IN THE HIGH COURT OF JUDICATURE AT PATNA

Mahendra Ram and Other

vs

State of Bihar

Criminal Appeal (DB) Number 169 of 2018

12 December, 2024

(Hon'ble Mr. Justice Vipul M. Pancholi Hon'ble Mr. Justice Dr. Anshuman)

Issue for Consideration

1. Whether judgment of conviction and the order of sentence passed by learned Vth Additional Sessions Judge, West Champaran, in S.T. No. 444 of 2012, arising out of Nautan (Jagdishpur) P.S. Case No. 36 of 2012 is correct or not?

Headnotes

Indian Penal Code, 1860—Section 302, 201 read with 34—Murder-- informant stated in the fardbeyan itself that because of the land dispute his brother was killed by appellants—beheaded body was discovered—none of the independent witnesses of seizure list has been examined by the prosecution—discovered head and the other part of the body of the deceased were of the same person or not has not been examined/confirmed medically —seized knife was not sent to FSL for analysis and for connecting the corpse and the head—neither DNA test nor any special test was done.

Held: discovery of the articles as well as the head of the deceased has not been duly proved—no material connecting the chain of circumstance from which it can be established that the appellants have killed the deceased—prosecution has miserably failed to prove the case against the appellants beyond reasonable doubt—trial court has committed grave error while passing the impugned judgment and order of conviction and sentences against the appellants-- impugned judgment of conviction and order of sentence quashed and set aside—appellants are acquitted of the charges levelled against them by the learned trial court—appeal allowed.

(Paras 19, 24, 25 and 27)

Case Law Cited

Sharad Birdhichand Sarda vs. State of Maharashtra, (1984) 4 SCC 116—Relied Upon.

List of Acts

Indian Penal Code, 1860.

List of Keywords

Beheaded body, circumstantial evidence, DNA, FSL.

Case Arising From

From judgment of conviction dated 14.11.2017 and the order of sentence dated 22.11.2017 passed by learned Vth Additional Sessions Judge, West Champaran, in S.T. No.444 of 2012, arising out of Nautan (Jagdishpur) P.S. Case No.36 of 2012.

Appearances for Parties

For the Appellants: Mr. Baxi S.R.P. Sinha, Sr. Advocate, Mr. Aditya Nath Jha, Advocate, Mr. Randhir Kumar, Advocate.

For the State: Dilip Kumar Sinha, APP.

Headnotes Prepared by: ABHAS CHANDRA

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.169 of 2018

Arising Out of PS. Case No.-36 Year-2012 Thana- NAUTAN District- West Champaran

==========

1. Mahendra Ram, son of Chanar Ram, resident of Village- Jamunia Dakshin Tola, Police Station- Jagdishpur, District- West Champaran.
2. Santosh Ram, son of Bhulan Ram, resident of Village- Jhakhra Gopalpur, Police Station- Gopalpur, District- West Champaran.
3. Sunil Ram, son of Harihar Ram, resident of Village- Bhanachak, Police Station- Majhaulia, District- West Champaran.
4. Shiv Ram, son of Bhola Ram, resident of Village- Jamunia Dakshin Tola, Police Station- Jagdishpur, District- West Champaran.

... ... Appellants

Versus

The State of Bihar ... ... Respondent

==========

Appearance :

For the Appellants	:	Mr. Baxi S.R.P. Sinha, Sr. Advocate with
	:	Mr. Aditya Nath Jha, Advocate
	:	Mr. Randhir Kumar, Advocate
For the Respondent	:	Mr. Dilip Kumar Sinha, APP

==========

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN

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

Date : 13-12-2024

The present appeal, filed under Sections- 374(2) and 389(1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code'), arises out of the judgment of conviction dated 14.11.2017 and the order of sentence dated 22.11.2017 passed by learned Vth Additional Sessions Judge, West Champaran, in S.T. No.444 of 2012, arising out of Nautan (Jagdishpur) P.S. Case No.36 of 2012, whereby and whereunder the appellants have been convicted for the offences punishable under Sections 302/34 and 201/34 of the Indian Penal Code (hereinafter referred to as

'IPC') and have been sentenced to undergo rigorous imprisonment for life and a fine of Rs. 20,000/- each for the offence under Section 302/34 of IPC, rigorous imprisonment for five years and a fine of Rs. 5,000/- each for the offence under Section 201/34 of IPC. In default of payment of fine, they have been ordered to undergo six months rigorous imprisonment each. Both the sentences have been ordered to run concurrently and period spent under trial will be counted under sentences.

2. The prosecution story, in brief, is as under:

2.1. The prosecution case is based on the *fard-beyan* of the informant Nagina Ram, recorded by the Assistant Sub-Inspector of Police of Jagdishpur Police Station on 12.02.2012, at about 21.10 hours, that a dispute with regard to 4 bigha 2 katha and 11 dhur was going on for last 12 years between his grandfather and his co-villager Ayodhya Thakur and a title suit was pending before the Sub-Judge in that connection. With regard to the said dispute a scuffle took place between the two parties on 01.02.2012 for which on 12.02.2012 a Panchayati was held by the local *panches* in presence of Mukhiya and Sarpanch and the dispute was resolved. In the same evening, when his brother Sitaram (deceased) was returning back from market, a distress call was received at around 7.30 PM on the mobile phone at his house

from the mobile phone of Sitaram in which he told in waggling voice that because of the land dispute he is being killed whereafter the call got disconnected and when they called back, the mobile was found switched off. Thereafter, they ran towards the market and on the way they met Shivram and they asked him if he had seen Sitaram Ram who had gone to the market with him. On this he said that he has not seen him and that the deceased had not gone to the market with him. Thereafter, they moved forward and when reached a little further they saw blood streak on the way leading towards Jamunia graveyard. The blood mark was leading towards the river. When they followed it, they saw the beheaded body of the deceased lying in mud on the bank of the Dhanauti river and his head was missing. The body was identified to be that of the deceased by his clothes and the old wound mark on the right leg. Due to the land dispute, Baliram Thakur, Shambhu Thakur, Indrasan Thakur, Bharat Thakur, Harinder Thakur, Ayodhya Thakur, Munni Lal Thakur, Manoj Thakur, Ashok Thakur, Om Prakash Thakur, Mahindra Ram, Shiv Ram, Pramod Yadav, all from Jamunia Dakshin Tola, Kishuni Mahato, Chandradev Prasad, and Feku Thakur, Kodai Mahato, all of Jamunia Dakshin Tola, Police Station Jagdishpur, District West Champaran always threatened to kill them and that day, when the deceased was

returning home from Jagdishpur market, these people attacked him on the way and severed his head from the body with a sharp weapon and thereby killed him and threw the body into the river. The informant has further stated in his *fard-beyan* that he is of the firm view that the above people, in collusion with one another, have killed the deceased by severing his head after surrounding him on the way.

2.2. After recording of the *fard-beyan* of the informant, formal FIR came to be registered before Jagdishpur Police Station, bearing Nautan (Jagdishpur) P.S. Case No. 36 of 2012 for the offences punishable under Sections 147, 149, 302, 201/120-B of the Indian Penal Code and Section 3(2)(v)(vi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2.3. After registration of the FIR, the Investigating Officer commenced the investigation and during the course of the investigation, he recorded the statement of the witnesses and collected evidence 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 after taking cognizance vide order dated 01.08.2012 under Sections 302, 201 and 34 of the IPC, committed the same to

the Sessions Court under Section 209 of the Code, where the same was registered as Sessions Trial No. 444/2012.

3. Before the trial court, the prosecution examined 06 witnesses and also produced documentary evidence. Thereafter, the statement of the accused under Section- 313 of the Code came to be recorded wherein they pleaded not guilty.

3.1. After conclusion of the trial, the trial court passed the impugned judgment of conviction and the order of sentence, against which the appellants/convicts have preferred the present appeal.

4. Heard Mr. Baxi S.R.P. Sinha, learned Senior Counsel for the appellants, assisted by Mr. Aditya Nath Jha and Mr. Randhir Kumar, and Mr. Dilip Kumar Sinha, learned A.P.P. for the respondent-State.

5. Learned senior counsel for the appellants submits that, in the present case, there is no eye-witness to the incident in question and the case of the prosecution rests on circumstantial evidence. However, the prosecution has failed to complete the chain of circumstances from which it can be established that the appellants herein have committed the alleged offence, despite which the trial court has recorded the conviction.

5.1. It has been contended that PW 2, who is the witness to the seizure list, has stated during cross-examination that nothing was recovered in his presence. It has been further submitted that PW 3, who is the informant, has specifically admitted in paragraph 8 that he is not an eye-witness to the incident in question and on the basis of suspicion and because of the land dispute between the parties he had given the name of the accused and, in fact, he would not have any grievance against the accused. He has further admitted that the *fard-beyan* was not read over to him by the *Darogaji* and he is not aware about the *chappal*.

5.2. It is further submitted that PWs. 4, 5 and 6 are police officers and PW 4 is the Investigating Officer (IO), who has carried out the investigation. Learned Senior Counsel referred the deposition of PW 4 and thereafter submitted that the said witness has deposed before the court that the motive for commission of the crime is that the second wife of accused Mahendra Ram was having love affairs with the deceased and, therefore, deceased has been killed. Learned Senior Counsel further submitted that the prosecution has failed to prove the motive by leading cogent evidence. Learned Senior Counsel further submits that PW 4 has deposed before the court that on the basis of confessional statement of different accused, different articles of deceased have

been discovered and even the head of the deceased as well as the knife, which was used in the commission of the crime, were also discovered at the instance of the concerned accused. However, learned Senior Counsel submits that the prosecution has failed to prove beyond reasonable doubt that the head, which was discovered at the instance of one of the accused was of the deceased or not. Even the murder weapon, i.e., the knife, was not having blood stains and the said knife was also not sent for analysis to the Forensic Sciences Laboratory (FSL). The said witness has also admitted that he did not seize any blood stained soil from the place of occurrence. Even the so-called seized various articles, including *chappal, Muffler* of the deceased, were also not duly proved. Thereby, the prosecution has failed to prove the complete chain of circumstances. Learned Senior Counsel, therefore, urged that the prosecution has failed to prove the case against the accused beyond reasonable doubt and, therefore, this Court may quash and set aside the impugned judgment and order.

6. On the other hand, learned Additional Public Prosecutor has opposed the present appeal. Learned APP would submit that the present is a case of circumstantial evidence. However, from the deposition given by PW 4, it is clear that on the basis of the confessional statement of different accused, different

belongings of the deceased, i.e., *chappal* and *Muffler,* were discovered. Further, the head, which was severed from the body, was discovered at the instance of one of the accused. Similarly, the knife, which was used in the commission of the crime, was also discovered at the instance of one of the accused. Thus, from the deposition of PW 4, IO, it can be said that the present appellants have committed the alleged offence and, therefore, the trial court has not committed any error while passing the impugned judgment and order. Learned APP, therefore, urged that the appeal be dismissed.

7. We have considered the submissions canvassed by learned counsel appearing for the parties and also perused the materials placed on record and gone through the evidence led by the prosecution. At this stage, it is pertinent to deal with the relevant extract of the evidence of the witnesses. The prosecution has examined 06 witnesses.

8. PW 1, Dr. Ashok Kumar Chaudhary, the doctor, who was then posted in M.J.K Hospital Bettiah as Medical Officer, has conducted the *post mortem* examination of the dead body of the deceased Sitaram and found as under: -

> *"A. External exam- Head with face and neck are only present with black hair, foul smell coming out from neck.*

*(ii) One incised wound over wide middle part 6”*x*4.5”x bone c*ut.

<u>On dissection</u>-

B. Above injuries were confirmed. Injury to neck caused by sharp cutting substance.

3. Time elapsed since death- 10 to 15 days.

4. Cause of Death- Shock and hemorrhage due to sharp cutting injury over neck.”

8.1. In his examination-in-chief he has deposed that the aforesaid *post mortem* report was prepared in his pen and signature and the same is marked as Ext-1 & his signature is marked as Ext-1/a.

8.2. He further deposed that the dead body was not weighed. It was blackish in colour. Head & neck was examined and he had referred it as dead body as it is part of body. The different colour over different portion is not mentioned in the *post mortem* report.

8.3. He has further deposed that black hair was present on head. It was not soiled with blood. He didn’t find blood on other than hair portion. The wound was measured. He has no personal knowledge about the identity of deceased. The estimated time of death has been stated in the report. From examination of body, it appeared that neck was cut by sharp cutting weapon. The face had eyes and ear with depressed eyes. Eyes and ears were not

cut. The mouth was opened or not, is not mentioned in the report. Nothing is reported about teeth present.

8.4. He has denied the suggestion that he has not conducted the examination scientifically and a wrong report has been given by him. He has also denied the suggestion that his report is a simple table work and he is deposing on wrong report."

8.5. PW 1 was not cross-examined.

9. PW 2, Nagendra Ram, has deposed in his examination-in-chief that the incident occurred about five months ago. Sitaram (deceased) died on the day of the incident. He was murdered. He does not know who killed Sitaram and why. He has not even heard it. The police didn't take his statement. He admitted that his thumb impression is there on the seizure list. A pair of *chappal* of Lakhani Company was found from the place of occurrence and was seized. Though he recognized Shiv Ram, who was standing in the court, he deposed that he does not know the names of the second or third person, who were Sunil Ram and Santosh Ram and standing in the court and did not recognize them.

9.1. In his cross-examination he deposed that he came from outside 10 days after the incident and that nothing was recovered in front of him and that whom he has recognized is of his village.

10. PW 3, Nagina Ram, who is the informant, has deposed in his examination-in-chief that he is the informant of the case filed for murder of his brother Sitaram. It was 12th March and the incident took place 5-5.5 years ago. He does not know the reason for the murder. There was a land-dispute going on with the accused persons. When he was sitting at his door on the day of the incident, his brother Sitaram called him and said, “I am Sitaram. No one is coming to save me.” Thereafter, he went out to look for his brother with village people. When they moved forward, they found a trail of blood marks in the graveyard. When they moved further, they saw that someone had beheaded his brother and thrown him on the bank of the river (Dhanauti). He was lying dead. He has further deposed that, on being informed, the police came and recorded his statement. He filed an FIR against Indrashan Thakur, Ayodhya Thakur, Munnilal Thakur, Ashish Thakur, Fenku Thakur, Indrasan Thakur, Joginder Thakur and others. The *fard-beyan* was read over to the informant and the FIR was marked as Exhibit-2. The informant put his thumb impression on the FIR after finding it to be correct. He deposed that he recognizes all the accused. He recognized Shivram, who was standing in the court and deposed that he would recognize the rest as well by face. He further deposed that the police also took his

thumb impression on the seizure list. The police had seized his brother's *chappal*. The seizure list has been marked as Exhibit-3. He deposed that he also put his signature on another seizure list.

10.1. In his cross-examination, PW 3 has deposed that he does not know the name of the police officer who took his statement. He did not see the accused committing the murder. He had given the names of the accused on suspicion due to a land dispute. He does not have any issue with Mahendra Ram, Shiv Ram, Santosh Ram and Sunil Ram and that he does not want to pursue the case against them. He further deposed that *Darogaji* did not read out the statement to me. He does not know what was written on the papers on which he put his signature. He does not know whose slippers were seized. As the accused are from his village, he recognizes them. He further adds that a lot of cases of snatching took place in his village.

11. PW 4, Rajesh Kumar Jha, The Investigating Officer, has deposed in his examination-in-chief that he himself took over the investigation of the case on 12.02.2012. In course of investigation, on the day of the incident itself, he recorded the statement of the informant again, inspected the scene of crime and recorded the statements of witnesses Vipat Ram, Ramayan Ram, Ramanand Ram. Thereafter, accused Munilal Thakur, Om Prakash

Thakur, Manoj Thakur, Indrasan Thakur, Bharat Thakur were arrested. After that Mobile details of the deceased were obtained. On the basis of the details, other accused, including Sunil Ram, were also arrested. On the information of Sunil Ram, mobile phone of the deceased was recovered. Confessional statements of the accused were also recorded. On the basis of their statements, the head of the deceased was also recovered. Again, statements of other witnesses Bhikhari Yadav, Satyanand Tiwari, Nagendra Ram, Nagina Ram were taken and accused Santosh Ram involved in the murder was arrested. On the basis of Santosh's confessional statement and clue, the slippers of the deceased were recovered. After receiving the supervision note, accused Mahendra Ram was taken on remand and, on the basis of his confessional statement, muffler of the deceased was recovered. He further deposed that he obtained the *post mortem* report. He took accused Shiv Ram on remand and his confessional statement was recorded. Finally, on the basis of statements of witnesses, charge-sheet against accused Mahendra Ram, Shiv Ram, Sunil Ram, Santosh Ram was submitted on 12.05.12. He identified his handwriting and signature on the charge-sheet, which came to be marked as Exhibit-4. The signature of the charge-sheet witness was marked as Exhibit 4/a.

11.1. He has given vivid description of the place of occurrence and stated that blood marks were found on the *kutcha* leading south direction till the bank of Dhanauti river. A corpse without head was found on the bank of Dhanauti river. He recognized accused Santosh Ram, Mahendra Ram and Sunil Ram standing in the court.

11.2. PW 4 identified his handwriting and signature on the seizure list dated 24.02.12 with regard to seized mobile phone of the deceased, which was recovered from Rani Chhabri chimney on the basis of lead given of accused Sunil Ram. This seizure list has been marked as Exhibit 5 and the signature of the witness on it has been marked as Exhibit-5/3. So also, the seizure list dated 24.02.12 with regard to seizure of knife, which was used in commission of the offence, which was marked as Exhibit-6 and the signature of the witness was marked as Exhibit 6/3. The knife was also recovered at the instance of Sunil Ram. The seizure list dated 24.02.12 with regard to seizure of the *chappal* of the deceased of Lakhani make too was recovered at the instance of accused Santosh Ram from the south bush of Jamunia cemetery. The seizure list has been marked as Exhibit-7 and signature of the witness has been marked as Exhibit-7/a. Another seizure list on record dated 16.03.12 for discovery of muffler, which came to be

recovered from north ditch near Jamunia cemetery on the information of accused Mahendra Ram, came to be marked as Exhibit-8 and the signature of the witness thereon was marked as Exhibit-8/a. He deposed that all the seizure lists were prepared at the place of occurrence itself in presence of the independent witnesses mentioned therein. He also prepared the inquest of the recovered head in his own handwriting and signature on 24.02.2012. He found in his investigation that four persons, namely, accused Mahendra Ram, Shiv Ram, Sunil Ram and Santosh Ram had together murdered Sitaram Ram on 12.02.2012 for the reason that the deceased was having love affair with Mahendra Ram's second wife and that all the witnesses supported the incident.

11.3. In his cross-examination PW 4 has deposed that he has not recorded the statement of the wife of the deceased in the investigation process. He deposed that in his re-statement, the informant has stated that a call from mobile no. 9801222462 of deceased Sitaram was received on mobile no. 7739427051 of the wife of informant namely Sankesa Devi. The deceased said in a slurred voice that because of the land dispute, they are trying to kill him and the mobile got switched off. PW 4 has deposed that he has not recorded the statement of the wife of the informant

Sankesa Devi nor did he obtain any details of Sankesa Devi's mobile number. Copy of the call details of the mobile phone of the deceased was obtained and is attached with the case diary, but the same has not been recorded in the case diary. He deposed that he did not attach the application submitted for obtaining SIM in the case diary.

11.4. PW 4 has further deposed in his cross-examination that in his re-statement the informant stated that a call was received at his home at around 7:30 p.m. on the mobile number of his wife Sankesha. However, the call details thereof was not taken by PW 4. He further deposed that he has recorded the statement of Ramnath Ram in paragraph 10 of the CD, wherein he stated that he is of firm belief that due to an old land dispute, accused persons have committed the murder of the deceased in collusion with each other. It is also recorded that earlier also a scuffle took place over the same land dispute. However, PW 4 did not investigate on the point of land dispute in course of investigation.

11.5. In paragraph 25 of his cross-examination, PW 4 has deposed that he has not written about the recovered knife nor did he record whether it contained blood stains on it or not nor did he get that knife examined.

11.6. In paragraphs 26 to 29 of his cross-examination, PW 4 has deposed that the informant himself identified that the corpse and the head belonged to one person and that no medical examination was got conducted that both the body parts belonged to one person. Though inquest was prepared, but there is no mention in the inquest that the skin of the recovered head was peeled off. Though the place has been mentioned in the case diary, however, PW 4 has not mentioned the detailed description of the boundaries of the place wherefrom the head was recovered.

11.7. In paragraph 30 of his cross-examination, PW 4 has deposed that the head was buried by digging a pit inside the river, which was taken out by Sunil Ram himself, where 2-2 1/2 ft. water was there. PW 4 has not recorded in the diary that there was mud on the head, he simply mentioned in the diary that he found it buried in the mud on the north side of the river.

11.8. In paragraph 31 of his cross-examination, PW 4 has deposed that the recovered articles are not before him in the court. He had not given any mark on the seized knife, which was kept in the *malkhana* of the police station.

11.9. In paragraphs 32 to 34 of his cross-examination, PW 4 has deposed that he has not mentioned the time

of recording of statements of witnesses. He has only recorded confessional statements of the arrested accused, but not taken their defence statement. He has not recorded in the case diary the names of the armed personnel who accompanied him during arrest of accused Sunil.

11.10. In paragraph 35 of his cross-examination, PW 4 has deposed that he did not take the statements of the neighbours, where he went for conducting raids nor did he take statement of the persons living at the brick kiln. He had carried out investigation with regard to the recovered SIM, which was in the name of Shiv Pujan Ram, who is brother of Sunil.

11.11. In paragraph 39 of his cross-examination, PW 4 has deposed that he had not recorded the statement of second wife of Mahendra Ram nor recorded her name in the case diary.

11.12. In paragraphs 40 to 42 of his cross-examination, PW 4 has deposed that he did not attach the copy of the request letter given for obtaining the mobile details nor he mentioned the call details of SIM No. 8757624376 in the case diary, though he had obtained the same. He has also not mentioned the IMEI number of the mobile of the deceased, though he had obtained it during investigation.

11.13. In paragraph 45 of his cross-examination, to a suggestion put forth, PW 4 has deposed that it is not true that since the IMEI number of the mobile phone of the deceased, which was allegedly seized, was not found during the investigation, it cannot be said that the seized mobile phone belonged to the deceased.

11.14. In paragraphs 46 to 50 of his cross-examination, PW 4 has deposed that the seized knife was not sent to FSL for examination nor any DNA test or any special test was done to connect the recovered head with the recovered dead body. The material seized during inquest was not produced before the Court. The mobile phone allegedly seized was also not produced before the Court. There is no description of blood stains on any of the clothes recovered from the body of the deceased. No seizure list of blood has been prepared from the scene of crime.

11.15. Lastly, PW 4 has deposed in his cross-examination, that it is wrong to say that the investigation carried out by him is flawed and that the charge-sheet has been filed against the accused without any concrete supporting evidence.

12. PWs. 5 and 6 have deposed that they have accompanied the IO to the place of occurrence and that they came to know that murder of the deceased was committed because of

ongoing land dispute and that a beheaded dead body was recovered.

13. We have re-appreciated the entire evidence led by the prosecution. It would reveal that PW 3, the informant, gave his *fard-beyan* on 12.02.2012 at about 09.10 PM. It has been stated in the *fard-beyan* that at about 07.30 PM, his brother Sitaram called from his mobile phone to the mobile phone of the informant and informed that because of the land dispute, he is being killed. Thereafter, the mobile got switched off. Thereafter, the informant tried to contact his brother on mobile, however, the mobile was found switched off. Thereafter, he reached to the market and during the course of search, he found that beheaded body of his brother was found lying near Dhanauti river. The informant has also deposed that the dispute was going on with regard to land since 40 years between one Ayodhya Thakur and others and father of the informant and a title suit was pending between the parties before the concerned court and because of the said dispute a scuffle took place on 01.02.2012. Thereafter, the dispute was settled in the Panchayat in the presence of Mukhiya and Sarpanch on 12.02.2012 and on the very same day in the evening the incident took place. He was, therefore, of the firm belief that 17

accused, who were named in the *fard-beyan* must have killed his brother.

14. It would further reveal from the deposition given by PW 1, Dr. Ashok Kumar Chaudhary, that on 24.02.2012, i.e., after a period of 11 days from the date of incident, he conducted *post mortem*. It is relevant to observe that the said Doctor has mentioned in paragraph 2 that on external examination head with face and neck are only present with black hair, foul smell coming out from the neck and one incised wound over wide middle part 6" x 4-1/2"x bone cut was found. Thus, it appears that after the head of the deceased was discovered on 24.02.2012, the same was sent to the Doctor for conducting *post mortem*. It appears that the said Doctor did not carry out *post mortem* of the remaining part of the body of the deceased and there is nothing on record to suggest that the *post mortem* of the remaining part of the body was conducted by any Doctor.

15. PW 2, Nagendra Ram has, though deposed in examination-in-chief that in the seizure list his thumb impression was obtained, wherein it was mentioned that one *Hawai Chappal* of *Lakhani* company was seized from the place of occurrence, in paragraph 6 of the cross-examination, the said witness has stated that nothing was discovered in his presence. Thus, it appears that

this witness has not fully supported the seizure of so-called *chappal* of the deceased.

16. PW 3, Nagina Ram is the informant and brother of the deceased. This witness has admitted during cross-examination that he is not an eye-witness to the incident in question and because of the land dispute with the accused persons, on the basis of suspicion, he had given the name of the accused. However, now he does not have any dispute with the accused and he is not interested in continuing the proceeding. He has further admitted in paragraph 9 that the *fard-beyan* was not read over to him by *Darogaji* and he is not aware about the said *chappal.*

17. Now, the only witness upon which main reliance has been placed by the prosecution is PW 4, the Investigating Officer, who has conducted the investigation. It appears from the deposition given by the said witness that on the basis of the information given by the informant when he had carried out the investigation, he arrested the accused on different dates and confessional statement of all the accused came to be recorded by him. The said witness has said that on the basis of confessional statement of accused, *chappal* was discovered. Thereafter, on the basis of the confessional statement of accused Mahendra Ram, *muffler* of the deceased was discovered. Further,

on the basis of the confessional statement of accused Sunil Ram knife was discovered and thereafter on the basis of confessional statement of Sunil Ram head of the deceased was discovered. However, it is relevant to observe, at this stage, that during cross-examination, the said witness has admitted that he obtained signatures of independent witnesses on all the seizure lists, however, barring PW 2, a seizure list witness, none of the independent witnesses of seizure list has been examined by the prosecution, but the said witness, as observed hereinabove, has admitted during cross-examination that nothing was discovered in his presence. Thus, except the deposition of IO, there is no other evidence in support of the so-called seizure of certain articles belonging to the deceased as well as the murder weapon and the head of the deceased. It would further reveal from the cross-examination of the said witness that IO did not produce the call details of the mobile phone of the deceased and the mobile phone of the wife of the informant. At this stage, it is required to be recorded that it is the case of the informant that at 07.30 PM, his brother (deceased) called from his mobile phone to his mobile phone and informed that because of the land dispute he is being killed. Thus, the prosecution has failed to prove that the deceased

has lastly called and informed about the incident to his brother, i.e., the informant.

18. It would further reveal that in paragraph 25 of cross-examination, PW 4 has admitted that he has not stated in the case diary that there was blood stain on the knife or not and he had not sent the knife for necessary analysis. He has further admitted in paragraph 27 that the discovered head and the other part of the body of the deceased were of the same person or not has not been examined/confirmed medically. He has also admitted that the skin of the head, which was discovered, has peeled off. In paragraph 46, once again, he has admitted that seized knife was not sent to FSL for analysis and for connecting the corpse and the head. He further admitted that neither DNA test nor any special test was done. He has also admitted in paragraph 50 that he did not seize any blood from the place of occurrence.

19. We are of the view that discovery of the articles as well as the head of the deceased has not been duly proved. There is no material connecting the chain of circumstance from which it can be established that the appellants herein have killed the deceased.

20. PWs. 5 and 6 are other police officers. Their deposition is not of any assistance to the case of prosecution.

21. At this stage, it is pertinent to observe that the informant specifically stated in the *fard-beyan* itself that because of the land dispute, the incident in question took place and it is the specific case that when his brother (deceased) called on his mobile phone at 07.30 PM, deceased himself informed that because of the land dispute, he is being killed. However, surprisingly, the IO has deposed in paragraph 17 of examination-in-chief that as there was love affair between the deceased and the second wife of accused Mahendra Ram, incident in question took place. Thus, the IO has attributed the motive to accused Mahendra Ram that he was having grudge because of the love affair between the deceased and his second wife. However, the prosecution has failed to lead evidence with a view to prove the aforesaid so-called motive on the part of the accused to kill the deceased. Even otherwise, with regard to the land dispute between the parties also, no evidence has been led by the prosecution and, therefore, we are of the view that the prosecution has failed to prove the motive on the part of the accused to kill the deceased. It is well settled that in case of circumstantial evidence, motive assumes importance. In the present case, the prosecution has miserably failed to prove the said aspect.

22. At this stage, we would like to refer the decision rendered by the Hon'ble Supreme Court, in the case of ***Sharad Birdhichand Sarda Vs. State of Maharashtra***, reported in **(1984) 4 SCC 116**, wherein it been has observed in paragraph 150 to 160 as under:

> *"150. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a court.*
>
> *151. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh 1952 SCR 1091 : (AIR 1952 SC 343) . This case has been uniformly followed and*

applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail v. State of Uttar Pradesh, (1969) 3 SCC 198 and Ramgopal v. State of Maharashtra, AIR 1972 SC 656. It may be useful to extract what Mahajan, J. has laid down in Hanumant's case (at pp. 345-46 of AIR) (supra):

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

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

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

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

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

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

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

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

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

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

154. It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in The King v. Horry, (1952) NZLR 111, thus:

"Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for."

155. Lord Goddard slightly modified the expression 'morally certain' by 'such circumstances as render the commission of the crime certain'.

156. This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. Horry's case (supra) was approved by this Court in Anant Chintaman Lagu v. State of Bombay, (1960) 2 SCR 460 : (AIR 1960 SC 500). Lagu's case as also the principles enunciated by this Court in Hanumant's case (supra) have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases — Tufail case (1969) 3 SCC

198 (supra), Ramgopal's case (AIR 1972 SC 656) (supra), Chandrakant Nyalchand Seth v. State of Bombay (Criminal Appeal No 120 of 1957 decided on 19-2-1958), Dharambir Singh v. State of Punjab (Criminal Appeal No 98 of 1958 decided on 4-11-1958). There are a number of other cases where although Hanumant's case has not been expressly noticed but the same principles have been expounded and reiterated, as in Naseem Ahmed v. Delhi Administration, (1974) 2 SCR 694 (696) : (AIR 1974 SC 691 at p. 693), Mohan Lal Pangasa v. State of U.P., AIR 1974 SC 1144 (1146), Shankarlal Gyarasilal Dixit v. State of Maharashtra, (1981) 2 SCR 384 (390) : (AIR 1981 SC 765 at p. 767) and M.G. Agarwal v. State of Maharashtra, (1963) 2 SCR 405 (419) : (AIR 1963 SC 200 at p. 206) a five-Judge Bench decision.

157. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor-General relying on a decision of this Court in Deonandan Mishra v. State of Bihar, (1955) 2 SCR 570 (582) : (AIR 1955 SC 801 at p. 806), to supplement his argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor General we are unable to agree with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus:

"But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation. . . such absence of explanation or false explanation would itself be an additional link which completes the chain."

158. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier, viz., before a false explanation can be used as additional link, the following essential conditions must be satisfied:

(1) various links in the chain of evidence led by the prosecution have been satisfactorily proved,

(2) the said circumstance point to the guilt of the accused with reasonable definiteness, and

(3) the circumstance is in proximity to the time and situation.

159. If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter

was examined in Shankarlal's case (AIR 1981 SC 765) (supra) where this Court observed thus:

"Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstance, if other circumstances point unfailingly to the guilt of the accused."

160. This Court, therefore, has in no way departed from the five conditions laid down in Hanumant's case (AIR 1952 SC 343) (supra). Unfortunately, however, the high Court also seems to have misconstrued this decision and used the so-called false defence put up by the appellant as one of the additional circumstances connected with the chain. There is a vital difference between an incomplete chain of circumstances and a circumstance which, after the chain is complete, is added to it merely to reinforce the conclusion of the Court. When the prosecution is unable to prove any of the essential principles laid down in Hanumant's case, the High Court cannot supply the weakness or the lacuna by taking aid of or recourse to a false defence or a false plea. We are, therefore, unable to accept the argument of the Additional Solicitor-General."

23. From the aforesaid observation made by the Hon'ble Supreme Court, it can be said that certain essential

conditions must be satisfied 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. The facts so established should be consistent only with the hypothesis of the guilt of the accused. Further, the circumstances should be of a conclusive nature and tendency and 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.

24. Keeping in view the aforesaid decision rendered by Hon’ble Supreme Court, if the evidence led by the prosecution in the present case is carefully examined, we are of the view that the prosecution has miserably failed to prove the case against the appellants herein beyond reasonable doubt. We have also gone through the reasoning recorded by the trial court and we are of the view that the trial court has committed grave error while passing the impugned judgment and order of conviction and sentences against the appellants. Hence, the same deserves to be quashed set aside.

25. Accordingly, the impugned judgment of conviction dated 14.11.2017 and order of sentence dated 22.11.2017 passed

by learned Vth Additional Sessions Judge, West Champaran, in connection with Sessions Trial No.444 of 2012, arising out of Nautan (Jagdishpur) P.S. Case No.36 of 2012 are quashed and set aside. The appellants are acquitted of the charges levelled against them by the learned trial court.

26. The appellants No. 1, 2, and 4, namely, Mahendra Ram, Santosh Ram and Shiv Ram respectively, are on bail. They are discharged from the liabilities of their respective bail-bonds. The appellant No. 3, namely, Sunil Ram, is in custody. He is directed to be released from jail custody forthwith, if his presence is not required in any other case.

27. The present appeal stand allowed.

(Vipul M. Pancholi, J)

(Dr. Anshuman, J)

Pawan/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	20.12.2024.
Transmission Date	20.12.2024.