

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No. 53 of 2020

Arising Out of PS. Case No.-296 Year-2016 Thana- JAHANABAD District- Jehanabad

RAJA KUMAR GOSWAMI @ RAJ KUMAR GOSWAMI @ RAJA
GOSWAMI Son of Late Kapil Goswami Resident of Village - Kutwanchak,
P.S. and Distt - Jehanabad.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 5775 of 2019

Arising Out of PS. Case No.-296 Year-2016 Thana- JAHANABAD District- Jehanabad

MANISH KUMAR Son of Dhanraj Singh Resident of Village - Gangachak,
P.S.- Masaudhi, Distt.- Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 16 of 2020

Arising Out of PS. Case No.-296 Year-2016 Thana- JAHANABAD District- Jehanabad

SANGAL SWAMI @ VINAY KUMAR S/o - Binod Singh @ Binod Kumar
Resident of Village- Badi Sangat, P.S.- Jehanabad, Distt- Jehanabad.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 314 of 2020

Arising Out of PS. Case No.-296 Year-2016 Thana- JAHANABAD District- Jehanabad

PRINCE KUMAR @ NEPALI Son of Kamal Singh Resident of Village and
P.O. - Jhutpani, P.S. and District - Tari, Nepal.

... .. Appellant/s



Versus

The State of Bihar

... .. Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 359 of 2020

In

CRIMINAL APPEAL (SJ) No.376 of 2020

Arising Out of PS. Case No.-296 Year-2016 Thana- JAHANABAD District- Jehanabad

=====

HARE RAM YADAV Son of Sri Ram Pravesh Yadav Resident of Village-
Nizamuddinpur, P.O. and P.S.- Jehanabad, District- Jehanabad.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 566 of 2021

In

CRIMINAL APPEAL (SJ) No.217 of 2020

Arising Out of PS. Case No.-296 Year-2016 Thana- JAHANABAD District- Jehanabad

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RAHUL KUMAR @ FURRI @ FUGGI S/o Late Dhaneshwar Paswan R/o
village- Tikhkhora, P.S.- Masaudhi, Distt.- Patna

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

Appearance:

(In CRIMINAL APPEAL (DB) No. 53 of 2020)

For the Appellant/s : Mr. Pramod Kumar Singh, Advocate
Mr. Amit Kumar, Advocate

For the Respondent/s : Km. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (SJ) No. 5775 of 2019)

For the Appellant/s : Mr. Ansul, Sr. Advocate
Mr. Anuj Kumar, Advocate
Mrs. Priyanka Singh, Advocate
Mr. Javed Aslam, Advocate

For the Respondent/s : Mr. Syed Ashfaque Ahmad, APP



(In CRIMINAL APPEAL (DB) No. 16 of 2020)

For the Appellant/s : Mr. Ramakant Sharma, Sr. Advocate
Mr. Lakshmi Kant Sharma, Sr. Advocate
Mr. Rajesh Kumar, Advocate
Mr. Rakesh Kumar Sharma, Advocate

For the Respondent/s : Mr. Dilip Kr. Sinha, APP

(In CRIMINAL APPEAL (DB) No. 314 of 2020)

For the Appellant/s : Mr. Kanhaiya Pandey, Advocate
Mr. Rakesh Narayan Singh, Advocate
Mrs. Usha Kumari, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 359 of 2020)

For the Appellant/s : Mr. Ashok Kumar, Advocate
For the Respondent/s : Mrs. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 566 of 2021)

For the Appellant/s : Mr. Manoj Kumar, Advocate
Mr. Raj Narayan Mishra, Advocate
Mr. Uday Kumar, Advocate
Ms. Bhawna Jha, Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date: 17-02-2026

The aforesaid appeals preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'CrPC') arise out of the same judgment of conviction and order of sentence dated 12.12.2019 and 13.12.2019 respectively, hence the aforesaid appeals have been heard together and are being disposed off by the present common judgment. By the said



judgment of conviction dated 12.12.2019, passed by the Learned Additional District and Sessions Judge-1st, Jehanabad (herein after referred to as the 'Ld. Trial Judge') in Sessions Trial No. 76 of 2017/14 of 2017 (arising out of Jehanabad P.S. Case No. 296 of 2016), the appellants of the first, third and fourth case have been convicted under Sections 302/201/120(B) read with Section 149 of the Indian Penal Code (hereinafter referred to as the 'IPC') while the appellants of the second, fifth and sixth case have been convicted under Sections 201/120(B) read with Section 149 of the IPC. By the order of sentence dt. 13.12.2019, the appellants of the 1st, 3rd and 4th case have been sentenced to undergo rigorous imprisonment (RI) for life under Sections 302/120(B) read with Section 149 of the IPC with fine of Rs. 10,000/- each and in default of payment of the same they have been further directed to undergo RI for one year each as also they have been sentenced to undergo RI for 5 years each under Sections 201/120(B) read with Section 149 of the IPC with fine of Rs. 5,000/- each and in default of payment of the same they have been further directed to undergo RI for six months each. Both the sentences have been directed to run concurrently. As far as the appellants of the 2nd, 5th and 6th case are concerned, by the order of sentence dt. 13.12.2019, they have been sentenced to



undergo RI for five years each under Sections 201/120(B) read with Section 149 of the IPC with fine of Rs. 5,000/- each and in default of payment of the same they have been further directed to undergo rigorous imprisonment for six months each.

2. The short facts of the case as per the written report of the informant of the present case, namely Vidhi Kumar (PW-6), filed before the Officer-in-Charge Jehanabad Police Station is that on the previous day i.e. 22.06.2016, at about 08:00 p.m. in the night his brother Mantu Kumar aged about 33 years had told his wife Sheela Kumari (PW-4) that he has been called on telephone by Mithilesh Kumar for taking money, whereafter he had left the house, however when he did not return late in the night, his wife told the informant about the same, whereupon all the family members started searching for the said Mantu Kumar but he could not be found. The informant has further stated that the mobiles of Mantu Kumar bearing mobile nos. 8083588035 and 7091204544 were found to be switched off. He has also stated that when he had enquired from Mithilesh about his brother, he told him that he had to pay a sum of Rs. 25,000/- which he had given to Mantu Kumar near ICICI Bank, Jehanabad and then they had come up to *Mallahchak More*, whereafter the said Mantu Kumar had left on the pretext of purchasing vegetables,



after which he cannot say about his whereabouts. The informant has next stated that his brother Mantu Kumar had left the house on a black colour Bajaj Pulsar motorcycle, whereafter he is missing. On the basis of the said written report of the informant, an FIR bearing Jehanabad P.S. Case No. 296 of 2016 was registered on 23.06.2016 at 10:30 am under Section 365 of the IPC against unknown persons.

3. The police had then conducted investigation and upon finding the case to be true had filed a charge sheet dated 30.09.2016 under Sections 302, 201, 120B, 467, 468 and 471 of the Indian Penal Code and under Section 66 of the Information Technology Act, 2000 (hereinafter referred to as the "I.T. Act") against the aforesaid six appellants. The learned Trial Court upon considering the chargesheet and the materials available on record had taken cognizance of the aforesaid offences vide order dated 19.12.2016 against all the said six appellants, whereafter the case was committed to the Court of Sessions vide order dated 31.01.2017 and was numbered as Sessions Trial No. 76 of 2017 / 14 of 2017. The learned Trial Court had then framed charges against the aforesaid appellants vide order dated 17.02.2017 under Sections 302/149, 201/149, 467/149, 468/149, 471/149 and 120(B)/149 of the IPC and Section 66 of the I.T. Act.



4. During the course of trial, the prosecution has examined 10 witnesses. While PW-1 Ram Chandra Prasad is father of the deceased, PW-2 Babloo Kumar is maternal brother of the deceased, PW-3 Kumkum Devi is wife of the informant and *Bhabhi* of the deceased, PW-4 Sheela Kumari is wife of the deceased, PW-6 Vidhi Kumar is the informant and brother of the deceased, PW-5 Sri Sandeep Patel is the Judicial Magistrate who had recorded the statements of the appellants of the 1st and 6th case under Section 164 of the Cr.PC, PW-7 Sanjay Kumar is the Investigating Officer of the present case and PW-8 Munna Kumar is the Operator posted at the office of the Superintendent of Police, Jehanabad. As far as PW-9 Ganesh Das is concerned, he is the Chaukidar of Jehanabad Police Station while PW-10 Ram Dhyani Sharma is an Advocate Clerk, a formal witness.

5. The learned senior counsel Sri Ramakant Sharma, appearing for the appellant of the third case, namely Sangal Swami @ Vinay Kumar has submitted that there are no eye witnesses in the present case and the same is solely based on circumstantial evidence, however a bare perusal of the evidence on record would show that the link and chain in the series of circumstances are wholly missing and the Investigating Officer has tried to pick up circumstances from here and there and



connect them, nonetheless he has utterly failed to do so. In this regard the evidence of the Investigating Officer i.e. PW-7 has been relied upon and reference has been made to paragraphs no. 3, 4, 10, 12(4), (5) and (8) to submit that the Investigating Officer has though tried to link the mobile numbers of various accused with the alleged occurrence, however it is apparent that the link regarding the appellants having made calls to the deceased Mantu Kumar is missing. It is also submitted that the Investigating Officer, in his evidence has stated that the last call was made to the mobile number of the deceased by the suspect mobile number, i.e. 7519391443, however his evidence would also show that upon investigation the said mobile number was found to be registered in the name of one Kamlesh Kumar but the whereabouts of the said Kamlesh Kumar is not known till date. It is next submitted by referring to paragraphs no. 16, 17, 20 and 22 of the evidence of the Investigating Officer that though the house of the appellant of the first case was inspected, however no incriminating articles were recovered therefrom.

6. It is next submitted by the learned senior counsel Sri Ramakant Sharma that though the handset of Sangal Swami was seized, after he was arrested and seizure list was also prepared but the seizure list witnesses have not been examined which has



caused grave prejudice to the defense. Reference has next been made to paragraph nos. 37 and 40 of the evidence of PW-7 Sanjay Kumar (I.O.) to submit that the whereabouts of Kamlesh Kumar, in whose name the suspect sim, from which last call was made to the deceased, has been registered has neither been traced nor examined. The learned Sr. counsel for the appellant has also drawn attention to paragraphs no. 42 to 46 of the evidence of PW-7 Sanjay Kumar (I.O.) to submit that though reference has been made to the tower location of the mobile of the deceased to be near Mallahchak water tank, i.e. near his house and then his mobile's tower location was not found at Hospital Road from 08:00 p.m. onwards of 22.06.2016, however his wife had talked in the same night at 08:37 p.m. and the tower location has been found to be at Shekh Alam Chauk but the last call made on the mobile of the deceased from the suspect mobile number is at 08:12 p.m. in the night when the tower location has been found to be at Mallahchak, nonetheless all these circumstances do not lead to any conclusion.

7. The learned senior counsel for the appellant of the third case has further submitted, by referring to other paragraphs of the evidence of PW-7 Sanjay Kumar (I.O.) that the dead body of the deceased itself has not stood identified, especially in view of



the evidence of PW-7 Sanjay Kumar (I.O.) as contained in paragraph no. 53 of his deposition to the effect that the articles which were seized by the police at the time of cremation of the dead body do not match with the articles which have been mentioned in the inquest report, more so in column nos. 5 and 7. In fact in paragraph no. 57, the Investigating Officer has admitted that the tower location of the mobiles of the deceased and Sangal Swami was never found to be together. The learned senior counsel has next referred to paragraph no. 69 of the evidence of PW-7 Sanjay Kumar (I.O.) with a view to discredit the testimony of PW-7 Sanjay Kumar (I.O.) and show that he is not a truthful witness inasmuch as PW-7 has stated in the said paragraph that after he had recovered the mobile phone of deceased Mantu Kumar, he had called for the documents of the said mobile phone from the wife of the deceased and had compared the IMEI number and established the identity of the said mobile, whereafter the documents were returned back to the wife of the deceased, however surprisingly he has admitted that he had not noted the said facts in the case diary.

8. At this juncture, the learned senior counsel for the appellant of the third case has referred to a judgment rendered in the case of *Aghnoo Nagesia vs. State of Bihar*, reported in *AIR*



1966 SC 119 to submit that the Hon'ble Apex Court has held therein that the provisions contained in Sections 25, 26 and 27 of the Indian Evidence Act, 1872 seem to proceed upon the view that confessions made by an accused to a police officer or made by him while he is in the custody of a police officer are not to be trusted and should not be used in evidence against him. The learned senior counsel for the appellant has next referred to a judgment rendered by the Hon'ble Apex Court in the case of **Abdul Nassar vs. State of Kerala & Anr**, reported in **AIR 2025 SC 691**, paragraph no. 30 whereof is reproduced herein below:-

“30. We deem it essential to enunciate the principles that courts must adhere to while appreciating and evaluating evidence in cases based on circumstantial evidence, as follows:

(i). The testimony of each prosecution and defence witness must be meticulously discussed and analysed. Each witness's evidence should be assessed in its entirety to ensure no material aspect is overlooked.

(ii). Circumstantial evidence is evidence that relies on an inference to connect it to a conclusion of fact. Thus, the reasonable inferences that can be drawn from the testimony of each witness must be explicitly delineated.

(iii). Each of the links of incriminating circumstantial evidence should be meticulously examined so as to find out if each one of the circumstances is proved individually and whether collectively taken, they forge an unbroken chain consistent only with the hypothesis of the guilt of the accused and totally inconsistent



with his innocence.

(iv). The judgment must comprehensively elucidate the rationale for accepting or rejecting specific pieces of evidence, demonstrating how the conclusion was logically derived from the evidence. It should explicitly articulate how each piece of evidence contributes to the overall narrative of guilt.

(v). The judgment must reflect that the finding of guilt, if any, has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reasonable hypothesis.”

9. Thus, it is submitted by the learned senior counsel that the links of the incriminating circumstantial evidence should be examined so as to find out if each one of the circumstances has stood proved individually and whether collectively taken, they forge an unbroken chain consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. It is submitted that as far as the present case is concerned, the link in the chain of circumstances is missing and none of the circumstances have stood proved independently, hence the circumstantial evidence is not enough to prove the guilt of the appellants beyond all reasonable doubt. It is next submitted that the motive behind the occurrence in question is also absent as is apparent from the evidence of the prosecution's witnesses, which also points towards the missing link in the chain of circumstances. It is also argued that a bare perusal of



the statement of the appellant of the third case, recorded under Section 313 of the Code of Criminal Procedure would show that firstly the incriminating evidence available against the said appellant has not been put to him and secondly he has in his defence stated that the police used to come repeatedly at his house and used to harass him and his family members leading to him surrendering before the Court on 27.07.2016, however he was not remanded since the Court told him that there is no evidence against him, whereafter he had gone to Jehanabad Town Police Station and had told the police that if there is no evidence against him then why he and his family members are being harassed, whereupon the police personnel had caught him and had forcibly got his signature made on a blank sheet of paper but he had not given any confessional statement before the police. In this regard, reference has been made by the learned senior counsel for the said appellant to a judgment reported in ***AIR 2020 SC 4535 (Maheshwar Tigga vs. State of Jharkhand)***, paragraph no. 9 whereof is reproduced herein below:-

“9. This Court, time and again, has emphasised the importance of putting all relevant questions to an accused under Section 313 CrPC. In Naval Kishore Singh vs. State of Bihar [(2004) 7 SCC 502], it was held to be an essential part of a fair trial observing as follows:-



“5. The questioning of the accused under Section 313 CrPC was done in the most unsatisfactory manner. Under Section 313 CrPC the accused should have been given opportunity to explain any of the circumstances appearing in the evidence against him. At least, the various items of evidence, which had been produced by the prosecution, should have been put to the accused in the form of questions and he should have been given opportunity to give his explanation. No such opportunity was given to the accused in the instant case. We deprecate the practice of putting the entire evidence against the accused put together in a single question and giving an opportunity to explain the same, as the accused may not be in a position to give a rational and intelligent explanation. The trial Judge should have kept in mind the importance of giving an opportunity to the accused to explain the adverse circumstances in the evidence and the Section 313 examination shall not be carried out as an empty formality. It is only after the entire evidence is unfurled the accused would be in a position to articulate his defence and to give explanation to the circumstances appearing in evidence against him. Such an opportunity being given to the accused is part of a fair trial and if it is done in a slipshod manner, it may result in imperfect appreciation of evidence.”

10. Therefore, it is submitted by the learned senior counsel, appearing for the appellant of the 3rd case that the incriminating circumstances having not been put to the said appellant, the same cannot be used to convict the said appellant. The other issue raised by the Ld. senior counsel is that the call detail records have not stood proved in absence of certification under Section 65B of the Indian Evidence Act, 1872. Reference in this



connection has been made to a judgment rendered by the Hon'ble Apex Court in the case of *Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal & Ors.*, reported in (2020) 7 *SCC 1*. The Ld. Sr. counsel for the appellant has next submitted that there should be no if and but and the evidence must be pointing towards the guilt of the accused persons and only then it can be said that their guilt has been proved beyond all reasonable doubt. Reference in this connection has been made to a judgment rendered by the Hon'ble Apex Court in the case of *Sujit Biswas vs. State of Assam*, reported in *AIR 2013 SC 3817* to contend that suspicion, however grave it may be, cannot take the place of proof and there is a large difference between something that "may be" proved and something that "will be" proved. Thus, it is submitted that in a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof since the mental distance between "may be" and "must be" is quite large and divides vague conjectures from sure conclusions. It is thus submitted that as far as the present case is concerned, barring suspicion there is no concrete proof to substantiate the guilt of the accused persons/appellants.

11. The learned counsel appearing for the appellant of the first case namely Raja Kumar Goswami, has though adopted the



arguments advanced by the learned senior counsel appearing for the appellant of the third case, however in addition it has been submitted that the link in the chain of circumstances is not complete, hence the said appellant cannot be convicted on the basis of circumstantial evidence and as far as ocular evidence is concerned, there is no eye witness to the occurrence in question, especially with regard to killing of the deceased. The learned counsel has referred to paragraph no. 110 of the deposition of the Investigating Officer (PW-7) to submit that he has stated that no communication was made from the mobile of Raja Goswami bearing no. 9097265546 to the mobile number of the deceased as has been observed from the call detail records. In any view of the matter, it is submitted that the call detail records have not stood proved in absence of certification under section 65B of the Indian Evidence Act. Thus, it is submitted that the evidence on record does not prove the guilt of the said appellant beyond all reasonable doubt.

12. The learned senior counsel appearing for the appellants of the second case and fourth case, namely Manish Kumar and Prince Kumar @ Nepali has submitted that the dead body found in the present case has itself not been identified and there is no evidence on record to connect the identity of the said dead body



with that of the deceased brother of the informant. It is next submitted by referring to paragraph No. 53 of the evidence of the Investigating Officer (PW-7) that the articles which were given by the informant to the Investigating Officer at the time of cremation and were seized by the Investigating Officer (PW-7) do not match with the articles found on the body of the deceased at the time of preparation of the inquest report, as has been mentioned in column nos. 5 and 7 thereof. Thus, the same also goes to show that the identity of the dead body has not stood established. The Ld. senior counsel has referred to paragraph nos. 3, 9, 99 and 100 to 102 of the evidence of PW-7 (IO) to submit that there is no connection in between the mobile number of the present appellants and the calls made to the deceased Mantu Kumar, hence even the call detail records do not prove that the said appellants and the deceased had been together at the time of the alleged occurrence.

13. The learned senior counsel appearing for the appellants of the 2nd and 4th case has next submitted by referring to the evidence of PW-7 (IO), specially paragraph no. 67 thereof that even if it is accepted for a moment that the confession of the appellant Manish Kumar had led to recovery of the parts of a motorcycle, nonetheless the fact remains that it is yet to be



ascertained as to whether the said parts belonged to the motorcycle being used by the deceased. Reference is also made to paragraph no. 69 of the evidence of the PW-7 (IO) to submit that after the mobile phone of the deceased was recovered, the Investigating Officer had called for its documents from his wife which she had produced and then the identity of the mobile phone was tried to be established by matching the IMEI number, however, the I.O. has stated that neither he had recorded the said factum in the case diary nor the said document was retained by him, hence it is submitted that the identity of the mobile phone has also not stood established. It is next contended that as far as the appellant Manish Kumar is concerned, the ingredients of Section 201 of the IPC do not stand established inasmuch as knowledge being foundation of the same, is completely missing.

14. As far as the 5th case, i.e the case of Hare Ram Yadav is concerned, the learned counsel appearing for the said appellant has referred to paragraphs no. 115 and 117 of the evidence of PW-7 to submit that the Investigating Officer has stated in his evidence that none of the witnesses have named the said appellant and no conversation had taken place in between the said appellant and the deceased. In fact, upon a court question, PW-7 (IO), in paragraph no. 119 has stated that no witness has



alleged or for that matter seen the said appellant taking the deceased in his car. Thus, it is submitted that no evidence is available on record to prove the guilt of the said appellant. As far as the appellant of the sixth case, namely Rahul Kumar is concerned, reference has been made to paragraph no. 106 of the evidence of PW-7 (I.O.) to submit that none of the eight witnesses have taken the name of the said appellant to be having any role in the alleged occurrence. Therefore, it is submitted that the said appellant is not guilty of the offences alleged much less there being any evidence on record to prove his guilt.

15. *Per contra*, the learned APP for the State Km. Shashi Bala Verma has submitted that admittedly there are no eye witnesses to the alleged occurrence, however there is enough circumstantial evidence to pin the aforesaid appellants and prove their guilt beyond all reasonable doubt. The Ld. APP for the State has referred to call detail records of the various appellants, as has been detailed in the evidence of the Investigating Officer i.e. PW-7 to submit that the complicity of the appellants of all the aforesaid appeals stands proved beyond all reasonable doubt. It is also submitted that the confessional statement of the appellants has led to various recoveries as can be culled out from the evidence of PW-7 i.e. the Investigating



Officer, thus invoking the principles, as contained in Section 27 of the Indian Evidence Act, 1872 the said circumstance would be enough to prove the guilt of the appellants beyond all reasonable doubt. Thus, it is submitted that the judgment of conviction and order of sentence rendered by the Ld. Trial Judge is fit to be upheld.

16. Besides hearing the learned senior counsels/counsels for the parties, we have minutely perused both the evidence i.e. ocular and documentary. Before proceeding further, it is necessary to cursorily discuss the evidence led by the prosecution.

17. PW-1 Ram Chandra Prasad has stated in his evidence that the occurrence dates back to one year at about 9:00 – 9:30 in the night when he was at his home and his son had gone to purchase vegetable but he did not return back, whereafter they had started searching for him. PW-1 has further stated that at the time his son was leaving the house, he had said that he has been called by Mithilesh Kumar at ICICI Bank for giving money to him. PW-1 has next stated that his son could not be found and ultimately his dead body was found near Masaurhi on the next day whereafter, postmortem examination was conducted. PW-1 has stated that Mithilesh Kumar along with Sangal Swami,



Rahul Kumar and other accused persons hatched a conspiracy together and killed his son as also one Goswami of Udwantchak is an accomplice as well. PW-1 has recognized the accused persons standing in the dock. In cross-examination PW-1 has stated that he had made his statement before the Police, the name of his son is Mantu and his wife has filed the case. PW-1 has further stated that he had not seen the killing taking place with his own eyes. We find that nothing substantial has emerged out of the further cross examination of the present witness.

18. PW-2 Bablu Kumar has stated in his examination-in-chief that the occurrence dates back to more than one year at about 08:00 p.m. in the night when he was at his home and at that time wife of Mantu rang him and told him that Mantu was called by Mithilesh Kumar by ringing him on his mobile phone and he had told Mantu that he would give money. After the deceased did not return, PW-2 had gone to the market but he could not find the deceased and when the deceased did not return back even on the next day, he along with others had gone to the police station and given information, whereafter police had told them that one dead body is lying at Dhanarua Police Station, whereupon they had gone to the police station and found the dead body of Mantu lying there. He had recognized Prince and



Sangal, however he declined to recognize others. PW-2 has also stated that he had given his statement before the police and wife of Mantu suspects that Mithilesh Kumar has killed Mantu in connivance with other accused persons. He has also stated that the teeth of the deceased had broken and his entire body had been burnt. In cross examination, PW-2 has stated that he had not seen Mantu going along with Mithilesh, however Mantu had left house at 08:00 p.m. which was disclosed to him by the family members of Mantu. He has also stated that he had himself not seen the killing of the deceased taking place by his own eyes. He has next stated that he had not seen the accused persons before, however he has recognized them because of their photographs having become viral. He has also stated that he is neighbor of Mantu and his cousin brother in relation.

19. PW-3 Kumkum Devi is wife of the informant and sister-in-law of the deceased who has stated in her examination-in-chief that the occurrence dates back to more than one year i.e. 22.06.2016 at about 08:00 p.m. in the night when she was at her house and her brother-in-law Mantu Kumar had gone outside the house near ICICI bank upon being called by the Mithilesh Kumar, however he did not return back. She has stated that Mithilesh Kumar had called Mantu for giving money and the



deceased had disclosed about the same at his home. On the next day at about 10:00 pm in the night wife of deceased told PW-3 that Mantu's phone is switched off and he has not returned, whereafter search was made and Mithilesh was called over phone, after which he said that he had given money to Mantu and then Mantu had gone away. On 24.06.2016, the dead body of the deceased was found under the jurisdiction of Dhanarua Police Station, where the same was kept by the Police and when they received information, they went to the Police Station. PW-3 has stated that she came to know about the persons who had killed her brother-in-law from the newspaper, wherein the names of the appellants were printed & the deceased was killed by Mithilesh Kumar in connivance with the other appellants.

20. PW-4 Sheela Kumari i.e. the wife of the deceased has deposed on similar lines as that of PW-3 Kumkum Devi, hence the same is not being repeated again for the sake of brevity. In addition PW-4 has stated in her evidence that after her husband had gone upon being called by Mithilesh Kumar and had not returned back she rang Nilesh Kumar and asked him about her husband, whereupon he said that the deceased was not with him, whereafter PW-4 had gone to the house of Mithilesh Kumar in the morning and had asked the wife of Mithilesh Kumar as to



why her husband was called by Mithilesh Kumar, whereupon she told her that he is not at home. PW-4 had then gone to *Bachpan Kids School* where brother of Mithilesh Kumar, namely Nishi Kumar told her, upon being asked about the whereabouts of Mithilesh Kumar that she should search for her husband. PW-4 has further stated that on 24.06.2016, at about 10:00 a.m. in the morning she came to know that one dead body has been recovered at Dhanarua, whereafter she along with her family members had gone there and seen the dead body as also had identified the same, where she came to know that the appellants have killed her husband. PW-4 has also stated that Mithilesh Kumar and Nilesh Kumar along with other accused persons have given effect to the occurrence in question. PW-4 has also stated that she had given her statement before the police. She has though not identified the accused persons standing in the dock but has said that Sangal Swamy along with two other accused persons are present. PW-4 Sheela Kumari has also stated that the accused persons have confessed their crime before the Police. Upon a court question being put to PW-4 as to whether she had disclosed the name of the accused before the Police, she did not reply. In paragraph-9 of her cross-examination PW-4 has stated that Mithilesh Kumar and Nilesh



Kumar had taken away her husband after calling him, however there is no prior enmity amongst them. PW-4 has also stated that she does not recognize Rahul and Hare Ram.

21. PW-5 Sandeep Patel is the Judicial Magistrate, 1st Class who had recorded the statement of the accused persons under Section 164 Cr.P.C. He has stated that on 20.07.2016 he was posted as Judicial Magistrate-1st Class, Jehanabad Civil Court and on that day he had recorded the statement of Raja Kumar Goswami U/s. 164 Cr.P.C. PW-5 has stated that Raja Kumar Goswami had disclosed in his statement made before him that he used to run a vending shop near *Matkori Kuan* in front of Amit Recharge and Cold Drink shop and there only the house of Sangal Swami is situated and 15 days prior to the incident Sangal Swami had told him that he would bring one person who shall be possessing a sum of Rs. 8,00,000/- and if they are able to extract the said money, they would derive lot of benefit as also they would torture him at the house of Raja Kumar Goswami which is vacant. Raja Kumar Goswami has further stated that at first, he was not willing to give effect to the said occurrence, however upon him being offered money he became ready to do so. As per the pre-plan, on 20.6.2016 Sangal Swami got a new mobile of Micromax company from A-One Mobile



Centre situated at Matkori Kuan, Hospital Road as also had obtained one fake sim card from a shop situated next to ancient Shiva Temple at Jehanabad and on 20.06.2016 at about 7/8:00 p.m. in the evening he rang on mobile no. 7519391443 and 8083588035 and called the said person near Matkori Kuan and as per the plan Prince Kumar @ Nepali, Bholu @ Ravi and Rohit Kumar had also come along with him to his room. Thereafter, Sangal Swami brought the said person on his motorcycle to the room of Raja Kumar Goswami and as soon as they arrived at the room, all the accused persons had pushed Mantu, caught hold of his hands and legs, whereafter they had shut his mouth and then Sangal Swami had made him sniff powder as also had injected an injection. The plan was that when Mantu regains consciousness, they would ask him about the password of his ATM card and then they would take out money and kill him, however Raja Kumar Goswami has said that he did not know about the plan of killing Mantu. He has also stated that on account of the doses of powder and injection being excessive Mantu did not regain consciousness and he died, whereafter call was made and one Hare Ram Yadav was called along with a vehicle, whereupon the dead body of Mantu was wrapped in a bedsheet and loaded on a Tavera vehicle and



taken to Moriyawa-Dhanarua, after which the dead body was thrown towards the southern side at a distance of one kilometer, after which the accused persons had sprinkled oil over the dead body and burnt it. PW-5 has next stated that the said confessional statement made by Raja Kumar Goswami was read over to him and upon finding the same to be correct he had put his signature which has been identified and marked as Exhibit-1.

22. PW-5 has further stated in his testimony that on 30.07.2016 he had recorded the statement of Rahul Kumar @ Fuggi under Section 164 Cr.PC wherein he has stated that on 23.06.2016, he had made available one black colour Pulsar motorcycle to Manish Kumar and he was told that the same belongs to one person who is resident of Jehanabad, whose murder has been committed by his relative, hence the said vehicle is required to be hidden. Thereafter, Manish Kumar had dismantled the parts of the said motorcycle and buried it on the banks of Punpun river in the sand near Middle School, Tiskhora, which was recovered by the police. PW-5 has stated that Rahul Kumar had read over his statement and upon finding the same to be correct had put his signature, which has been marked as Exhibit-1/1. In cross-examination, PW-5 has stated in paragraph no. 3 that before recording the statement he had told the accused



persons that their statements can also be used against them and after having told them about the repercussions, he had written whatever was stated by the accused persons. In paragraph no. 5 of his cross-examination, PW-5 has stated that he had given enough time to the accused persons to understand the things, prior to recording of their statements. In paragraph no. 6 of his cross-examination, PW-5 has stated that before recording the statement he had satisfied himself that the accused persons had been produced before the Chief Judicial Magistrate and according to his direction they were being produced before him. He has also stated that he had recorded the statement of Raja Kr. Goswami and had made him understand that his statement can be used against him and this fact has though not been written at the beginning of the statement of the said persons, however the same has been mentioned after recording of the statement. In paragraphs no. 8 and 9, PW-5 has stated that only after the accused persons were satisfied and had requested to record the statement, he had recorded their statement U/s. 164 Cr.P.C.

23. PW-6 Vidhi Kumar (informant) has stated in his evidence that the occurrence dates back to 22.06.2016 and Mantu Kumar is his younger brother who has been killed. On 22.6.2016 Mantu Kumar had left the house at 08:00 p.m. in the night and he came



to know about Mantu Kumar being killed on 24.6.2016. PW-6 has stated that Mithilesh Kumar had rang his younger brother and called him to give money since he was in possession of the money of Mantu and when his younger brother did not come back, he first rang Mithilesh but on that day his mobile was switched off and then he rang his brother, whereupon he had requested him to get Mithilesh to talk to him, after which Mithilesh had talked with him at 11:00 p.m. and had told him that he had called his younger brother at ICICI bank and given him a sum of Rs. 25,000/-, whereafter he had left him at Mallahchak. PW-6 has next stated that on 23.06.2016, he had filed a written report at the police station which he has identified and has stated that the same is in his writing and bears his signature, which has been marked as Exhibit-2. He has also stated that he came to know about his younger brother being killed from the newspaper and that his dead body is lying near Moriyawa village under Dhanarua Police Station, whereafter he had gone to the Dhanarua Police Station and identified the dead body of his brother. The dead body was brought to Jehanabad and postmortem was conducted. PW-6 has also stated that conspiracy pertaining to killing of his brother was hatched by Mithilesh Kumar and Sangal Swami as also Prince Kumar @



Nepali and Raja Kumar Goswami. PW-6 has identified Sangal Swami standing in the dock who used to come often with his brother, however PW-6 could not recognize the other five accused persons standing in the dock. In cross-examination, PW-6 has stated that the place where the dead body of his brother was recovered is at a distance of about 35 kilometers from Jehanabad. In paragraph no. 5 of his cross-examination, PW-6 has stated that he had not seen anyone killing his brother and he does not know Prince Kumar @ Nepali from before as also he does not recognize him. In para no. 12 of his cross-examination, PW-6 has stated that the police had made enquiries from him even on second occasion but he has not named any accused person in his second statement. In para no. 13, PW-6 has stated that he is making statement regarding Sangal Swami for the first time. In para no. 14 of his cross-examination, PW-6 has stated that he had never contacted Sangal Swami and he and his family members had never made any statement against Sangal Swami before the police but one boy had given such statement. In paragraph no. 16 of his cross-examination, PW-6 has stated that he had not seen the occurrence with his own eyes and one mobile was recovered from the house of Raja Kumar Goswami. In paragraph no. 18 of his cross-examination, PW-6 has stated



that he has not stated before the police, in his re-statement that conspiracy was hatched and his brother was killed.

24. PW-7 Sanjay Kumar is the Investigating Officer of the present case and he has stated in his evidence that on 23.06.2016, he was posted at Jehanabad Police Station as Sub-Inspector of Police and had assumed the investigation of Jehanabad P.S. Case No. 296 of 2016, whereafter he had mentioned the F.I.R. in the case diary and then he had gone to the first place of occurrence i.e. the house of the informant situated at Mallahchak from where Mantu Kumar had gone to collect money from Mithilesh Kumar after disclosing about the same to his wife (PW- 4). PW-7 had recorded the statement of the informant wherein he had supported the case of prosecution and had stated that the friends of the deceased namely, Santosh, Nilesh, Buntty, Abhishek and Mithilesh Kumar are involved in the occurrence in question and Mithilesh Kumar has made Mantu to disappear. PW-7 has stated that he had recorded the statement of the wife of the deceased (PW-4) who had supported the contents of the F.I.R. and had expressed her suspicion regarding involvement of Mithilesh Kumar @ M. Kumar, Abhishek Kumar, Nilesh Kumar @ Bablu, Santosh Kumar & Buntty Kumar. PW-7 had also recorded the statement



of the father of the deceased, i.e PW-1, wherein he has named Mithilesh Kumar and Nilesh Kumar @ Bablu to be responsible for abducting Mantu Kumar. PW-7 had recorded the statement of PW-3 as well, who has named Mithilesh Kumar and Abhishek Kumar as the persons who had abducted Mantu Kumar. PW- 7 had next recorded the statement of PW- 2 and made inquiries from the local residents, whereafter he had obtained CDRs of mobile number of Mantu Kumar bearing mobile nos. 7091204544 and 8083588035 as also that of mobile numbers of Mithilesh Kumar i.e. 9939744805 and 7654142270.

25. PW-7 has next stated that he found from the call detail records that deceased had made last call on 22.06.2016 at 8:20:37 p.m. on the mobile phone of Mithilesh Kumar and at that time the location of Mantu (deceased) was at Mallahchak Pani Tanki Road i.e. near his house. PW-7 (I.O.) has further stated that the last location of Mantu's second mobile Number i.e. 8083588035 was found west of Teeneri Nadaul, P.S. Masaurhi. PW-7 has next stated that from analysis of the call detail records, it has been found that the mobile phone of Mithilesh Kumar was generally on at night but on the date of incident i.e. 22.06.2016, it was found to be switched off at 21:36 hours as also was found to be switched on at 08:02 a.m. of



23.06.2016. In fact, the second mobile number of Mithilesh Kumar was found switched off after he had received a call at 20:40 hours in the night, whereafter it was switched on at 08:42 a.m. on the next day. PW-7 has also stated that though Mithilesh Kumar was summoned but he did not appear at the police station. The newspaper reports had revealed that a dead body was recovered matching the description of the deceased at a place situated under the jurisdiction of Dhanarua Police Station. Thereafter, the Sub-Inspector of Police, Jehanabad Police Station, namely Banarsi Chaudhary was sent to Dhanarua P.S. along with the informant to identify the dead body and conduct further investigation, whereafter the dead body was identified by the informant and his family members. The inquest report was then prepared and the same was entered in the case diary, whereafter the dead body was handed over to the family members of the deceased. PW-7 has also stated that during cremation the informant had given the following items, recovered from the dead body of the deceased:-

(i) a small burnt piece of red bed sheet.

(ii) a white colour handkerchief.

(iii) burnt red colour thread used for making a locket.

26. PW-7 has stated that the informant had told him that it is



possible that M. Kumar @ Mithilesh Kumar might have murdered his brother at his house situated at Mallahchak or at his coaching center and then he would have taken away the deceased by wrapping him in a bedsheet. PW-7 has also referred to the second place of occurrence i.e. the agricultural field situated on the road side, south of village-Moriyawa which is situated south of Sai Bazar, Patna-Gaya Road and the same belongs to one Ashok Mahto. PW-7 had reached the D.I.O. Office at Jehanabad to inquire about the suspect mobile number 7519391443 by which repeated calls were made to the deceased, whereupon it was found that the same was issued by one Vikas STD, Unta Bazar on 20.06.2016 and the owner of the said STD shop accepted that though the sim card of the said mobile number was issued by him but he did not know as to who had taken the same. However, the register maintained by the shop owner shows that the same was issued in the name of one Kamlesh Kumar. PW-7 has also stated that on the day of incident i.e. on 22.06.2016 at around 8:30 pm, the deceased Mithilesh Kumar and Sangal Swami had met and talked with one another and after some time all the three had sat on a motorcycle belonging to the deceased and had proceeded towards the market but on the way Sangal Swami had alighted



on account of difficulty in sitting on the motorcycle, whereafter the deceased had dropped Mithilesh Kumar and returned back to Hospital More. PW-7 has next stated that the suspect mobile no. 7519391443 was used only to call the deceased. In paragraph no. 12, PW-7 has given an analysis of the suspect mobile no. 9122822273 vis-a-vis its call detail records.

27. PW-7 has also stated that he had reached the D.I.O. office and examined the CDR/SDR of mobile numbers 9905909212 and 9097265546, whereupon it transpired that both the mobile numbers were connected to the occurrence in question inasmuch as the same were used from beginning till the end of the said occurrence i.e. from 08:00 p.m. on 22.06.2016 to 08:00 a.m. on 23.06.2016 and multiple conversations had taken place with the following mobile numbers:-9122822273 (Sangal Swami), 7274979182, 7033713507, 9835726904 and 9905909212 (Sangal Swami @ Vinay Kumar). PW-7 has mentioned about the third place of occurrence, i.e. the house of Raja Goswami situated at Kutubanchak, located 100 meter north of *Arwal More*, Jehanabad. PW-7 has stated that he had recorded the confessional statement of Sangal Swami who has admitted regarding his involvement in the alleged crime and the mobile of the deceased was recovered based on the information



provided by Sangal Swami. PW-7 has also stated that based on the information given by Manish Kumar about the whereabouts of the parts of the motorcycle of the deceased and his mobile phone, the same were recovered. PW-7 had recorded the confessional statement of the aforesaid appellants as also he had recorded the statements of the witnesses. PW-7 has proved various documents produced during the course of his examination-in-chief including the confessional statements, seizure list, inquest report, formal F.I.R., Fardbeyan etc. PW-7 had submitted chargesheet qua the aforesaid appellants on 30.09.2016. He has recognized all the accused persons standing in the dock. PW-7 has next stated that he had tried to recover the Sim number of mobile number 7519391443 (issued in the name of Kamlesh Kumar) during the course of investigation but could not succeed. PW-7 has stated that he had not recorded the statement of Kamlesh Kumar. PW-7 has also stated that PW-4 Sheela Kumari i.e. the wife of the deceased has admitted that there was some pre-existing money dispute in between her husband and Mithilesh Kumar.

28. In para no. 49, PW-7 has stated that it is clear from the inquest report and statement of S.H.O., Dhanarua Police Station, namely Lal Mohan Singh that the deceased had received 100%



burn. In paragraph no. 53, PW-7 has stated that all the articles which were given to him by the informant during the cremation of the deceased were not seized by him, however the said items do not match with the items prescribed in column nos. 5 and 7 of the inquest report as also with the articles mentioned in the fardbeyan of Lal Mohan Singh, SHO, Dhanarua Police Station. In paragraph no. 57, PW-7 has stated that the tower location of the mobile number of the deceased and Sangal Swami were never found together and location of mobile number 9905909212 (that of Sangal Swami) was not found at Jehanabad in between the period 20.06.2016 to 24.06.2016. In paragraph no. 65, PW-7 has stated that on 27.07.2016 at 07:05 pm a raid was conducted at the house of Manish Kumar, however he was absconding and while the police force was returning back to the police station, they had recovered one Sony company mobile phone from the drain as was disclosed by Sangal Swami in his confessional statement, whereafter on 30.07.2016 at 07:00 a.m. parts of motorcycle of the deceased were seized. In paragraph no. 69, PW-7 has stated that when the aforesaid Sony company mobile phone, allegedly belonging to the deceased was recovered, the wife of the deceased was asked for the document which she had produced and the same was used to identify the



mobile phone by matching the IMEI number and then the said documents were returned back to PW-4, however PW-7 has admitted that he had not recorded the said factum in the case diary. In paragraph no. 70, PW-7 has stated that the SDR of mobile number 9905909212 shows that the same is registered in the name of one Vinay Kumar, son of Vinod Kr and the sim was activated on 20.6.2016, however he had not further investigated regarding the shop from where the said sim was obtained.

29. In paragraph no. 77 of his cross-examination, PW-7 has stated that no evidence has been found with regard to abduction and killing of the deceased by the accused person, namely Manish Kumar and in paragraph no. 78 of his cross-examination, PW-7 has stated that no witness has mentioned regarding Manish Kumar having either abducted or killed the deceased. In paragraph no. 80 of his cross-examination, though PW-7 has stated that mobile phone used by Manish to communicate with Sangal has been seized, however the details of conversation have not been recovered/recorded. In paragraph no. 82 of his cross-examination PW-7 has stated that the house of Manish Kumar is at Ganga Chak, Masaurhi and the parts of motorcycle of the deceased were recovered from the bank of Punpun river as also two mobile phones were recovered from



Manish Kumar. PW-7 had seized parts of the motorcycle from the banks of Punpun river as per the location disclosed by Manish Kumar. In paragraph no. 87 of his cross-examination PW-7 has stated that Rahul Kumar @ Fuggi has stated in his confessional statement that he had dismantled the motorcycle of the deceased into parts and thrown the same in the Punpun river. In paragraph no. 93 of his cross-examination PW-7 has stated that upon ascertaining the name and address of the holder of mobile no. 9102391649, belonging to Prince Kumar @ Nepali, the sim card was found to have been issued in the name of one Dhananjay Kumar whose statement has not been recorded. In paragraph No. 103, PW-7 has stated that PW-1, PW-3, PW-4 and PW-6 have not named any other accused persons during the course of investigation and during the course of investigation statement of eight witnesses were recorded, all of whom have not taken the name of Rahul Kumar @ Furri @ Fuggi.

30. In paragraph no. 110 of his cross-examination, PW-7 has stated that there was no communication in between the mobile number of Raja Goswami i.e. 9097265546 with the mobile number of the deceased, as is apparent from the CDR. He has also stated that no witness has taken the name of Raja Goswami to be the person who had abducted and murdered the deceased.



In para nos. 115 to 119 of cross-examination of PW-7, though PW-7 has stated that Hare Ram is stated to have taken the dead body of the deceased from the place of occurrence by vehicle, however he has admitted that neither of the eight witnesses have named Hare Ram Yadav to be having any role in the alleged occurrence nor there was any conversation between Hare Ram and the deceased but as per the CDR several conversations had taken place in between the mobile number of Raja Goswami and Hare Ram on the alleged date and time of occurrence, nonetheless the CDR of the mobile number of Hare Ram was not obtained and his location could not be identified apart from PW-7 having admitted that no witness has seen Hare Ram Yadav taking the deceased in his car. In paragraph no. 124 of his cross-examination, PW-7 has stated that the owner of the car is Shashi Ranjan, however his statement has not been recorded and the vehicle which was seized after several days of the alleged occurrence was never sent for FSL examination.

31. PW-8 Munna Kumar is the Inspector of Police and he has stated in his examination-in-chief that the Superintendent of Police, Jehanabad had directed him to retrieve the CDR and SDR of mobile number in question for the purposes of investigation, whereafter the same including CAF records were



generated from the system available in the office and then the same were retrieved and provided by him in connection with Jehanabad P.S. Case No. 296 of 2016, which he has identified and the same have been marked as exhibit-16 with objection. In cross examination, PW-8 has stated that the aforesaid CDR/SDR/CAF system generates reports and requires no signature. Upon the Court having put a question to PW-8 as to whether the aforesaid CDR/SDR/CAF documents have been attested by him or by the Superintendent of Police or by any competent official of the concerned telecom company, he has stated that the same were generated by the relevant mobile company through our office system. Upon a question being put to the said witness as to whether the CDR reveals the user of the said mobile number at that time, PW-8 has stated that the analysis of CDR was done by the Investigating Officer.

32. PW-9 Ganesh Das is a formal witness, at whose behest three seized mobile phones have been exhibited and in his cross-examination, he has stated that he has no knowledge as to where the said mobile phones were kept. He has also stated that the papers relating to the seizure of the said mobile phones were not prepared in his presence nor sealed and signed by any official as also the said mobile phones were not seized in his presence and



the same neither bears any special mark nor have been sealed rather, they have been just wrapped in a plastic sheet.

33. PW-10 Ram Dhyan Sharma has stated that he knows Dr. Anil Singh of Patna Medical College, Patna and he has seen him writing and reading. He has exhibited a copy of the post mortem report dated 23.06.2016 and has stated that he recognizes the writing and signature of Dr. Anil Singh present on the same and the same has been marked as Exhibit-X (with objection). In his cross-examination PW-10 has stated that he never got an opportunity to work with Dr. Anil Singh and the said post mortem report was not prepared in his presence.

34. After closing the prosecution evidence, the learned Trial Court recorded the statement of the aforesaid appellants on 04.12.2019 under Section 313 Cr.P.C. for enabling them to personally explain the circumstances appearing in the evidence against them, however they claimed to be innocent.

35. The learned Trial Court upon appreciation, analysis and scrutiny of the evidence adduced at the trial has found the aforesaid appellants guilty of the offence and has sentenced them to imprisonment and fine as stated above, by the impugned judgment and order.

36. We have perused the impugned judgment of the learned



Trial Court, the entire materials available on record including the evidence led by the prosecution and have given thoughtful consideration to the rival submissions made by the learned senior counsels/counselors for the appellants and learned APP for the State.

37. Having perused the evidence on record we find that there are no eye witnesses to the alleged occurrence, hence the case of the prosecution in the present matter is based on circumstantial evidence, thus we would examine whether the crucial circumstances as appearing from the case of the prosecution/the prosecution story are sufficient to establish the guilt of the appellants in connection with the alleged crime apart from examining whether all the alleged circumstances have been proved by cogent and sufficient evidence of the prosecution and whether all the links to constitute the complete chain of all alleged material circumstances are complete so as not to give any reasonable ground for the conclusion consistent with the innocence of the accused and the same must show that in all human probability the act must have been done by the accused.

38. At the outset, we would like to delve upon the law laid down by the Hon'ble Apex Court in the case of *Sharad Birdhichand Sarda vs. State of Maharashtra*, reported in



(1984) 4 SCC 116, wherein five golden principles have been enunciated and in this regard it would be relevant to reproduce paragraphs no. 152, 153 and 154 herein below:-

“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]. 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] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625]. It may be useful to extract what Mahajan, J. has laid down in Hanumant case:

“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] where the observations were made:

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

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

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

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

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

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

39. Now coming back to the present case, we would like to examine the circumstances which are material herein. We have to find out whether all the material/ incriminating circumstances appearing from the prosecution story have been sufficiently



proved by the prosecution or not. It is an admitted position that there is no direct evidence in the present case and none has claimed to have seen the commission of the alleged killing of the deceased by the appellants. From the prosecution story as also from the evidence which we have referred to herein above, the relevant circumstances which according to the prosecution, shows commission of the alleged offence by the appellants have been culled out by us & are being dealt with hereunder one by one.

40. The first circumstance which can be culled out from the prosecution story is that the deceased namely Mantu Kumar had left his house on 22.06.2016 at about 08:00 p.m. in the night after informing his wife Sheela Kumari (PW-4) that he has been called on telephone by one Mithilesh Kumar for taking money, however when he did not return late in the night, his wife had informed the informant of this case, namely Vidhi Kumar (PW-6), whereupon all the family members started searching for the said Mantu Kumar but he could not be found and his mobile phones were also switched off. On 24.06.2016 one dead body was found lying near Marhoura village under Dhanarua Police Station, whereafter the informant had gone to Dhanarua Police Station and identified the dead body as that of his brother. Having perused the evidence of PW-1 Ram Chandra Prasad



(father of the deceased), PW-2 Babloo Kumar (maternal brother of the deceased), PW-3 Kumkum Devi (wife of the informant and sister-in-law of the deceased), PW-4 Sheela Kumari (wife of the deceased) and PW-6 Vidhi Kumar (informant and brother of the deceased), who are the main witnesses of the prosecution, we find that they have not seen the actual killing of the deceased with their own eyes, nonetheless they suspect that Mithilesh Kumar had hatched a conspiracy in connivance with the appellants and killed the deceased. Moreover, the said witnesses have all denied to have last seen the deceased in the company of the aforesaid appellants much less in the company of Mithilesh Kumar. We further find that most of the said witnesses had come to know about the killing of the deceased from newspaper. In fact, the informant (PW-6), in his testimony has admitted that even in his second statement made before the police, he had not named any accused person whom he suspected to have killed his brother as also he had not disclosed the names of the accused persons who had hatched conspiracy and killed his brother. Thus, we find that the circumstance of last seen pertaining to the deceased having left his house either with the appellants or the said Mithilesh Kumar, much-less the deceased having been last seen in their company has not stood proved. We also find that the



place of occurrence has also not stood proved, which is apparent from a bare perusal of the evidence on record.

41. The second circumstance which has emerged from the case of the prosecution is regarding identification of the dead body of the deceased. In this regard, we would refer to the evidence of PW-2 Babloo Kumar, who has stated that entire body of the deceased was burnt. Even the Investigating Officer i.e. PW-7 has stated in his evidence that the deceased had sustained 100% burn injuries. Moreover, the Investigating Officer i.e. PW-7 has also stated that all the articles given to him by the informant during cremation of the deceased were not seized, however they did not match with items mentioned in Clause No. 5 and 7 of the inquest report as also with the articles mentioned in the fardbeyan of the S.H.O., Dhanarua Police Station. Hence, we find that even identification of the dead body of Mantu Kumar has not been properly done and there is no conclusive proof of the fact that the dead body recovered by the police is that of Mantu Kumar. Thus, this circumstance has also not stood fully established.

42. The third circumstance which can be gathered from the evidence on record is regarding the tower location of the mobile phones of the appellants, Mithilesh Kumar and the deceased



Mantu Kumar as also the CDR/SDR/CAF of the said mobile phones. In this regard, we find that the CDR/SDR/CAF have not stood proved in absence of certification under Section 65B of the Indian Evidence Act, 1872. Reference in this connection be had to a judgment rendered by the Hon'ble Apex Court in the case of *Arjun Panditrao Khotkar* (supra). Nonetheless, even if the CDR of the mobile phones of the deceased and the appellants are taken into consideration, as has been detailed in the evidence of the Investigating Officer i.e. PW-7, we find that the deceased had made last call on the mobile of Mithilesh Kumar at 08:20:37 P.M. and the tower location of his mobile was near his house. Moreover, repeated calls were made to the mobile phones of the deceased from one suspect mobile number bearing 7519391443, which upon investigation was found to have been issued on 20.06.2016 in the name of one Kamlesh Kumar, however the said Kamlesh Kumar could not be traced out by the police. PW-7 has stated in paragraph no. 56 of his evidence that the tower location of the mobile number of the deceased and that of Sangal Swami (appellant of the third case) was never found together and the tower location of the mobile phone of Sangal Swami was in fact not found at Jehanabad in between 20.06.2016 to 24.6.2016, hence the complicity of Sangal Swami in the alleged occurrence



appears to be remote. In paragraph no. 110 of his cross-examination, PW-7 has stated that there was no communication in between the mobile phone of Raja Kumar Goswami (appellant of the first case) and the deceased. Thus, we find that no conclusive finding has been arrived at upon analysis of the CDR/SDR/CAF of the mobile phones of the deceased and the appellants and moreover, there is no proof of any communication having taken place in between the mobile phone of the appellants and the deceased, thus all such circumstances do not lead to any conclusion. Therefore, the circumstances emanating out of CDR/SDR/CAF of the mobile phones of the deceased and the appellants are inconclusive and of no worth to prove the guilt of the appellants beyond all reasonable doubt inasmuch as the link regarding the appellants having made calls to the deceased Mantu Kumar is completely missing.

43. The fourth circumstance is regarding the place of occurrence. In this regard we find that the Investigating Officer has stated in paragraphs no. 16, 17, 20 and 22 of his evidence that the house of Raja Kumar Goswami was though inspected, which is stated to have been used for the purposes of accidentally killing the deceased as can be culled out from the confessional statement of Raja Kumar Goswami recorded by



PW-5 under Section 164 Cr.P.C. on 20.07.2016, however no incriminating articles were recovered therefrom. Thus, even the place of occurrence has not stood proved.

44. The fifth circumstance is existence of motive behind the occurrence in question. We find that in a criminal case based on circumstantial evidence, motive assumes great significance as it is considered to be a crucial link for establishing the prosecution's allegation, however we find from the evidence of PW-1 to PW-4 and PW-6 that no motive whatsoever has been disclosed much-less alleged and in fact PW-4 i.e. the wife of the deceased has stated in her evidence that the deceased had no prior enmity either with Mithilesh Kumar or with his brother Nilesh Kumar. Thus, motive which is an important link in the chain of circumstances, has not been proved.

45. The sixth circumstance is recovery of the mobile phone of the deceased upon disclosure made by Sangal Swami (appellant of the 3rd case), in his confessional statement. The Investigating Officer (PW-7) has though deposed that upon disclosure made by Sangal Swami in his confessional statement, the mobile phone of the deceased was recovered but we find that PW-7 has stated in para no. 69 of his evidence that when the police had recovered one Soni company mobile phone from the drain,



belonging to the deceased, the wife of the deceased was asked for the documents which she had produced and the same were used to identify the mobile phone by matching the IMEI number and then the said documents were returned back to PW-4, however, PW-7 has admitted that he had not recorded the said factum in the case diary. Thus, we find that there is no evidence on record to prove that the said recovered mobile phone is that of the deceased, hence the said circumstance has also not stood proved.

46. The seventh circumstance is recovery of the parts of the motorcycle of the deceased upon disclosure made by Rahul Kumar @ Fuggi (appellant of the 6th case), in his confessional statement as also upon the Investigating Officer having extracted information from Manish Kumar (appellant of the 2nd case). In this regard, we may refer to the evidence of the Investigating Officer i.e. PW-7, who has stated that based on the information given by Manish Kumar the parts of the motorcycle of the deceased were recovered, however we find from the evidence on record that there is no proof of the fact that the parts of the motorcycle recovered by the police are those of the motorcycle of the deceased apart from the fact that neither Test identification of the said parts was conducted nor the Investigating Officer had



made any effort to link the said parts with the motorcycle of the deceased, hence the said circumstance also does not lead to any inference regarding the guilt of the appellants.

47. At this juncture, we may state that it is a well settled law that so much of the information received from an accused person in custody of the police, whether in the nature of confession or otherwise, as related distinctly to the fact thereby discovered, may be admissible, thus not all information disclosed by a person in police custody is required to be proved as against the accused person and only that part which distinctly relates to the discovery of a fact is admissible and can be proved. Reference in this connection be had to a judgment rendered by the Hon'ble Apex Court in the case of ***Rajendra Singh & Ors. vs. State of Uttranchal etc.***, reported in ***(2025) SCC online SC 2148***, paragraphs no. 27 to 36 whereof are reproduced herein below:-

“27. Now, what remains before us is the recovery of the weapons of crime to establish the identity of the appellants as the persons involved in the crime. On the basis of the recovery of the said weapons, we have to determine if the said recoveries are good enough to connect the appellants with the crime.

28. Undoubtedly, the recovery of one of the swords was made from a garage, and the recovery of another sword and the Kanta was made from bushes in sugarcane field, which was an open space. The weapons were no doubt recovered allegedly on the pointing out of the appellants.



However, no effort was made to match the blood on the said weapons with that of the deceased. The weapons were sent for forensic examination but no report of the forensic laboratory was produced to establish that the weapons so recovered were smeared with the blood of the deceased to prove that they were actually used in the murder of the deceased.

29. We are afraid that the submission of the State counsel, that as the appellants themselves stated that they took the police to the place where they hid the weapons, by which they committed the offence indicates that the appellants admitted to have committed the offence with the above weapons, cannot be accepted. The statement of the appellants that the weapons recovered were the weapons of crime cannot be read against them in view of Sections 25 and 26 read with Section 27 of the Indian Evidence Act, 1872. Only that part of the statement which leads the police to the recovery of the weapons is admissible, and not the part which alleges that the weapons recovered were actually the weapons of crime.

30. The above three provisions of the Evidence Act are beneficial to bring home the point. They read as under:

“25. Confession to police officer not to be proved.—
No confession made to a police officer, shall be proved as against a person accused of any offence.

26. Confession by accused while in custody of police not to be proved against him.—
No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Explanation.—
In this section “Magistrate” does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882 (10 of 1882)



27. How much of information received from accused may be proved.— *Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.*”

31. *A simple reading of all the three provisions conjointly reveals that the first two provisions are substantive, whereas Section 27 is in the nature of an exception. Sections 25 and 26, at one hand, provide that no confession made to a police officer or to any person while in custody of the police, shall be admissible against a person accused of any offence, on the other hand, Section 27 provides an exception to the above provisions. It states that so much of the information, received from an accused person in custody of the police, whether in the nature of confession or otherwise, as related distinctly to the fact thereby discovered, may be admissible. This means that not all information disclosed by a person in police custody is required to be proved as against the accused person; only that part which distinctly relates to the discovery of a fact is admissible and can be proved.*

32. *In Pulukuri Kottaya v. The King Emperor, the Privy Council while analysing the aforesaid three provisions of the Evidence Act, held that the fact of discovery, on information supplied by the accused is a relevant fact except in a case in which the possession or concealment of an object constitute the gist of the offence charged. Information supplied by a person in custody such as “I will produce a knife concealed in the roof of my house”, only leads to the discovery of the knife concealed in the house of the informant, but whether the knife is proved to have been used in the commission of an offence is another question. So if the above information is followed by the words, “with which I stabbed A”, those words would be inadmissible since they do not relate to the*



discovery of the knife from the house of the informant, but are rather independent in nature, amounting to confession of the crime which cannot be used against the person making it i.e. the accused, in view of prohibition contained under Sections 25 and 26 of the Evidence Act.

33. The aforesaid decision has recently been followed with approval by the Division Bench of this Court in Manjunath v. State of Karnataka, wherein it has been said that only “so much of the information” as relates distinctly to the fact thereby discovered is admissible, and the rest of the information stands excluded. In other words, the information leading to the recovery of the weapons of crime is admissible, but not the information that the crime was actually committed by the said weapons.

34. In view of the aforesaid facts and circumstances, the identity of the appellants as the persons involved in the offence has not been established either by any ocular evidence or from the recovery of the weapons of crime.

35. It is important to note that the order of acquittal passed by the Trial Court was not open to interference by the First Appellate Court until and unless the findings recorded by the Trial Court were per se perverse or erroneous. It is safer and more appropriate to rely upon the findings of the Trial Court which has seen the demeanor of the witnesses rather than to rely upon the findings of the First Appellate Court. In our opinion, the High Court erred in reversing the finding of the Trial Court without coming to the conclusion that the findings of the Trial Court were perverse.

36. Thus, in the aforesaid facts and circumstances of the case, we are of the view that High Court manifestly erred in interfering with the findings of acquittal recorded by the Trial Court and reversing the judgment so as to convict the appellants. It is doubtful whether the offence has been committed by the appellants. The conviction of the appellants is accordingly set aside. The appeals are



allowed, and the appellants are acquitted of the alleged offence by granting them the benefit of doubt.”

48. We may also gainfully refer to a judgment rendered by the Hon’ble Apex Court in the case of ***Jafarudheen & Ors vs. State of Kerala*** reported in ***(2022) 8 SCC 440***, paragraphs no. 37 to 43 whereof are reproduced herein below:-

“37. Section 27 of the Evidence Act is an exception to Sections 24 to 26. Admissibility under Section 27 is relatable to the information pertaining to a fact discovered. This provision merely facilitates proof of a fact discovered in consequence of information received from a person in custody, accused of an offence. Thus, it incorporates the theory of “confirmation by subsequent facts” facilitating a link to the chain of events. It is for the prosecution to prove that the information received from the accused is relatable to the fact discovered. The object is to utilise it for the purpose of recovery as it ultimately touches upon the issue pertaining to the discovery of a new fact through the information furnished by the accused. Therefore, Section 27 is an exception to Sections 24 to 26 meant for a specific purpose and thus be construed as a proviso.

38. The onus is on the prosecution to prove the fact discovered from the information obtained from the accused. This is also for the reason that the information has been obtained while the accused is still in the custody of the police. Having understood the aforesaid object behind the provision, any recovery under Section 27 will have to satisfy the court's conscience. One cannot lose sight of the fact that the prosecution may at times take advantage of the custody of the accused, by other means. The court will have to be conscious of the witness's credibility and the other evidence produced when dealing with a recovery under Section 27 of the Evidence Act.



39. Kusal Toppo v. State of Jharkhand [(2019) 13 SCC 676] as hereunder:

“25. The law under Section 27 of the Evidence Act is well settled now, wherein this Court in Geejaganda Somaiah v. State of Karnataka [(2007) 9 SCC 315] has observed as under:

‘22. As the section is alleged to be frequently misused by the police, the courts are required to be vigilant about its application. The court must ensure the credibility of evidence by police because this provision is vulnerable to abuse. It does not, however, mean that any statement made in terms of the aforesaid section should be seen with suspicion and it cannot be discarded only on the ground that it was made to a police officer during investigation. The court has to be cautious that no effort is made by the prosecution to make out a statement of the accused with a simple case of recovery as a case of discovery of fact in order to attract the provisions of Section 27 of the Evidence Act.’

26. The basic premise of Section 27 is to only partially lift the ban against admissibility of inculpatory statements made before the police, if a fact is actually discovered in consequence of the information received from the accused. Such condition would afford some guarantee. We may additionally note that, the courts need to be vigilant while considering such evidence.

27. This Court in multiple cases has reiterated the aforesaid principles under Section 27 of the Evidence Act and only utilised Section 27 for limited aspect concerning recovery (refer Pulukuri Kotayya v. King Emperor [1946 SCC OnLine PC 47]; Jaffar Hussain Dastagir v. State of Maharashtra [(1969) 2 SCC 872]. As an additional safeguard we may note that reliance on certain observations made in certain precedents of this Court without understanding the background of the case may not be sustainable. There is no



gainsaying that it is only the ratio which has the precedential value and the same may not be extended to an obiter. As this Court being the final forum for appeal, we need to be cognizant of the fact that this Court generally considers only legal aspects relevant to the facts and circumstances of that case, without elaborately discussing the minute hyper technicalities and factual intricacies involved in the trial.”

40. *Navaneethakrishnan v. State [(2018) 16 SCC 161] as hereunder : (SCC p. 168, para 23)*

“23. The learned counsel for the appellant-accused contended that the statements given by the appellant-accused are previous statements made before the police and cannot be therefore relied upon by both the appellant-accused as well as the prosecution. In this view of the matter, it is pertinent to mention here the following decision of this Court in Selvi v. State of Karnataka [(2010) 7 SCC 263] wherein it was held as under : (SCC p. 334, para 133)

‘133. We have already referred to the language of Section 161CrPC which protects the accused as well as suspects and witnesses who are examined during the course of investigation in a criminal case. It would also be useful to refer to Sections 162, 163 and 164CrPC which lay down procedural safeguards in respect of statements made by persons during the course of investigation. However, Section 27 of the Evidence Act incorporates the “theory of confirmation by subsequent facts” i.e. statements made in custody are admissible to the extent that they can be proved by the subsequent discovery of facts. It is quite possible that the content of the custodial statements could directly lead to the subsequent discovery of relevant facts rather than their discovery through independent means. Hence such statements could also be described as those which “furnish a link in the chain of evidence” needed for a successful



prosecution.”

41. *H.P. Admn. v. Om Prakash [(1972) 1 SCC 249] as hereunder : (SCC p. 259, para 8)*

“8. ... We are not unaware that Section 27 of the Evidence Act which makes the information given by the accused while in custody leading to the discovery of a fact and the fact admissible, is liable to be abused and for that reason great caution has to be exercised in resisting any attempt to circumvent, by manipulation or ingenuity of the investigating officer, the protection afforded by Section 25 and Section 26 of the Evidence Act. While considering the evidence relating to the recovery we shall have to exercise that caution and care which is necessary to lend assurance that the information furnished & the fact discovered is credible.”

42. *Aghnoo Nagesia v. State of Bihar [(1966) 1 SCR 134: AIR 1966 SC 119] as hereunder:(AIR pp. 122-23, para 9)*

“9. Section 25 of the Evidence Act is one of the provisions of law dealing with confessions made by an accused. The law relating to confessions is to be found generally in Sections 24 to 30 of the Evidence Act and Sections 162 and 164 of the Code of Criminal Procedure, 1898. Sections 17 to 31 of the Evidence Act are to be found under the heading “Admissions”. Confession is a species of admission, and is dealt with in Sections 24 to 30. A confession or an admission is evidence against the maker of it, unless its admissibility is excluded by some provision of law. Section 24 excludes confessions caused by certain inducements, threats and promises. Section 25 provides: ‘No confession made to a police officer, shall be proved as against a person accused of an offence’. The terms of Section 25 are imperative. A confession made to a police officer under any circumstances is not admissible in evidence against the accused. It covers a confession made when he was free and not in police custody, as also a confession made before any



investigation has begun. The expression “accused of any offence” covers a person accused of an offence at the trial whether or not he was accused of the offence when he made the confession. Section 26 prohibits proof against any person of a confession made by him in the custody of a police officer, unless it is made in the immediate presence of a Magistrate. The partial ban imposed by Section 26 relates to a confession made to a person other than a police officer. Section 26 does not qualify the absolute ban imposed by Section 25 on a confession made to a police officer. Section 27 is in the form of a proviso, and partially lifts the ban imposed by Sections 24, 25 and 26. It provides that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Section 162 of the Code of Criminal Procedure forbids the use of any statement made by any person to a police officer in the course of an investigation for any purpose at any enquiry or trial in respect of the offence under investigation, save as mentioned in the proviso and in cases falling under sub-section (2), and it specifically provides that nothing in it shall be deemed to affect the provisions of Section 27 of the Evidence Act. The words of Section 162 are wide enough to include a confession made to a police officer in the course of an investigation. A statement or confession made in the course of an investigation may be recorded by a Magistrate under Section 164 of the Code of Criminal Procedure subject to the safeguards imposed by the section. Thus, except as provided by Section 27 of the Evidence Act, a confession by an accused to a police officer is absolutely protected under Section 25 of the Evidence Act, and if it is made in the course of an investigation, it is also protected by Section 162 of the



Code of Criminal Procedure, and a confession to any other person made by him while in the custody of a police officer is protected by Section 26, unless it is made in the immediate presence of a Magistrate. These provisions seem to proceed upon the view that confessions made by an accused to a police officer or made by him while he is in the custody of a police officer are not to be trusted, and should not be used in evidence against him. They are based upon grounds of public policy, and the fullest effect should be given to them."

43. *K. Chinnaswamy Reddy v. State of A.P.* [(1963) 3 SCR 412 : AIR 1962 SC 1788] as hereunder: (AIR pp. 1792-793, para 9)

"9. Let us then turn to the question whether the statement of the appellant to the effect that "he had hidden them (the ornaments)" and "would point out the place" where they were, is wholly admissible in evidence under Section 27 or only that part of it is admissible where he stated that he would point out the place but not that part where he stated that he had hidden the ornaments. The Sessions Judge in this connection relied on Pulukuri Kotayya v. King Emperor [1946 SCC OnLine PC 47] where a part of the statement leading to the recovery of a knife in a murder case was held inadmissible by the Judicial Committee. In that case the Judicial Committee considered Section 27 of the Evidence Act, 1872 which is in these terms:

'27. How much of information received from accused may be proved.—*Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.'*



This section is an exception to Sections 25 and 26, which prohibit the proof of a confession made to a police officer or a confession made while a person is in police custody, unless it is made in immediate presence of a Magistrate. Section 27 allows that part of the statement made by the accused to the police “whether it amounts to a confession or not” which relates distinctly to the fact thereby discovered to be proved. Thus even a confessional statement before the police which distinctly relates to the discovery of a fact may be proved under Section 27. The Judicial Committee had in that case to consider how much of the information given by the accused to the police would be admissible under Section 27 and laid stress on the words “so much of such information ... as relates distinctly to the fact thereby discovered” in that connection. It held that the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. It was further pointed out that “the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact.””

49. Now coming to the confessional statement made by Raja Kumar Goswami (appellant of the 1st case) and Rahul Kumar @ Furri @ Fuggi (appellant of the 6th case) under Section 164 Cr.P.C. before the learned Magistrate i.e. PW-5 Sandeep Patel, we find that before acting upon the confession it will have to be judged as to whether the confession is reliable or not and one test which is useful in most cases for evaluating a confession, as has been held by the Hon’ble Apex Court in the case of **Sankaraiya**



vs. State of Rajasthan, reported in (1978) 3 SCC 435, is that the Court should carefully examine the confession and compare it with the rest of the evidence in the light of surrounding circumstances and probabilities of the case and upon such examining and comparison, if 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 test of the confession being true and trustworthy.

50. It is a well settled principle of law that a confession recorded under Section 164 Cr.P.C. is generally admissible as 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 Court and is generally considered only when it has been recorded after having complying with all the mandatory provisions of Section 164 Cr.P.C. In this regard, we would gainfully refer to a judgment rendered by the Hon'ble Apex Court in the case of *S. Arul Raja vs. State of Tamil Nadu*, reported in (2010) 8 SCC 233. It is equally a well settled 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. Reference in this connection be had 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. It would be relevant to reproduce para No. 16 of the judgment rendered in the case of ***Sahadevan & Anr.*** (supra) herein below:-

“16. Upon a proper analysis of the above referred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made 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.”

51. 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**.*

52. Now coming back to the present case, as far as the confessional statements of Raja Kumar Goswami and Rahul Kumar @ Fuggi, recorded by PW-5 under Section 164 Cr.P.C. are concerned, such statements have to be proved like any other fact and in accordance with law, the same should not suffer from any material discrepancies and should be supported by a chain of cogent circumstances as also should be further corroborated by other prosecution evidence. However, we find from the evidence on record that the confessional statement made by the said two appellants under Section 164 Cr.P.C. before PW-5 have not stood substantiated in absence of the circumstances from which the conclusion of guilt is to be drawn, having been proved



independently as also the link in the chain of circumstances being not complete and there being several missing links. Thus, the said extra judicial confession does not inspire confidence so as to form the sole basis for proving the guilt of the appellants beyond all reasonable doubt.

53. We find upon perusal of the evidence of the Investigating Officer i.e. PW-7, especially paragraphs no. 77, 78, 106, 110, 112, 115 and 119 that PW-7 has stated therein that none of the eight witnesses have either named Rahul Kumar or Raja Kumar Goswami or Hare Ram Yadav or Manish Kumar to be having any complicity in the killing of the deceased, there is no evidence regarding them having abducted and murdered the deceased and moreover, there is neither any evidence nor anybody has seen Hare Ram Yadav (appellant of the 5th case) carrying the dead body of the deceased in his car. In fact, PW-7 has also not deposed regarding there being any communication from the mobile phones of the appellants with that of the deceased. Thus, we find that there is absolutely no evidence on record to prove the guilt of the aforesaid appellants in the alleged occurrence beyond all reasonable doubt.

54. Now, we deem it apt to refer to the well settled principle of law laid down by the Hon'ble Apex Court in a catena of



judgments to the effect that conviction can be based solely on circumstantial evidence if the circumstances so established are consistent only with the hypothesis of the guilt of the accused and also conclusive in nature leaving no room of any hypothesis of innocence of the accused in the alleged crime and the entire chain of circumstances, is complete. In this regard, we would like to refer to a judgment rendered by the Hon'ble Apex Court in the case of **SK. Yusuf vs. State of West Bengal**, reported in **(2011) 11 SCC 754**, relevant paragraph whereof being paragraph no. 32, is being reproduced herein below: -

“32. Undoubtedly, conviction can be based solely on circumstantial evidence. However, the court must bear in mind while deciding the case involving the commission of serious offence based on circumstantial evidence that the prosecution case must stand or fall on its own legs and cannot derive any strength from the weakness of the defence case. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The facts so established should be consistent only with the hypothesis of the guilt of the accused and they should not be explainable on any other hypothesis except that the accused is guilty. The circumstances should be of a conclusive nature and tendency. 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 that the act must have been done by the accused.”

55. We find from the evidence on record of the present case that material/ incriminating circumstances from which the



conclusion of guilt of the appellants is to be drawn have not stood proved much less established and the evidence on record does not lead us to draw an inference that the link in the chain of circumstances is so complete, so as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused. Moreover, all the facts/circumstances/evidence, as discussed hereinabove cumulatively stitched together do not lead to the sole hypothesis of the guilt of the appellants herein. We also find that the test laid down by the Hon'ble Apex Court in the case of ***Sharad Birdhichand Sarda*** (supra) is not satisfied so as to warrant sustaining of conviction based on scratchy and disjointed evidence. Consequently, we also find that the essential ingredients to constitute an offence under section 201 IPC are completely missing as also have not stood proved. Thus, considering the evidence available on record, we are of the opinion that it will be extremely unsafe to sustain a conviction qua the appellants inasmuch as the prosecution has failed to establish its case beyond all reasonable doubts, hence we are constrained to come to a conclusion that the appellants are not guilty of the offences for which they have been charged. Therefore, taking into account an overall perspective of the entire case, emerging out of totality of the facts and



circumstances, as indicated hereinabove and having perused the entire evidence on record as also for the foregoing reasons, we find that the impugned judgment of conviction and order of sentence does not stand to scrutiny, hence the same requires interference, thus the appellants of the aforesaid appeals deserve to be acquitted of the charges levelled against them.

56. Accordingly, the judgment of conviction and order of sentence dated 12.12.2019 and 13.12.2019 respectively, passed by the learned court of 1st Additional District and Sessions Judge, Jehanabad in Sessions Trial No. 76 of 2017/14 of 2017 (arising out of Jehanabad P.S. Case No. 296 of 2016) are hereby set aside. Consequently, all the appellants of the aforesaid six appeals are acquitted of the charges levelled against them.

57. The appellant of Criminal Appeal (DB) No. 53 of 2020, namely Raja Kumar Goswami @ Raj Kumar Goswami @ Raja Goswami, who is in custody, is directed to be released from the jail forthwith, if not required in any other case.

58. As far as the appellants of Criminal Appeal (SJ) No. 5775 of 2019 (Manish Kumar), Criminal Appeal (DB) No. 16 of 2020 (Sangal Swami @ Vinay Kumar), Criminal Appeal (DB) No. 314 of 2020 (Prince Kumar @ Nepali), Criminal Appeal (DB) No. 359 of 2020 (Hare Ram Yadav) and Criminal Appeal (DB)



No. 566 of 2021 (Rahul Kumar @ Furri @ Fuggi) are concerned, they are on bail, as such they are discharged from the liabilities of their bail bonds.

59. In the result, all the aforesaid six appeals bearing Criminal Appeal (DB) No. 53 of 2020, Criminal Appeal (SJ) No. 5775 of 2019, Criminal Appeal (DB) No. 16 of 2020, Criminal Appeal (DB) No. 314 of 2020, Criminal Appeal (DB) No. 359 of 2020 and Criminal Appeal (DB) No. 566 of 2021 stand allowed.

(Mohit Kumar Shah, J)

(Soni Shrivastava, J)

S.Sb/-

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