant was indeed absconding, would not necessarily lead to a conclusion of a guilty mind. When it comes to a case based exclusively on circumstantial evidence, it can rarely be said that the act of an accused absconding can form the determining link in completing the chain of circumstantial evidence, where the requisite threshold for upholding a conviction is that there must be no other reasonable hypothesis other than the guilt of the accused. The Apex Court in Bipin Kumar Mondal v. State of W.B., (2010) 12 SCC 91, while relying on Matru v. State of U.P., (1971) 2 SCC 75 has reiterated this position and held as under:-

“27. In Matru v. State of U.P. [(1971) 2 SCC 75 : 1971 SCC (Cri) 391 : AIR 1971 SC 1050] this Court repelled the submissions made by the State that as after commission of the offence the accused had been absconding, therefore, the inference can be drawn that he was a guilty person observing as under : (SCC p. 84, para 19)

“19. The appellant's conduct in absconding was also relied upon. Now, mere absconding by itself does not necessarily lead to a firm conclusion of



guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime such is the instinct of self-preservation. The act of absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case. Normally the courts are disinclined to attach much importance to the act of absconding, treating it as a very small item in the evidence for sustaining conviction. It can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the accused. In the present case the appellant was with Ram Chandra till the FIR was lodged. If thereafter he felt that he was being wrongly suspected and he tried to keep out of the way we do not think this circumstance can be considered to be necessarily evidence of a guilty mind attempting to evade justice. It is not inconsistent with his innocence.”

A similar view has been reiterated by this Court in Rahman v. State of U.P. [(1972) 4 SCC (N) 6 : AIR 1972 SC 110] and State of M.P. v. Paltan Mallah [(2005) 3 SCC 169 : 2005 SCC (Cri) 674].

28. Abscondence by a person against whom FIR has been lodged, having an apprehension of being apprehended by the police, cannot be said to be unnatural. Thus, in view of the above, we do not find any force in the submission made by Shri Bhattacharjee that mere absconding by the appellant after commission of the crime and remaining untraceable for such a long time itself can establish his guilt. Absconding by itself is not conclusive either of guilt or of guilty conscience.”



32. Another related but equally important aspect in the facts of the present case is the alleged suspicious conduct that has been attributed to the Appellant by the prosecution is that he had left his house after getting to know that the Complainant had lodged a police complaint. As per the deposition of PW-8 /Rajdev Mishra, in his Examination-In-Chief dated 11.11.1999, he has noted that he had seen the Appellant lying on a cot in his courtyard and at about 5 pm when he saw the Appellant's house again, it was found to be locked.

33. Even if the Appellant was absconding, it cannot be said that any other possible explanation of the Appellant had has been ruled out. Applying the dictum of the law as laid down by the Apex Court, it cannot be said that merely absconding or suspicious conduct in the absence of any corroborative links can form the substratum of conviction. In the case of Akhilesh Hajam v. State of Bihar, **1995 Supp (3) SCC 357**, the Apex Court has held that strong emotional considerations cannot take the place of proof. The relevant parts of the judgement read as under:-

*“12. From the tenor of the evidence adduced by the prosecution it can well be seen that there has been a deliberate venture and an attempt of the witnesses to favour the appellant and it becomes clear that the witnesses did not come out with the truth and tried to suppress the material facts to deflect the course of justice for reasons best known to them. **On going through the prosecution evidence though it appears to us that in all probability the appellant may be the culprit but probabilities and moral convictions have no place or any role to play to convict a person in the absence of legal evidence. There is a long distance to be travelled between the expression “may be” and “must be”. Howsoever strong the emotional considerations may be, but the same cannot take the***



place of proof. It is indeed unfortunate that four innocent persons lost their lives and the culprit whosoever he may be goes unpunished. But it would be still worse if an innocent person is held responsible for the same merely on the basis of strong and serious doubts and, therefore, the conviction of the appellant deserves to be set aside by giving him the benefit of doubt.”

(emphasis supplied)

34. This brings us to the final and most substantial limb of the prosecution's case i.e. recoveries. Before the Ld. Trial Court, the prosecution has argued that several recoveries were made at the instance of the Appellant. While the body of the deceased was not recovered at the instance of the Appellant, it was found in a gunny bag inside the septic tank behind the Appellant's house. Additionally, a rope, a spade and slippers belonging to the deceased were also recovered from the Appellant's house. A ransom note was also recovered at the instance of the Appellant from a pit at Balaji Crossing.

35. Since these recoveries form the strongest pillar of the case of the prosecution, it is imperative to assess whether these recoveries complete the chain of events and establish the prosecution's case beyond reasonable doubt. Before undertaking this examination, it would be apposite to briefly summarise the case of the prosecution before the Learned Trial Court based on which the conviction of the Appellant rests.

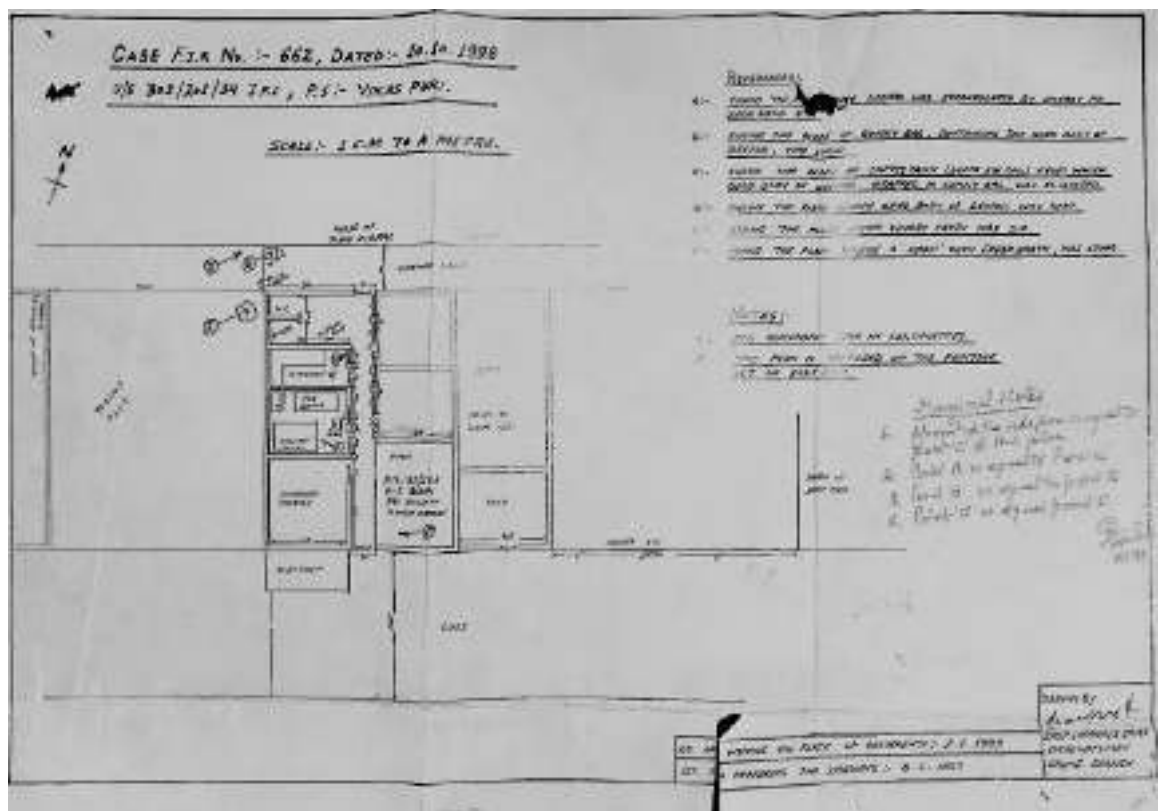
36. In short, the gist of the prosecution's case is that on 10.10.1998 the gunny bag containing the body of the deceased was discovered in the septic tank and the Police were informed accordingly. PW-26/Inspector Gurbachan Singh along with his fellow police officers inspected the site, whereafter samples were collected from the gunny bag, the rope with which it was tied



and the mud from the site of the incident. PW-26/Inspector Gurbachan Singh also recovered a spade from the courtyard of the Appellant's house. Thereafter, inquest proceedings were conducted and the body of the deceased was sent for post-mortem examination at Subzi Mandi mortuary.

37. Subsequently, the Appellant was arrested on 16.10.1998 near Uttam Nagar bus terminal, based on information provided by PW-12 /the Complainant to the Police. After his arrest, upon being interrogated, he made a disclosure statement to the Police. As per the prosecution, pursuant to this disclosure statement the police along with PW-12 /the Complainant and some other witnesses went to the house of the Appellant and Balaji Crossing from where recoveries were made.

38. In order to appreciate the rival contentions, it is necessary to examine the exhibits and testimonies of the witnesses before the Ld. Trial Court. Ex. PW15/A i.e. the site plan of the place of incident records as under:-





39. A perusal of the deposition of PW-15/ Inspector Devender Singh reveals that Ex. PW15/A is a scaled map of the site that was prepared using the scale of 1 cm representing 1 meter. All the important points have been marked as A to F. “Point A” shows the place where the deceased was allegedly strangled. “Point B” shows the place from where the gunny bag containing the body of the deceased was lying. “Point C” shows the place from septic tank from where the dead body wrapped in the gunny bag was recovered. “Point D” shows the place where the body of the deceased was kept. “Point E” shows the place from where the earth was dug. Similarly, “Point F” shows the place from where the spade was recovered.

40. This Court would first like to examine the circumstances in which the body of the deceased was recovered, for which this Court has gone through Ex. PW15/A and the material on record. A perusal of Ex. PW15/A demonstrates that the septic tank was situated at the backside of the house of the Appellant. As per the testimony of PW-4 /Raj Bahadur, the septic tank is located on the backside gali of the house of Appellant and is about 8 feet wide. It has been contended on behalf of the learned Counsel for the Appellant that the discovery of the body from the septic tank of the Appellant’s house would not *ipso facto* link the Appellant to the dead body and it is in fact a very weak piece of evidence.

41. Learned Counsel for the Appellant has placed reliance on the deposition of PW-3 /Lalan Malik, neighbour of the Complainant, who, in Examination-In-Chief dated 23.07.1999, has stated that there were about 5-6 other persons residing in the Appellant’s house, however, he was unable to provide their names.



42. The learned Counsel for the Appellant has pointed out to the deposition of PW-4 /Raj Bahadur, who, in his Cross-Examination dated 11.08.1999, also stated that 2-3 other persons used to reside with the Appellant in his house. Similarly, PW-8 /Rajdev Mishra, who is one the main witnesses of the prosecution has also deposed in his Cross-Examination dated 11.11.1999, that apart from the Appellant, his brother, wife of his brother along with 3-4 more persons besides their children, were also residing in the house.

43. The depositions thus establish that the house where the Appellant was residing was not in his sole occupation and it was not within his exclusive control and possession. The prosecution has also been unable to demonstrate that the septic tank located at the backside of the Appellant's house from where the body of the deceased was recovered was not accessible to others. On the contrary, material on record clearly establishes that the septic tank was located in a gali that was easily accessible to and all. Therefore, the fact that the body of the deceases was recovered from the septic tank behind the Appellant's house, though vital, cannot be said to form an unbreakable chain of corroboration when viewed in isolation.

44. This Court would now examine the recoveries made from within the premises of the Appellant's house. A spade (Ex/ PW-8), was recovered from the Appellant's house on 10.10.1998. And based on the disclosure statement of the Appellant dated 16.10.1998 the Police then recovered a bundle of rope (Ex PW 12/D), a pair of slippers (Ex PW 12/C) and a ransom note (Ex. PW-26/H) were recovered from the house of the Appellant but the ransom note was recovered from Balaji Crossing.



45. As far as the spade is concerned, a perusal of Ex PW8/C i.e. the seizure memo thereof, reveals that the recovery was made from courtyard of the Appellant's house in the presence of PW-9 /Rajdev Mishra and PW-12 /the Complainant on 10.10.1998. The seizure memo also reveals that the spade appeared to have earth on its blade and the sample of earth sticking to the blade of the spade was scraped off and sealed in a separate transparent polythene packet. At the time of its recovery, PW-12 /the Complainant and PW-8 /Rajdev Mishra were the witnesses who had attested the seizure memo. A perusal of the seizure memo demonstrates that the spade was recovered on 10.10.1998 and it was not recovered at the instance of the Appellant which is corroborated by the testimony of PW-8 /Rajdev Mishra.

46. It is in this backdrop that the testimony of PW-4 /Raj Bahadur in his Examination-In-Chief and Cross-Examination assumes significance. In his Examination-In-Chief, PW-4/ Raj Bahadur stated that about three days prior to the date on which the deceased went missing, he had borrowed the spade from the Appellant because he needed it for some repair work that going on in his house. He has also stated that on the evening of 08.10.1998 the Appellant insisted that the spade be returned to him. PW-4 /Raj Bajadur has also stated that at the time when the Appellant took the spade from him it had some fresh earth on its blade and that he had not washed or cleaned the spade at before handing it over to the Appellant.

47. The foregoing discussion makes it apparent that the spade was not recovered at the behest of the Appellant. It is also shows that the spade was independently in the possession of PW-4/ Raj Bahadur prior to the incident and his deposition that he had not cleaned the spade before returning it lowers the probative value of the mud samples as a link to the crime. When



it comes to appreciating the evidentiary value of the spade in the chain of circumstances, it cannot be said that the prosecution has been able to demonstrate as to how the spade was used in burring / disposing the body of the deceased and the Ld. Trial Court has clearly overlooked the same.

48. With respect to the rope, marked as Ex. PW-12/D, the recovery is stated to have been made from one of the rooms of the Appellant's house subsequent to his disclosure statement. In order to appreciate the evidentiary value of this recovery there are two aspects that have to be considered. The **first** aspect is the corroborative chain linking the rope recovered from the house of the Appellant to the rope that was used to tie the gunny bag. The **second** aspect being the circumstances in which the recovery was made.

49. As per the deposition of PW-26/Inspector Gurbachan Singh, given in his Examination-In-Chief dated 08.03.2001, the rope was recovered from inside a room in the Appellant's house, whereafter, it was marked as Ex PW 12/D. As mentioned earlier, the first aspect requires examination of whether there is any reliable evidentiary link between the bundle of rope which was recovered from the Appellant's house and the rope with which the gunny bag was tied.

50. Learned Counsel for the Appellant has argued that the pieces of jute string i.e. Exhibit-3 was in a torn and mutilated condition and it could not be compared with the jute string in Exhibit-4 which was recovered from the house of the Appellant. Therefore, clearly the alleged recovery of the bundle of rope fails to link it with the rope which was used in the crime. It would also be pertinent to refer to the CFSL Report which is Ex. PW 21/A. The relevant portion of the CFSL Report reads as under:-



“The jute string marked exhibit 3 is in torn and mutilated condition and comparison of the same could not be made with the jute string marked exhibit”

51. The second aspect that needs consideration by this Court is the circumstances in which the recovery of the rope was made. PW-25 /HC Vijender Singh, in his Cross-Examination dated 14.11.2000, has stated that the lock of the rooms of the house of the Appellant were opened when they reached the house along with him. PW-26/Inspector Gurbachan Singh in his Cross-Examination held on 01.08.2001 stated that the lock of the rooms of the Appellant were opened after summoning his brother, who provided the key of the said rooms. PW-8 /Rajdev Mishra, deposed in his Cross-Examination held on 11.11.1999 that the locks of all the rooms were opened in the presence of PW-5 /Chaudhary Randhir Singh, who was not made witness of the recovery. This, the learned Counsel for the Appellant argues, casts doubt on the recovery.

52. With respect to the pair of slippers, marked as Ex. PW-12/C, the recovery is stated to have been made from the courtyard of the Appellant's house. It was identified by PW-12 /the Complainant and further PW-26/Inspector Gurbachan Singh, in his Examination-In-Chief dated 08.03.2001 has deposed that the pair of slippers was recovered from the courtyard of the Appellant's house, lying among a heap of bricks. As per the description provided by PW-26/Inspector Gurbachan Singh, these slippers were of the make “Glory”, and the straps and the surface of the slippers were of black colour whereas the upper base of the slipper was of white colour. The slippers were seized *vide* seizure memo as Ex. PW 12/C.

53. Qua this, Learned Counsel for the Appellant has argued that despite the availability of other independent witnesses, only PW-12 /the



Complainant and PW-25 /HC Vijender Singh were joined as witnesses to the seizure and this casts serious doubt on the genuineness of the recovery. Additionally, Learned Counsel for the Appellant has pointed out that the pair of slippers were recovered lying on the shed near the roof, which is an easily accessible open space. He has also pointed out that the pair of slippers are of an ordinary make and was easily available in the market.

54. Learned Counsel for the Appellant has placed reliance on the depositions of PW-8 /Rajdev Mishra in his Cross-Examination dated 11.11.1999, PW-12 /the Complainant in his Cross-Examination dated 16.01.2001, PW-25 i.e. HC Vijender Singh in his Cross-Examination dated 14.11.2000 and PW-26/Inspector Gurbachan Singh, in his Cross-Examination dated 01.08.2001, wherein, they all have stated that the slippers recovered were ordinary slippers which were easily available in the market.

55. After going through the deposition of the abovementioned witnesses this Court is in agreement with Learned Counsel for the Appellant that the recovery of the pair of slippers of the deceased was from an open space in the Appellant's house which was easily accessible. Furthermore, slippers of this make were easily available in the market and other than the deposition of PW-12/ the Complainant, who is an interested witness, there is nothing that can link factum of recovery of the slippers to the deceased. Considering the above, this Court is of the view that recovery of the slippers is not a strong piece of circumstantial evidence or that the prosecution has established it as a strong piece of circumstantial evidence which completes the chain evidence.

56. As far as the ransom note is concerned, it is the prosecution's case that the note had been recovered from an open pit at Balaji Chowk at about



10:10 PM on 16.10.1998. It is the final link in the prosecution's case. Learned Counsel for the Appellant has argued that the recovery of the ransom note is questionable as at the time of recovery no public witness was asked to join during the recovery of the ransom note. He has placed reliance on the deposition of PW-25 /Vijender Singh, during his Cross-Examination dated 14.11.2000, wherein he has noted that *"..public was also passing through that way at that time, and some persons have gathered there, but no one was asked to sign the document..."*. Learned Counsel for the Appellant has also pointed out to the deposition of PW-26/Inspector Gurbachan Singh in his Cross-Examination dated 01.09.2001, wherein he has given a suggestion that the said ransom note was in the writing of co-accused Sadanand.

57. Perusal of the material on record and the deposition of the witnesses shows that despite the place of recovery being at Balaji Crossing no independent witness was joined during the recovery of the ransom note. Furthermore, even the authorship of the said note was questionable and there is no forensic link that connects the ransom note to the Appellant. And assuming that the forensic note was genuine, the prosecution has not been able to demonstrate any evidence of demand or communication with the complainant. These facts have been completely overlooked by the Ld. Trial Court. We are of the opinion that in the facts of this case and under the circumstances in which this ransom note was recovered, it is not a strong piece of evidence.

58. After having gone through the material on record, the testimonies of the witnesses, and the arguments advanced by the parties this Court is of the view that the conviction of the Appellant cannot be sustained. More so, as



mentioned earlier, when it comes to conviction in cases of circumstantial evidence. From the discussion it is evident that the prosecution's case is riddled with multiple inconsistencies and material lacunae which have rendered the chain of evidence incomplete and incapable of establishing the guilt of the Appellant beyond reasonable doubt. Some of these glaring inconsistencies which render the case of the prosecution improbable are summarized hereinunder:

- i. The body of the deceased was not discovered at the instance of the Appellant. Even though the septic tank from where the body of the deceased was recovered was at the backside of the Appellant's house, the statements of PW-3 /Lallan Malik and PW-8 / Rajdev Mishra demonstrates that the house of the Appellant was a shared dwelling with multiple residents. It is also disputed as to who opened the locks of the Appellant's house at the time of the recovery. Moreover, the septic tank was easily accessible as well.
- ii. Deposition of PW-25 /HC Vijender Singh, PW-26/Inspector Gurbachan Singh and PW-8 /Rajdev Mishra are in conflict with each other. As noted earlier PW-25 /HC Vijender Singh, in his Cross-Examination dated 14.11.2000 has stated that the lock of the rooms of the house of the Appellant were opened when they reached the house of the Appellant along with him, however, PW-26/Inspector Gurbachan Singh in his Cross-Examination held on 01.08.2001 stated that the lock of the rooms of the Appellant were opened after summoning his brother, and that it was he who provided the key of the rooms of the Appellant.



PW-8 /Rajdev Mishra deposed in his Cross-Examination held on 11.11.1999 that the locks of all the rooms were opened in the presence of PW-5 /Chaudhary Randhir Singh, who was not made witness of the recovery.

- iii. The pair of slippers that was purported to belong to the deceased was recovered lying under a shed near the roof in the courtyard of the Appellant's house. This place was easily accessible to anyone and it has not been demonstrated in any manner whatsoever that this place was in the exclusive possession of the accused.
- iv. The corroborative chain linking the Appellant's house to the slippers that belonged to the deceased is weak and unsubstantiated. Even otherwise, the slippers were recovered in the presence of an interested witness i.e. PW-12 /the Complainant. A perusal of the depositions of PW-8 /Rajdev Mishra, PW-12 /the Complainant, PW-25 /HC Vijender Singh and PW-26/Inspector Gurbachan Singh makes it apparent that the slippers which were recovered from the house of the Appellant were of an ordinary make and were easily available in the market.
- v. The CFSL Report i.e. Ex. PW-21/A has also been unable to demonstrate any corroborative link between the jute string which was used to tie the gunny bag and the rope which was recovered from the house of the Appellant.
- vi. Interestingly, though the pit from where the ransom note was recovered is a public place, yet no independent witnesses were



joined during the recovery of the same. Additionally, it has been suggested by PW-25 /HC Vijender Singh and PW-26/Inspector Gurbachan Singh that the note was in the handwriting of co-accused Sadanand. Therefore, the story of the prosecution regarding the recovery of the ransom note does not inspire confidence.

- vii. As far as the purported motive of the Appellant in having committed the murder is concerned, the statements of PW-8 /Rajdev Mishra and PW-12 /the Complainant on one side and PW-4 /Raj Bahadur and PW-13 /Kant Raj on the other side contradicted that the Appellant had enmity with PW-12 /the Complainant and therefore committed the murder of his son i.e. the deceased in order to exact revenge on him. As such, it cannot be conclusively said in any manner whatsoever that the motive of the prosecution has been able to establish that there was a clear-cut motive on behalf of the Appellant for committing the crime.

59. Unlike direct evidence the indirect light circumstances may throw may vary from suspicion to certitude. Therefore, care must be taken to avoid subjective pitfalls of exaggerating a conjecture into a conviction. This Court is of the view that in the facts and circumstances of this case the prosecution has been unable to prove the guilt of the Appellant beyond reasonable doubt. Seen from the prism of the *panchsheel* test as enunciated in Sharad Birdhichand Sarda (supra) and refined further by the pronouncements of the Apex Court, it cannot be said that the circumstances from which the guilt of



the accused has been drawn appear to be fully established by the prosecution.

60. The facts which have been established by the prosecution are not exclusively consistent with the hypothesis of the guilt of the accused and other hypotheses cannot be ruled out. It can also not be said that the circumstances of the present case are of a conclusive nature and tendency and exclude every possible hypothesis except the one that has been sought to be proved. Finally, the chain of evidence of the prosecution has been riddled with inconsistencies and material gaps that are inconsistent with the guilt of the accused and it has not been shown in all human possibility that the Appellant had committed the murder of the deceased.

61. In light of the above, the conviction of the Appellant is set aside. Pending applications (if any) are disposed-off.

62. The bail bonds are discharged.

SUBRAMONIUM PRASAD, J

SAURABH BANERJEE, J

NOVEMBER 17, 2025

hsk/VR