IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.7 of 2019

Arising Out of PS. Case No.-34 Year-1992 Thana- SHIVSAGAR District- Rohtas

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Sudama Ram s/o Gangdayal Ram Vill-Bishrampur, P.S-Shivsagar, Distt.-Rohtas at Sasaram

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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with

CRIMINAL APPEAL (DB) No. 1444 of 2018

Arising Out of PS. Case No.-34 Year-1992 Thana- SHIVSAGAR District- Rohtas

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Vibhishan Ram Son of Sri Pati Ram, Resident of Village-Vishrampur, Police Station-Baddi Sheo Sagar, District-Rohtas.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Acts/Sections/Rules:

- *Sections 302/34, 201 of the Indian Penal Code*
- *Section 25(A)/27 of the Arms Act*
- *Section 27 of the Evidence Act*

Cases referred:

- *Bijender @ Mandar Vs. State of Haryana, reported in (2022) 1 SCC 92.*

- *Surinder Kumar Khanna Vs. Intelligence Officer, Directorate of Revenue Intelligence, reported in (2018) 8 SCC 271*
- *Ramanand @ Nandlal Bharti Vs. State of Uttar Pradesh, reported in 2022 SCC OnLine SC 1396*
- *Haricharan Kurmi And Jogia Hajam Vs. State of Bihar, reported in 1964 SCC OnLine SC 28*
- *Subramanya Vs. The State of Karnataka, reported in (2023) 11 SCC 255*
- *Sharad Birdhi Chand Sarda Vs. State of Maharashtra, reported in (1984) 4 SCC 116*

Appeal - filed challenging the judgement whereby the concerned Trial Court has convicted the present appellants for the offences punishable under Sections 302/34, 201 of the Indian Penal Code and Section 25(A)/27 of the Arms Act.

Held - In criminal trial there is no scope for applying the principle of moral conviction or grave suspicion. Further, in criminal cases where the other evidence adduced against the accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of co-accused person, the presumption of innocence, which is a basis of criminal jurisprudence against the accused persons and compels the Court to render the verdict that the charge is not proved against him and so he is entitled to benefit of doubt. (Para 28)

When the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such other accused person and if the said evidence appears to be satisfactory and the Court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the Court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right. In the present case, except the statement of the co-accused, there is no evidence available on record connecting the appellant

to the incident in question and, therefore, only on the basis of the confessional statement of co-accused, appellant cannot be convicted. (Para 30)

Prosecution has failed to complete the chain of circumstances from which it can be established that the present appellants have committed the alleged offences. (Para 32)

Appeal is allowed. (Para 35)

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... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Appearance :
(In CRIMINAL APPEAL (DB) No. 7 of 2019)
For the Appellant/s : Mr. Praveen Kumar, Advocate
Mr. Ajay Kumar Singh, Advocate
For the State : Mr. Sujit Kr. Singh, A.P.P.
(In CRIMINAL APPEAL (DB) No. 1444 of 2018)
For the Appellant/s : Mr. Birendra Kumar Singh, Advocate
For the State : Mr. Sri Satya Narayan Prasad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 12-02-2025

Both the appeals have been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as ‘Code’) challenging the judgment of conviction dated 26.09.2018 and order of sentence dated 03.10.2018 passed by learned Fast Track Court-Ist, Rohtas, Sasaram in Sessions Trial No. 285/93,

arising out of Shivsagar (Baddi) P.S. Case No. 34 of 1992, whereby the concerned Trial Court has convicted the present appellants for the offences punishable under Sections 302/34, 201 of the Indian Penal Code and Section 25(A)/27 of the Arms Act and sentenced them for the offence under Section 302/34 of the Indian Penal Code to go rigorous imprisonment for life, for offence under Section 201 of the Indian Penal Code rigorous imprisonment for three years, for the offence under Section 27 of the Arms Act rigorous imprisonment for three years. All the sentences have been directed to run concurrently.

1.1. Since, both these appeals arise out of common judgment and order, they have been heard together and are being disposed of by this common judgment.

FACTUAL MATRIX:-

2. The crux of the prosecution case is as under:-

2.1. The informant, on 06.03.1992 at 10:00 p.m., in presence of his brother and *samdhi* got his statement recorded at Baddi Police Station where it has been stated that on 28.02.1992 at 06:30 p.m., his nephews Sudama Ram and Bhabhikshan Ram came and took his son Dukhan @ Radheshyam Ram with them on the pretext of hunting, but Dukhan @ Radheshyam Ram (deceased) did not return home. He searched for Radheshyam Ram

everywhere but could not find him. His nephew Sudama Ram has also been missing from home since that date and has not returned home. His nephew Bhabhikshan Ram used to come home sometimes. He used to enquire about his son but he did not tell him anything and said that he did not know anything. On 06.03.1992, at about 09:00 p.m., he caught Bhabhikshan Ram and interrogated him after beating him upon which he told him that he along with Sudama Ram had killed his son with a pistol due to which he died there and when he asked him where he had hidden the body, he refused to tell and told that Sudama Ram stays hidden in Sasaram market out of fear and sometimes sends him home to inform him about the affairs of the village and that is why he had come. When Bhabhikshan Ram was being brought to the Police Station with the help of constable Dinesh Singh and *chowkidar* Nathuni Paswan, he told on the way that both of them buried the dead body in the dam of Marichai Bahiyar pond.

2.2. After registration of the F.I.R., the Investigating Officer started the investigation and, during the course of the investigation, he had recorded the statement of the witnesses and thereafter filed the charge-sheet against the appellants/accused before the concerned Magistrate Court. As the case was exclusively triable by the Court of Sessions, the learned

Magistrate committed the same to the Sessions Court where the same was registered as Sessions Trial No. 285/93.

2.3. Before the Trial Court, the prosecution had examined following 13 witnesses:-

PW-1	Shankar Dayal Ram
PW-2	Lakshan Paswan
PW-3	Sheogovind Ram
PW-4	Sheopujan Ram
PW-5	Mohit Ram
PW-6	Sheonarayan Ram
PW-7	Rania Devi
PW-8	Shiv Dhobi
PW-9	Dinesh Singh
PW-10	Nathuni Paswan
PW-11	Dr. Ravindra Nath Singh
PW-12	Vasudev Prasad
PW-13	Manmohan Jha Azad

3. In Criminal Appeal (DB) No. 7 of 2019, we have heard Mr. Praveen Kumar, learned counsel for the appellant assisted by Mr. Ajay Kumar Singh and Mr. Sujit Kr. Singh, learned A.P.P. for the Respondent-State.

3.1. In Criminal Appeal (DB) No. 1444 of 2018, we have heard Mr. Birendra Kumar Singh, learned counsel for the appellant and Mr. Satya Narayan Prasad, learned A.P.P. for the Respondent-State.

SUBMISSIONS ON BEHALF OF THE APPELLANTS:-

4. Learned advocates for the appellants submit that the present is a case of circumstantial evidence and there is no eye-witness to the occurrence in question. The prosecution has failed to complete the chain of circumstances from which it can be said that the appellants have committed the alleged offences. Thus, the prosecution has failed to prove the case against the appellants beyond reasonable doubt despite which, the Trial court has recorded the order of conviction. Hence, the same be quashed and set aside.

5. Learned counsels would further submit that the Trial court has placed reliance upon the confessional statement of the appellants/accused and it has been held that, on the basis of the said confessional statement, dead body of the deceased was discovered and the pistol which was used in the commission of the crime was also discovered at his instance. It is submitted that relying upon the said confessional statement of the appellant Vibhishan Ram, the order of conviction has been recorded.

6. Learned counsel for the appellant Sudama Ram has contended that the said appellant has been implicated on the basis of the so-called confessional statement of co-convict Vibhishan Ram and there is no other evidence/ material against the said appellant connecting him with the incident in question. It

is further submitted that when there is no other evidence connecting the said appellant with the incident in question, his conviction only on the basis of confessional statement of co-convict cannot be recorded. Learned counsel, therefore, urged that the appeal filed by the said appellant Sudama Ram be allowed.

7. Learned counsel for the appellant Vibhishan Ram submits that so far as the said appellant is concerned, the dead body of the deceased was recovered and even the pistol was also recovered during night hours on the basis of the so-called statement of the appellant/ accused. However, from the evidence led by the prosecution, it transpires that the confessional statement of the said appellant Vibhishan Ram came to be recorded only on the next day morning. Thus, before the confessional statement of the appellant Vibhishan Ram was recorded, there was already discovery/ recovery of the dead body and the weapon. Learned counsel, therefore, urged that on this ground the impugned judgment rendered by the Trial court be set aside.

8. Learned counsel for the appellants have placed reliance upon the following decisions:-

(i) **Bijender @ Mandar Vs. State of Haryana**, reported in **(2022) 1 SCC 92**.

(ii) **Surinder Kumar Khanna Vs. Intelligence Officer, Directorate of Revenue Intelligence**, reported in **(2018) 8 SCC 271**.

SUBMISSIONS ON BEHALF OF THE STATE:-

9. On the other hand, learned A.P.P. has opposed the present appeals. Learned A.P.P. would submit that though it is a case of circumstantial evidence, the prosecution has proved the case against the appellants by leading cogent evidence. The Trial court has rightly placed reliance upon the confessional statement of the appellant/ accused Vibhishan Ram. It is submitted that, on the basis of the confessional statement, the dead body of the deceased was discovered. Further, the weapon which was used in commission of the crime was also discovered at the instance of the appellant Vibhishan Ram. Thus, Trial court has not committed any error while passing the impugned judgment and order. He, therefore, urged that no interference is required in the present appeals.

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

10. PW-1 Shankar Dayal Ram and PW-2 Lakshan Paswan have not supported the case of the prosecution.

11. Evidence of PW-3, PW-4, PW-7, PW-8, PW-9 and PW-10 need not be gone into as they have not supported the case of the prosecution and they have been declared hostile.

12. PW-5 Mohit Ram has deposed, in his examination-in-chief, that the Inspector recovered the gun from the shed on the basis of Vibhishan's statement. At that time, he was also present there. After that, Vibhishan took the Inspector to Marchaiya Pond. A body was buried there. A layer of soil was scattered over the body. Vibhishan dug the dead body out. A gun and the dead body were recovered in front of him and Shiv Govind and he himself had made his thumb impression on the Seizure List.

12.1. In his cross-examination, he has stated that *dafdar* and *chowkidar* came after some time and took the accused Vibhishan out of his house and out of the village and questioned him, on which he told that he and Sudama had killed Dukhan and buried the body in Marchaiya Pond. At that time, he, Shivnarayan Govind and other people of the village were also there. After this, Vibhishan was taken to the Police Station and handed over to the Police. Vibhishan also told that he had committed the murder 8 days ago. From the Police Station, they first came to the place where the dead body was buried and sat there. After this, Vibhishan took the Police with him and gave them the gun after

taking it out. After this, on returning, Vibhishan dug out the body. At the time, when the accused was taking the Police to take out the gun, there were about 100 people there. Govind Ram, Sheopujan Ram and Sheonarayan Ram were also among those people. He has further stated that the gun was not found before him because he had stopped near the body. When the body was taken out, he saw the head and half of the face were missing. He did not see any other injury on the body. He has further stated that Dukhan Ram did not have a gun.

13. PW-6 Sheonarayan Ram is the father of the deceased Dukhan. He has stated, in his examination-in-chief, that six months before the incident, there was a dispute over the orchard. At that time, Sudama had threatened that he would kill and bury his son but that dispute was resolved through mutual reconciliation. Six months' after the dispute was resolved, Vibhishan took his son with him for hunting. His son did not return. Then, he asked Vibhishan about his son on which he replied that he had gone to relative's house. After this, he searched for him at his relative's place for 8 days but could not find his son. After 8 days, Vibhishan was caught hold by Laxman Prasad, Shankar Dayal, Haridwar Bind, Jiut Dusadh and many other people. These people told him that Vibhishan had killed his son. After this,

Vibhishan was caught by the *chowkidar* and *dafadar* and he was forbidden from killing by the villagers. Sudama left his family in the village and fled. The *chowkidar* and *dafadar* took Vibhishan along with the villagers. When the inspector at the Police station questioned Vibhishan, he told him that he had murdered his son and buried the body at Mirchaiya Bahiyar. On this five policemen and the villagers went to Mirchaiya Bahiyar. There, Vibhishan told about the body. The inspector made him sit near the body and took the accused Vibhishan with him. Vibhishan took the inspector to the garden where the gun was buried. After this, he also took the inspector in the jungle where he had killed him. After this, Vibhishan dug out the body. The inspector prepared the Inquest Report of the dead body on which he put his thumb impression at the Police station.

13.1. In his cross-examination, he has stated that the orchard for which the land dispute took place belongs to the four of his brothers. He along with his four brothers had made a path in that orchard. Sudama had beaten his son over that path. He had not filed any case under Section 107 of the Code regarding that incident. He did not inform the Police station about the threat given by Sudama. He has further stated that his son Dukhan never used to go hunting before. In Para-19, he has stated that when

Vibhishan and Sudama returned on the next day at 08:00-09:00 a.m., he enquired them about his son and they told him that he must be coming. He did not inform the Police at that time. He has further stated that Laxman Paswan, Shankar Dayal, Haridwar Bind and Jiut Bind are residents of his village. These people had caught the accused Vibhishan in the south direction inside the village. At that time, he had gone out of the village in search of his son and when he came back after 08:00 p.m., he heard a rumour in the village that his son has been murdered. Upon hearing this, he fell unconscious near the neem tree located at his door. He has stated, in Para 24, that Mukhlala, Sheopujan Chamar, his brother Shiv Govind, Devnarayan Singh & Vijay Singh stayed with him at Marchaiya Badhar. Some policemen were also there. They sat there for about 2-3 hours. Then, people reached there after recovering the gun. Policemen, *dafadar* and *chowkidar* came back after recovering the gun. He saw the gun which was about two and a half cubits long. In Para-30, he has stated that he had seen the dead body. The flesh on one side of the cheek was missing and the teeth etc. were broken. Further, he has stated that he did not tell the inspector that there was an altercation over the orchard, six months before the incident. At that time, Sudama threatened him that he would kill and bury his son, but that dispute ended through

reconciliation. Further, he has stated that he told the inspector that when he asked Vibhishan about his son, he told that his son had gone to some relative's house.

14. PW-11 Dr. Ravindra Nath Singh has deposed that, on 7th March 1992, he was posted at Sadar Hospital, Sasaram as a Medical Officer. He performed the *post-mortem* examination on the dead body at 04:15 p.m and noted the following:-

> "1. The whole body was smeared with dust and mud, pilling of the skin over the body. The body was in stage of early decomposition.
>
> 2. Following *ante-mortem* wound were found-
>
> (i) Lacerated wound 1" x 1" x brain deep over right side of skull, near right margin was inverted. It was wound of entry.
>
> (ii) Lacerated wound with averted margin 2" x 2" x brain deep just above right angle of mouth (The wound of exit).
>
> Both wounds are continuous and communicating to each other. Skin and muscle thrown of upper angle of mouth. The injury was caused by fire arm.
>
> 3. The death was due to injury over skull and brain within 24 to 72 hours.
>
> 4. The P.M. Report with carbon copy in same process was prepared and signed by him. The carbon copy of P.M. Report attached in P.M. Report is in his pen and signature. P.M. Report is marked Ext. 2."

14.1. In his cross-examination, he has stated that the dead body started to decompose, however the muscles were intact and the injuries found were caused by only one shot.

15. PW-12 Vasudev Prasad is the Investigating Officer who was posted as SHO at Baddi Police Station on 29.01.1992. On that day, he took over the charge of the investigation. Thereafter, as per the instructions of the Superintendent of Police, he filed a supplementary charge-sheet against Ganga Dayal Ram, Brijbhar Ram, Tengar @ Jitan Ram, Shripati Ram and Gangadayal Ram.

16. PW-13 Manmohan Jha Azad is also the Investigating Officer of this case. He has stated, in his examination-in-chief, that the informant caught the accused Vibhishan Ram with the help of *chowkidar* Nathuni and *dafadar* Dinesh Singh. He arrested Vibhishan Ram and took him to Chilbiliyadih. At the Police station also, Vibhishan Ram had told him that he went with Sudama to hunt Avadh @ Radheshyam Ram in Mirchaiba Tal and Sudama shot Radheshyam and Vibhishan brought a sack in which he kept the dead body and after digging a pit, he buried the body and covered it with soil and hid the gun in the *arhar* field. Vibhishan Ram took him to Mirchaiya Tal and showed him the burial place. He found recently dug soil and a lot of foul odour. He did not have the dead body removed as it was a night time. Further, he has stated that Vibhishan Ram took him, Police station-in-charge and other police officials to a second place

of crime which is an *arhar* field of the accused Vibhishan Ram located at Godsana Siwan. A country-made gun dug out by Vibhishan Ram and handed over to him. At the incident of spot itself, in the presence of witnesses Sheogovind Ram and Mohit Ram, the gun handed over by the accused Vibhishan Ram was seized and a Seizure List was prepared on which Sheogovind Ram signed and Mohit Ram put his thumb impression. Thereafter, he inspected the crime scene at the instance of Police station SHO, the informant, villagers and the accused Vibhishan Ram. The second crime scene of the incident was located at about 2 kilometers north and west of the first crime scene. A pit was dug in the Baha and a naked dead body was there and soil and *acacia* thorns were put on the top of the body. The death. The Inquest Report was marked as Exhibit-5. After that, he recorded the statement of the witnesses Sheogovind Ram, Mohit Ram, Narayan Sharma, Pyare Ram, Shankardayal Ram, Sheopujan Ram, Babulal Paswan, *dafadar* Dinesh Singh, *chowkidar* Bhagwan Paswan and Shiv Dhobi. On 31.05.1993, a letter was sent to the sergeant major, Dehari for examination of the pistol, pellets and gunpowder given by the accused Vibhishan and, on the same demand letter, the sergeant major, after examination, recorded his report that the trigger and barrel of the gun was working and pellets and

gunpowder are fillable materials for a gun. The demand letter and the inspection report were marked as Exhibit-6. Thereafter, he went to the house of the informant Sheonarayan at Vishrampur on 08.03.1992 which is the incident spot. After that, he recorded the statement of the witness Raniya Devi, Kalavati Devi and Shiv Dhobi. He received the *post-mortem* examination report of the deceased Dukhan @ Radheshyam Ram on 10.03.1992. Thereafter, he recorded the statement of the informant Sheonarayan Ram again. The witness Sheogovind Ram had given the statement before him that, on the day of the incident, informant's son Dukhan Ram was taken to the forest by Sudama Ram and Vibhishan Ram on the pretext of hunting. On 06.03.1992, he and the informant caught hold of the accused Vibhishan Ram and questioned him and the accused got scared and accepted his crime. He told that after shooting him to death, he hid the body in Mirchaiya pond and hid the gun in the *arhar* field. Then, he went to the scene of incident with the Police and the accused showed him the place where the body was taken and the place where the pistol was hidden, and on that basis the dead body and the gun were recovered. The witness Sheopujan Ram had stated in front of him that Vibhishan and Sudama Ram together killed Radhe Shyam with a country-made gun and buried the body in Mirchaiya pond

and hid the gun in the *arhar* field. The witness Dinesh Singh had stated before him that the accused Vibhishan confessed his crime before him went to the incident spot with the Police force as per information given by the Police officers, the dead body and the gun were recovered. On 07.03.1992 the accused Vibhishan Ram gave his confessional statement to the Police Station at Baddi which he wrote and Vibhishan Ram put his thumb impression. On the basis of this confessional statement, the body and the gun were recovered by Vibhishan Ram. The confessional statement was marked as Exhibit-8.

16.1. In his cross-examination, he has stated that on 06.03.1992, he was at the incident spot at Mirchaiya Tal. It was the accused Vibhishan Ram who took him to Mirchaiya Tal and showed him the place where the body was buried. On 07.03.1992 at 05:00 a.m. from Mirchaiya Tal, he went to the *arhar* field of Luchai Paswan which was place of incident situated at the foot of Kaimur hills. He found blood like substance lying in the field. He did not seize any object from the this place. The Seizure List related to pistols was prepared in the field of Vibhishan Ram. He informed the Chief Judicial Magistrate, Sasaram that the pistol and spice were recovered from the hut of Shripati Harijan who is the father of the accused Vibhishan Ram. He has further stated that

the body was dug out in front of him by Nathuni Paswan but he did not record its details in the case diary. He found mud smeared all over the dead body and there was a hole-like injury on the temple of the dead body and there was flesh on the face and the entire body was swollen and the skin was peeled off. He had recorded the details of the dead body in the inquest report. He took the confession statement of the accused Vibhishan Ram on 07.03.1992. The body was dug out on 07.03.1992 at 06:00 a.m. He has further stated that Vibhishan Ram gave the statement voluntarily. The informant Sheonarayan Ram told him the names of only two accused. He has further stated that Sheonarayan Ram did not state before him that he searched for 8 days at his relative's place but could not find his son.

OBSERVATION AND REASONING:-

17. We have considered the submissions canvassed by the learned counsels appearing for the parties. We have also perused the deposition given by the witnesses and the documentary evidence produced before the Trial Court. From the evidence led by the prosecution, it transpires that the *fardbeyan* of the informant, who is the father of the victim, came to be recorded on 06.03.1992 at 22:00 hours in which he has mainly stated that, on 28.02.1992 at about 06:30 hours, his nephew Sudama Ram as

well as Vibhishan Ram came at his place and took his son Dukhan on the pretext of hunting. However, thereafter his son did not return. Thus, it appears that the F.I.R. was lodged after a period of approximately 7 days. It would further reveal, from the *fardbeyan*, that before the registration of the F.I.R. and giving the said *fardbeyan*, enquiry was made from Sudama Ram and he disclosed about the manner in which the son of the informant has been killed by him as well as Vibhishan Ram and, therefore, Vibhishan Ram was also apprehended and both of them were taken to the Police Station.

18. It would further reveal from the record that PW-1 & PW-2 have not supported the case of the prosecution whereas PW-3, PW-4 & PW-7 to PW-10 have not supported the case of the prosecution and they have turned hostile. Thus, the case of the prosecution is based on the deposition given by PW-5 (Mohit Ram), PW-6 (informant) and PW-13 (Investigating Officer).

19. PW-5 is the witness of Seizure List. The said witness has admitted, during cross-examination, that the accused Vibhishan Ram disclosed before him as well as the informant and other village people in the presence of *chowkidar* when enquiry was made that he alongwith co-accused Sudama Ram have killed

the deceased Dukhan and, thereafter, Vibhishan was taken to the Police Station. The said witness has further admitted that the pistol was not recovered in his presence.

20. PW-6 (informant) has deposed that his son had gone with Vibhishan for the purpose of hunting. However, he did not return for 8 days. He has further stated that he searched for his son for 8 days. However, thereafter Vibhishan Ram was asked about the incident after 8 days in presence of *chowkidar* and *dafadar*. Vibhishan (appellant/accused) admitted his guilt and, therefore, he was taken to the Police Station. During cross-examination, the said witness has stated that there was a dispute between him and his brothers with regard to the road of orchard. However, he did not inform to the Police with regard to the threat given by his brothers. The said incident took place prior to 6 months. He had also admitted that his son Dukhan had never gone for hunting in the past. The said witness has also admitted, in Para-33 of his cross-examination, that on the next day he informed to the *Daroga* that concerned Police Officer has not written name of five persons though he disclosed the name of five persons. *Daroga* has, therefore, written the name of the five persons and thereafter kept the chit in his pocket. *Daroga* also did not take any action with regard to the said five persons and, therefore, he met the

Superintendent of Police. Thus, from the aforesaid deposition of PW-6 (informant), it can be said that the conduct of the informant was not natural. His son was missing since last 8 days and he did not inform about the same to the Police. Further, he gave the name of five persons to the Police and, therefore, it can be said that he was having suspicion against five persons. However, the Police did not inquire about the said five persons.

21. At this stage, we would also like to refer the deposition given by PW-13 (Investigating Officer). The said witness has specifically admitted that the accused Vibhishan Ram was brought to the Police Station by the *chowkidar* and *dafadar* with the help of village people. He, therefore, arrested him. It is also his case that the accused Vibhishan Ram admitted his guilt and, therefore, his confessional statement was recorded. Thereafter, they went to the place shown by the said accused where he had hidden the dead body of the deceased. The said accused also showed him the place where the pistol was kept by him and, therefore, Seizure List was prepared. However, it is relevant to note that, from the Trial court record, it is revealed that the place where the dead body had been hidden was shown during night hours however, because it was a night, the dead body was not dug out and on the next day morning, the same was dug out.

The said aspect is also admitted by PW-6 (Investigating Officer) in Para-8 of his deposition. Now, it is pertinent to note that from the Trial court record, it transpires that the confessional statement of the appellant Vibhishan Ram was recorded at P.S. Baddi in the early morning of 07.03.1992. Thus, from the evidence led by the prosecution, it transpires that before the confessional statement of the appellant/accused Vibhishan Ram was recorded, the Police was aware about the place where the dead body of the deceased as well as the pistol was hidden. Thus, it appears that the dead body as well as the pistol were not discovered at the instance of the accused on the basis of confessional statement given by him before the Police.

22. At this stage, we would like to refer the decision rendered by the Hon'ble Supreme Court in the case of **Bijender @ Mandar (supra)**, wherein the Hon'ble Supreme Court has observed, in **Para-16**, as under:-

> "16. We have implored ourselves with abounding pronouncements of this Court on this point. It may be true that at times the court can convict an accused exclusively on the basis of his disclosure statement and the resultant recovery of inculpatory material. However, in order to sustain the guilt of such accused, the recovery should be unimpeachable and not be shrouded with elements of doubt. [Vijay Thakur v. State of H.P., (2014) 14 SCC 609 : (2015) 1 SCC (Cri) 454] We may hasten to add that circumstances such as : (i) the period of interval between the malfeasance and the disclosure; (ii)

> commonality of the recovered object and its availability in the market; (iii) nature of the object and its relevance to the crime; (iv) ease of transferability of the object; (v) the testimony and trustworthiness of the attesting witness before the court and/or other like factors, are weighty considerations that aid in gauging the intrinsic evidentiary value and credibility of the recovery. (See : Tulsiram Kanu v. State [Tulsiram Kanu v. State, 1951 SCC 92 : AIR 1954 SC 1] , Pancho v. State of Haryana [Pancho v. State of Haryana, (2011) 10 SCC 165 : (2012) 1 SCC (Cri) 223] , State of Rajasthan v. Talevar [State of Rajasthan v. Talevar, (2011) 11 SCC 666 : (2011) 3 SCC (Cri) 457] and Bharama Parasram Kudhachkar v. State of Karnataka [Bharama Parasram Kudhachkar v. State of Karnataka, (2014) 14 SCC 431 : (2015) 1 SCC (Cri) 395])"

23. At this stage, we would also like to refer the decision rendered by the Hon'ble Supreme Court in the case of **Ramanand @ Nandlal Bharti Vs. State of Uttar Pradesh**, reported in **2022 SCC OnLine SC 1396**, wherein the Hon'ble Supreme Court has observed, in **Para-53 & 54,** as under:-

> "53. If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence along with his blood stained clothes then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence. When

the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.

54. The reason why we are not ready or rather reluctant to accept the evidence of discovery is that the investigating officer in his oral evidence has not said about the exact words uttered by the accused at the police station. The second reason to discard the evidence of discovery is that the investigating officer has failed to prove the contents of the discovery panchnama. The third reason to discard the evidence is that even if the entire oral evidence of the investigating officer is accepted as it is, what is lacking is the authorship of concealment. The fourth reason to discard the evidence of the

> discovery is that although one of the panch witnesses PW-2, Chhatarpal Raidas was examined by the prosecution in the course of the trial, yet has not said a word that he had also acted as a panch witness for the purpose of discovery of the weapon of offence and the blood stained clothes. The second panch witness namely Pratap though available was not examined by the prosecution for some reason. Therefore, we are now left with the evidence of the investigating officer so far as the discovery of the weapon of offence and the blood stained clothes as one of the incriminating pieces of circumstances is concerned. We are conscious of the position of law that even if the independent witnesses to the discovery panchnama are not examined or if no witness was present at the time of discovery or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the discovery evidence unreliable. In such circumstances, the Court has to consider the evidence of the investigating officer who deposed to the fact of discovery based on the statement elicited from the accused on its own worth."

24. From the aforesaid observation made by the Hon'ble Supreme Court, it can be said that when the accused has shown willingness to give his confessional statement, it is the duty of the Investigating Officer to call for two independent witnesses at the police station itself and after the independent witnesses arrive at the police station, in their presence, the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the

weapon of the offence. Further, when the accused while in custody makes such statement before two independent witnesses (Panch Witnesses), the exact statement or the exact words uttered by the accused should be incorporated in the first part of the Panchnama that the I.O. may draw in accordance with law. This first part of Panchnama for the purpose of 27 of the Evidence Act is always drawn at the police station in presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the article used in commission of the offence has been hidden. Once the first part of the Panchnama is completed, thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of the offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama as contemplated under Section-27 of the Evidence Act.

25. Keeping in view the aforesaid decisions rendered by the Hon'ble Supreme Court, if the facts of the present case are examined, it is revealed that in the entire oral evidence of

the Investigating Officer, he had not disclosed about the aforesaid aspects and, therefore, the theory of the prosecution with regard to the evidence of discovery made pursuance to the confessional statement of accused Vibhishan Ram is not duly proved. On the contrary, as observed hereinabove, prior to recording the confessional statement of accused Vibhishan Ram, the place where the dead body was hidden and the pistol was kept was known to the Police authority.

26. Now, so far as the appellant Sudama Ram is concerned, it appears that he has not been implicated on the basis of the statement of co-accused Vibhishan Ram. Therefore, at this stage, we would like to examine the question as to whether the confessional statement of co-accused can bind the appellant Sudama Ram or not and to what extent.

27. At this stage, we would like to refer the decision rendered by the Hon'ble Supreme Court in the case of **Haricharan Kurmi And Jogia Hajam Vs. State of Bihar**, reported in **1964 SCC OnLine SC 28**, wherein the Hon'ble Supreme Court has observed, in **Para-14,** as under:-

> "14. In appreciating the full effect of the provisions contained in Section 30, it may be useful to refer to the position of the evidence given by an accomplice under Section 133 of the Act. Section 133 provides that an accomplice shall be a competent witness against an accused

> person; and that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Illustration (*b*) to Section 114 of the Act brings out the legal position that an accomplice is unworthy of credit, unless he is corroborated in material particulars. Reading these two provisions together, it follows that though an accomplice is a competent witness, prudence requires that his evidence should not be acted upon unless it is materially corroborated; and that is the effect of judicial decisions dealing with this point. The point of significance is that when the court deals with the evidence by an accomplice, the court may treat the said evidence as substantive evidence and enquire whether it is materially corroborated or not. The testimony of the accomplice is evidence under Section 3 of the Act and has to be dealt with as such. It is no doubt evidence of a tainted character and as such, is very weak; but, nevertheless, it is evidence and may be acted upon, subject to the requirement which has now become virtually a part of the law that it is corroborated in material particulars."

28. In the case of **Subramanya Vs. The State of Karnataka**, reported in **(2023) 11 SCC 255**, the Hon'ble Supreme Court has dealt with the aforesaid aspects in Para-63 to 67. The Hon'ble Supreme Court has mainly observed that Section 30, however, provided that the Court might take into consideration the confession and thereby no doubt made it evidence on which the Court could act, but the section did not say that the confession was to amount to proof. Equally, there must be other evidence and confession or only one element in consideration of all the facts proved in the case which may be put into the scale and weighed

with other evidence. The Hon'ble Supreme Court further observed that in criminal trial there is no scope for applying the principle of moral conviction or grave suspicion. Further, in criminal cases where the other evidence adduced against the accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of co-accused person, the presumption of innocence, which is a basis of criminal jurisprudence against the accused persons and compels the Court to render the verdict that the charge is not proved against him and so he is entitled to benefit of doubt.

29. In the case of **Surinder Kumar Khanna (supra)**, the Hon'ble Supreme Court has observed, in **Para-10 to Para-12**, as under:-

> "**10.** In *Kashmira Singh* v. *State of M.P.* [*Kashmira Singh* v. *State of M.P.*, (1952) 1 SCC 275 : 1952 SCR 526 : AIR 1952 SC 159 : 1952 Cri LJ 839] , this Court relied upon the decision of the Privy Council in *Bhuboni Sahu* v. *R.* [*Bhuboni Sahu* v. *R.*, 1949 SCC OnLine PC 12 : (1948-49) 76 IA 147 at p. 155.] and laid down as under: (AIR p. 160, paras 8-10)
>
> > "*8*. Gurubachan's confession has played an important part in implicating the appellant, and the question at once arises, how far and in what way the confession of an accused person can be used against a co-accused? It is evident that it is not evidence in the ordinary sense of the term because, as the Privy Council say in *Bhuboni Sahu* v. *R.* [*Bhuboni Sahu* v. *R.*, 1949 SCC OnLine PC 12 : (1948-49) 76 IA 147 at p. 155.] : (SCC OnLine PC)

> '…It does not indeed come within the definition of "evidence" contained in Section 3 of the Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination.'

Their Lordships also point out that it is

> 'obviously evidence of a very weak type. … It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities'.

They stated in addition that such a confession cannot be made the foundation of a conviction and can only be used in "support of other evidence". In view of these remarks, it would be pointless to cover the same ground, but we feel it is necessary to expound this further as misapprehension still exists. The question is, in what way can it be used in support of other evidence? Can it be used to fill in missing gaps? Can it be used to corroborate an accomplice or, as in the present case, a witness who, though not an accomplice, is placed in the same category regarding credibility because the Judge refuses to believe him except insofar as he is corroborated?

9. In our opinion, the matter was put succinctly by Sir Lawrence Jenkins in *Emperor* v. *Lalit Mohan Chuckerbutty* [*Emperor* v. *Lalit Mohan Chuckerbutty*, ILR (1911) 38 Cal 559 at p. 588.] where he said that such a confession can only be used to "lend assurance to other evidence against a co-accused "or, to put it in another way, as Reilly, J. did in *Periaswami Moopan, In re* [*Periaswami Moopan, In re*, 1930 SCC OnLine Mad 86 : ILR (1931) 54 Mad 75 at p. 77.] : (SCC OnLine Mad)

> '…the provision goes no further than this—where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in Section 30 may be thrown into the scale as an additional reason for believing that evidence.'

10. Translating these observations into concrete terms they come to this. The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."

11. The law laid down in *Kashmira Singh* [*Kashmira Singh* v. *State of M.P.*, (1952) 1 SCC 275 : 1952 SCR 526 : AIR 1952 SC 159 : 1952 Cri LJ 839] was approved by a Constitution Bench of this Court in *Haricharan Kurmi* v. *State of Bihar* [*Haricharan Kurmi* v. *State of Bihar*, (1964) 6 SCR 623 at pp. 631-633 : AIR 1964 SC 1184 : (1964) 2 Cri LJ 344] wherein it was observed: (*Haricharan case* [*Haricharan Kurmi* v. *State of Bihar*, (1964) 6 SCR 623 at pp. 631-633 : AIR 1964 SC 1184 : (1964) 2 Cri LJ 344] , AIR p. 1188, para 12)

"*12*. As we have already indicated, this question has been considered on several occasions by judicial decisions and it has been consistently held that a confession cannot be treated as evidence which is substantive evidence against a co-accused person. In dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right. As was observed by Sir Lawrence Jenkins in *Emperor* v. *Lalit Mohan Chuckerbutty* [*Emperor* v. *Lalit Mohan Chuckerbutty*, ILR (1911) 38 Cal 559 at p. 588.] a confession can only be used to "lend assurance to other evidence against a co-accused". In *Periaswami Moopan, In re* [*Periaswami Moopan, In re*, 1930 SCC OnLine Mad 86 : ILR (1931) 54 Mad 75 at p. 77.] Reilly, J., observed that the provision of Section 30 goes not further than this: (SCC OnLine Mad)

> '…where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in Section 30 may be thrown into the scale as an additional reason for believing that evidence.'

In *Bhuboni Sahu* v. *R.* [*Bhuboni Sahu* v. *R.*, 1949 SCC OnLine PC 12 : (1948-49) 76 IA 147 at p. 155.] the Privy Council has expressed the same view. Sir John

Beaumont who spoke for the Board, observed that: (SCC OnLine PC)

> '… a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of "evidence" contained in Section 3 of the Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities. Section 30, however, provides that the court may take the confession into consideration and thereby, no doubt, makes it evidence on which the court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved in the case; it can be put into the scale and weighed with the other evidence.'

It would be noticed that as a result of the provisions contained in Section 30, the confession has no doubt to be regarded as amounting to evidence in a general way, because whatever is considered by the court is evidence; circumstances which are considered by the court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that it is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with

> other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in Section 30. The same view has been expressed by this Court in *Kashmira Singh* v. *State of M.P.* [*Kashmira Singh* v. *State of M.P.*, (1952) 1 SCC 275 : 1952 SCR 526 : AIR 1952 SC 159 : 1952 Cri LJ 839] where the decision of the Privy Council in *Bhuboni Sahu case* [*Bhuboni Sahu* v. *R.*, 1949 SCC OnLine PC 12 : (1948-49) 76 IA 147 at p. 155.] has been cited with approval."
>
> 12. The law so laid down has always been followed by this Court except in cases where there is a specific provision in law making such confession of a co-accused admissible against another accused. [For example: *State* v. *Nalini*, (1999) 5 SCC 253, paras 424 and 704 : 1999 SCC (Cri) 691]"

30. From the aforesaid decisions rendered by the Hon'ble Supreme Court, it can be said that in dealing with criminal case when the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such other accused person and if the said evidence appears to be satisfactory and the Court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the

Court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right. In the present case, except the statement of the co-accused Vibhishan Ram, there is no evidence available on record connecting the appellant Sudama Ram to the incident in question and, therefore, we are of the view that, only on the basis of the confessional statement of co-accused, appellant Sudama Ram cannot be convicted.

31. At this stage, we would also like to refer the decision rendered by the Hon'ble Supreme Court in the case of **Sharad Birdhi Chand Sarda Vs. State of Maharashtra**, reported in **(1984) 4 SCC 116**, wherein the Hon'ble Supreme Court has observed, in **Para-152 & Para-153**, as under:-

> "**152.** A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:
>
> (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
>
> It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : (AIR 1973 SC 2622) where the observations were made:
>
> "Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and

> ‘must be’ is long and divides vague conjectures from sure conclusions.”
>
> (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
>
> (3) the circumstances should be of a conclusive nature and tendency,
>
> (4) they should exclude every possible hypothesis except the one to be proved, and
>
> (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.
>
> **153.** These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

32. Keeping in view the aforesaid decisions rendered by the Hon’ble Supreme Court, if the facts and the evidence led by the prosecution, in the present case, are closely examined, we are of the view that the prosecution has failed to complete the chain of circumstances from which it can be established that the present appellants have committed the alleged offences. Thus, the prosecution has failed to prove the case against the appellants beyond reasonable doubt. We have also gone through the reasoning recorded by the Trial court while rendering the impugned judgment and order and we are of the view that the

Trial court has committed a grave error while passing the same. Hence, interference in the same judgment and order is required.

CONCLUSION:-

33. Accordingly, the impugned judgment of conviction dated 26.09.2018 and order of sentence dated 03.10.2018 passed by learned Fast Track Court-Ist, Rohtas, Sasaram in Sessions Trial No. 285/93, arising out of Shivsagar (Baddi) P.S. Case No. 34 of 1992 are quashed and set aside. The appellants are acquitted of the charges levelled against them by the learned Trial Court.

34. Both the appellants are in custody. They are directed to be released from jail custody forthwith, if their custody is not required in any other case.

35. Both the appeals stand allowed.

(Vipul M. Pancholi, J)

(Alok Kumar Pandey, J)

Sachin/-

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