IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.1091 of 2017

Arising Out of PS. Case No.-116 Year-2015 Thana- ARIYARI District- Sheikhpura

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1. Sanjay Mandal
2. Guddu Mandal Both sons of Suresh Mandal @ Suresh Mahto Resident of Village - Brindawan, Police Station - Ariari, District - Sheikhpura.
3. Niranjan Kumar @ Niranjan Mandal son of Bashisth Mandal Resident of Village - Chak Awgila, Police Station - Ariari, District Sheikhpura.
4. Dilwar Mandal @ Dilawar Mandal son of Shankar Mandal Resident of Village - Raghunathpur, Police Station Sikandra, District Jamui.

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

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with

CRIMINAL APPEAL (DB) No. 925 of 2017

Arising Out of PS. Case No.-116 Year-2015 Thana- ARIYARI District- Sheikhpura

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1. Suresh Mahto @ Suresh Mandal and Anr Son of Late Nand Kishore Mahto
2. Bhonu Mahto @ Bhonu Mandal Son of Late Chando Mahto Both Resident of Village-Brindawan, P.S. Ariari, District Sheikhpura.

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

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IPC – Section 364, 302, 201, 149 and 120B

All the six(6) appellants have been convicted u/s-364, 302, 201, 149 and 120B IPC by the trial court, and are sentenced to undergo maximum imprisonment for life --- The appellants have been alleged to have killed the deceased after stragulating him and then cutting of his head and burying the trunk and head in the jungle. --- There is no eye witness to the occurrence, nor is there any enmity against the deceased or his family members with the appellants.---

Hanumant vs. State of M.P.; AIR 1952 SC 343, and Tutail@ Simmi vs. State of U.P.(1969)3 SCC 198 relied on. Held that in the case of Circumstantial ordence, circumstances relied upon must be consistent with the hypothesis of guilt of the accused. It should be of conclusive nature and tendency so as to exclude every hypothesis but the one proposed to be proved.

The ‘Factum propandum’ and the ‘Factum probans’ must be consently and firmly established.

Pulururi Kotlaya vs. King-Emperor, AIR 1947 PC 67 relied on. Held that very surprisingly and almost inexplicable to us is the failure of police in not recording such contession before independent persons, not bringing on record the arrest-memo of Fuddu Mandal as also the recovery memo of the truncated body --- Equally intriguing for us is the non-production of the fly-axe which admittedly was used for cutting the neck of the deceased, even though the same was seized and sealed. That the blood stains on it was never sent for chemical examination is another factor which would make the prosecution version whisly suspect. Thus, the recovery of the so-called dead body of the deceased is no discovery which would be admissible u/s-27 of the Indian Act.

--- There is no categorical assertion of any one of the witnesses that the truncated body was that of the deceased.

--- Only one thing appears to the fore, i.e. the police took the shortest possible route to avowedly solve the murder mystery. Only the confession appears to have been relied upon solely and the Trial Court unsuspectingly accepted such circumstances, viz. The recovery of truncated dead body to be of the deceased and used it as the

compelling evidence for coming to the conclusion of guilt of the appellants. --- If this is the manner in which the police investigation is conducted, the functioning of the criminal justice system would for sure, take a jolt. --- It is very perplexing for us to see that the trial court went along with the proposition of the prosecution, despite the innumerable weak links and cavernous wedge in the prosecution venies. --- The yawning infirmities and the gaps in the chain of circumstantial evidence in this case would only warrant an acquital of the appellants. --- We set aside the judgment and order of conviction, allow the appeals and acquit the appellants at all the charges.

[Para 3, 18, 20, 21, 22, 33, 34, 38, 40, 45, 47, 48, 49, 50 and 53]

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... ... Appellant/s

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with

CRIMINAL APPEAL (DB) No. 925 of 2017

Arising Out of PS. Case No.-116 Year-2015 Thana- ARIYARI District- Sheikhpura

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1. Suresh Mahto @ Suresh Mandal and Anr Son of Late Nand Kishore Mahto
2. Bhonu Mahto @ Bhonu Mandal Son of Late Chando Mahto Both Resident of Village-Brindawan, P.S. Ariari, District Sheikhpura.

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

==========

Appearance :
(In CRIMINAL APPEAL (DB) No. 1091 of 2017)
For the Appellant/s : Mr.Ajay Kumar Thakur,
For the Respondent/s : Mr. Binod Bihari Singh
(In CRIMINAL APPEAL (DB) No. 925 of 2017)
For the Appellant/s : Mr. Ajay Kumar Thakur
For the Respondent/s : Mr.Sri Ajay Mishra

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE NANI TAGIA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 05-01-2024

1. Both the appeals (six appellants therein) have been heard together and are being disposed off by this common judgment.

2. We have heard Shri Ajay Kumar Thakur for the appellants and Mr. Binod Bihari Singh and Mr. Ajay Mishra, APPs for the State.

3. All the six appellants have been convicted under Sections 364, 302, 201, 149 and 120B IPC vide judgement dated 19.06.2017 passed by the learned District & Sessions Judge, Sheikhpura in Sessions Case No. 26 of 2016. By order dated 22.06.2017, they have have been sentenced to undergo imprisonment for life, a fine of Rs. 10,000/- and in default of payment of fine, to further suffer R.I. for two years for the offence under Section 302/149 IPC; R.I. for ten years, fine of Rs. 5,000/-

and in default of payment of fine, to undergo R.I. for one year for the offence under Section 364/149 IPC. No separate sentence has been passed under Section 120(B) IPC. For the offence under Section 301/149, the appellants have been directed to undergo R.I. for three years, to pay a fine of Rs. 2,000/- and in default of payment, to further suffer R.I. for six months. The entire fine amount has been directed to be paid to the heirs of the deceased as compensation. The sentences have been ordered to run concurrently. A further direction has been given to the District Legal Services Authority, Sheikhpura for deciding about the quantum of compensation which ought to be awarded to the heirs of the deceased under the victim compensation scheme.

4. The appellants are said to have killed the deceased /Sanjeet Kumar after strangulating him and then cutting of his head and burying the trunk and head both in the jungle. No motive has been

assigned by the prosecution for the aforenoted killing. There is no eye-witness to the occurrence, nor is there any enmity against the deceased or his family members with the appellants. In fact, the F.I.R regarding the deceased having gone missing was lodged on 24.10.2015 by the elder brother of the deceased, namely, Sunil Kumar Suman (PW14). The deceased had gone out of the house on 22.10.2015 at about 6. P.M. along with one Shailendra Kumar for visiting the fair organized on the eve of Dussehra festival. However, when he did not return till the next day, an enquiry was made from afore-noted Shailendra, but he disclosed that he had left the company of the deceased in the night of 22.10.2015 only. On further search, it was gathered by PW14 that one Binod Paswan, who has not been examined at the Trial had seen the deceased along with appellant/Sanjay Mandal standing near the vehicle belonging to him. There

were some other persons also, who were drinking along with the owner of a local restaurant. On such information by Binod Paswan, PW14 came to the conclusion that perhaps the accused persons, namely, Shailendra, Sanjay Mandal and the restaurateur along with others might have killed the deceased.

5. On the basis of written report lodged by PW14 with the aforenoted information, a case vide Ariari P.S. Case No. 116/2015 dated 24.10.2015 was registered for investigation against aforenoted Shailendra Kumar, Sanjay Mandal and the restaurateur along with some unknown persons.

6. The police did not find the complicity of aforesaid Shailendra Kumar and the restaurateur referred to in the F.I.R. In fact, the prosecution case is that since appellant /Sanjay Mandal was a suspect as was seen last along with the deceased, he was arrested along with his brother, namely, Guddu

Mandal and on the confession of Guddu Mandal, other accused persons / appellants were also arrested. The confession of Guddu Mandal before the police led to the recovery of the trunk and the head of the deceased as also a sickle with blood-stains from the jungle. Only such persons were proceeded against who were named in the confession.

7. Ultimately, the police submitted chargesheet against the appellants, six in number, who were put on Trial.

8. The Trial Court, after having examined seventeen witnesses on behalf of the prosecution convicted and sentenced the appellants as aforesaid.

9. The major argument of Mr. Thakur in defense of the appellant is that the police as well as the Trial Court have completely misdirected themselves in relying upon inadmissible evidence for coming to the conclusion of guilt of the appellants. The confession which led to the recovery of the dead body was

made by Guddu Mandal, against whom there was no suspicion and, therefore, he might not have been arrested and in the custody of the police when his so called confession was recorded. Only Sanjay Mandal was named in the F.I.R. as he was seen by one Binod Paswan standing by the side of the deceased in the night of 22.10.2015. If this be so, it has been argued, even so much of the information which distinctly related to the recovery of the dead body would not be admissible even under Section 27 of the Evidence Act as the ban of Section 27 of the Evidence Act would apply *proprio vigore.*

10. In support of the aforenoted arguments, the Mr. Thakur has suggested that had it not been the case, the arrest memo of Guddu Mandal would have been brought on record. Even otherwise, the confession of Guddu Mandal leading to the so called recovery of the dead body and the weapon used in the murder cannot be accepted as the same was

never recorded in presence of independent witnesses when admittedly, many persons were waiting in the police station when such statement was being recorded. With respect to the recovery of the truncated dead body of the deceased, Mr. Thakur has urged that in the absence of any recovery memo, the whole purpose of the recovery gets frustrated. There is no guarantee that the dead body was recovered at the instance of Guddu Mandal. The place from where it was recovered remains unknown in the absence of the recovery memo.

11. The absence of recovery memo in the records of the case and the I.O. (P.W. 17) not taking the local persons who were present at the time exhumation of the dead body in loop, further confirms that there was no recovery at all.

12. That, the postmortem examination was conducted over the dead body of the deceased would, in this case, not be a sure proof of the

recovery. The post-mortem report does not refer to the case in which the body of the deceased was recovered. The subject body of the postmortem examination was completely swollen and decomposed. There is nothing on record to conclusively bring home the assertion of the prosecution that the body which was subjected to postmortem examination was that of Sanjeet Kumar. The dead body appears to have been identified by one Gorelal Paswan, the Chowkidar, who had only brought the dead body to the morgue. He could have only identified the dead body which he had brought.

13. Additionally, it has been argued that none of the witnesses claimed to have seen the deceased going anywhere in the company of the appellants. Thus even the inference from the circumstance of the deceased having been seen near a vehicle belonging to Sanjay Mandal and Sanjay Mandal being present there is so snapped out and

isolated a circumstance that it does not even come half way in completing the chain of circumstances for presumption of the guilt of the appellants.

14. Thus, it has been argued that the conviction of the appellants is based on no material and only hearsay statement of the witnesses.

15. As opposed to the aforenoted contentions, the learned Additional Public Prosecutors have submitted that though the recovery memo is not on record but the Investigating Officer of this case, namely, Balram Prasad (PW17) and Santosh Kumar Singh, the police officer, who was part of the team (PW16) have testified clearly that on the pointing of appellant/Guddu Mandal, the dead body and the blood stained sickle were recovered. The law does not enjoin the Trial Court to completely brush aside such recovery and the fact distinctly associated with it under Section 27 of the Evidence Act merely because the recovery Panchnama has not

been brought on record, which omission could be inadvertent as well. Apart from this, countervailing arguments have been made that while the statement of Guddu Mandal was being recorded, Sanjay Mandal was present there, who had affirmed whatever was said by Guddu Mandal. While the statement was being recorded, many persons, some of whom are the witnesses of this case, were present and they were also witnesses to the recovery of the truncated body. But before that, the learned APPs have pointed out, both Sanjay Mandal and Guddu Mandal were arrested, which fact stands confirmed by the statement of the I.O. (PW17). Though no arrest memo of Guddu Mandal is on record but it would be too much for the defense to press that when Guddu Mandal had made the statement, he was not in the custody of police and, therefore, one of the essential conditions for application of Section 27 of the Evidence Act that the person making such confession

ought to be an accused of a case and be in police custody for his statement to be taken as confession, inculpatory or otherwise, which would be admissible under Section 27 of the Evidence Act, was missing.

16. The witnesses, it has been asserted on behalf of the State, have been consistent that the deceased was found waiting for a vehicle to return home from the fair in the night of 22.10.2015. One of the witnesses has also confirmed that the deceased wanted to come back by a different mode of transport but Sanjay Mandal and Guddu Mandal insisted that they would reach the deceased to his home later.

17. Another brother of the deceased, while searching for his brother, had heard one of the appellants say that the police would gain no mileage by keeping Sanjay Mandal and Guddu Mandal in custody as they would not spill the beans and that the dead body was concealed in such a manner that

it can never be recovered. This apparently was heard by one of the witnesses to this case and, therefore, the Trial Court was not absolutely wrong in taking such statement into account and citing it as one of the circumstances for the presumption against the appellants to become strong one.

18. It is not unknown that the convictions are recorded on circumstantial evidence but only if the circumstances are complete.

19. No doubt, the Court does not expect any mathematical precision in forging the circumstances of inferential guilt as that may not be possible. However, it is well settled as to how, in cases of circumstantial evidence, the Court is under an obligation to look for each and every part of such circumstance which would form a complete chain, unerringly pointing towards the guilt of the accused. The circumstances ought to be of such a nature that it would only be in concord with lack of innocence of

the accused and should definitely point towards his guilt.

20. The most fundamental and the basic decision of the Supreme Court on circumstantial evidence is ***Hanumant vs. State of M.P. (AIR 1952 SC 343)***. The principles have been followed uniformly in ***Tufail @ Simmi vs. State of U.P. [(1969) 3 SCC 198]***; ***Ram Gopal vs. State of Maharashtra [(1972) 4 SCC 625]*** and ***Sharad Birdhichand Sarda vs. State of Maharashtra [(1984) 4 SCC 116].***

21. M.C. Mahajan, J. in Hanumant (supra) has said that it is well to remember that the circumstances relied upon must be consistent with the hypothesis of guilt of the accused. It should be of conclusive nature and tendency so as to exclude every hypothesis but the one proposed to be proved.

22. The "*factum probandum* and the *factum probans* must be cogently and firmly established."

"The force and effect of circumstantial evidence would depend upon its incompatibility with, and in capability of, explanation or solution upon any other supposition than that of the truth of the fact which it is adduced to prove; the mode of argument resembling the method of demonstration by the *reductio ad absurdum"*. *(Refer to* ***Ramanand @ Nandlas Bharti vs. State of U.P [AIR 2022 SC 5273])***; ***Subramanya vs. State of Karnataka, AIR 2022 SC 5110; Boby vs. State of Kerala, 2023 SCC Online SC 50 and Venkatesh @ Chandra vs. State of Karnataka, 2023 Cr.L.J. 183 SC****.*

23. Seen and analyzed in this context and on such touchstone we have found that Jitendra Kumar, Deepak Kumar, Uttam Kumar and Mithun Kumar, who have been examined as PWs 1 to 4 and who have confirmed that they had also visited the fair and had seen the deceased standing along with

appellant /Sanjay Mandal and his cohorts, have made their statements after the recovery of a truncated body which was tauted to be of Sanjit (deceased). Their statements, therefore, would not have any probative value with respect to even this circumstance that the deceased was last seen with one of the appellants and his associates. Their statements were recorded by the police after 20 days of the recovery of the dead body. Assuming that this spotting of the deceased along with Sanjay Mandal and others were true, but for the fact that the deceased went missing and later his dead body was recovered, it would not have been any important information for them to have disclosed it to anyone. In that case, their making the statements after the recovery might make sense. However, that would only be one of the circumstances, which independently may not partake of the character of connecting evidence. It would take the prosecution

nowhere specially when no witness has claimed to have seen the deceased going along with anyone of the appellants or all the appellants in the vehicle.

24. Rajesh Kumar (PW5) makes the prosecution version even more suspect. He was present at the fair and had seen one red-coloured magic vehicle being driven by Sanjay Mandal Bhonu, Suresh and Niranjan were seated in the vehicle. The vehicle was parked behind a poultry farm, from where it was recovered by the police in an abandoned condition. He further claimed to have seen all the appellants getting out of the vehicle and entering the poultry farm. If this statement is accepted to be true, it would only lead to one inference that from the fair, the appellants had come to the poultry farm and were not to be seen thereafter. The poultry farm or the place from where the vehicle was found does not fall in any one of the P.O.s. It appears that the police, without any

reason, gave a short-shrift to the accusation initially levelled by PW14 about the complicity of Shailendra and the local restaurateur who was named along with Sanjay Mandal. On the contrary, the brother of Shailendra has been brought to the witness-stand as PW9, who has confirmed that the deceased had come to his house and he and Shailendra had visited the fair. Shailendra came back in the night. In the morning, the next day, PW9 learnt that Sanjeet Kumar had not come back home. He enquired from his brother who had nothing else to offer except the regular/staid stand that he had left the company of the deceased sometimes in the night of October, 2015.

25. Till the time Shailendra was present along with deceased, nothing had happened and Shailendra did not ever disclose about the presence of Sanjay Mandal and his cohorts there in the fair.

26. This should have been investigated.

27. If P.W. 9 had asked his brother about Sanjit, he should have spoken about the same, if it were true. We say so for the reason that by the time some interrogation may have been made from Shailendra, the FIR had already been lodged in which he too was suspected as one of the offenders.

28. Where was the reason for the police to have completely given up the suspicion against Shailendra and the local restaurateur, who was partying at the fair along with others, some of whom have been named in the confession. The only answer which we could find about the sudden change of track by the police is the so-called confession of Guddu Mandal. That perhaps completed the story for the police to probe any further.

29. The I.O. (P.W. 17) has gone on record by stating before the Court that he did not consider it

necessary to know about the relationship of the appellants and the deceased for them to have harboured any intention of harming the deceased or the reason for killing him. This only denotes that the police acted with its blinders on and never cared to investigate the case properly.

30. We find substance in the submission of Mr. Thakur that by the time the statement of Guddu Mandal was recorded, which was supported by Sanjay Mandal, who only had become a suspect by then, Guddu Mandal was not even a suspect and in the absence of any arrest memo of Guddu Mandal, it would be difficult to assert with conviction that he was under the custody of the police.

31. Section 26 of the Evidence Act, 1872, puts a complete ban on the admissibility of a confession made by any person while he is in the custody of a police officer, unless it is made in the immediate presence of a Magistrate. Such statement cannot

be proved against the maker. We are not referring to the explanation of Section 26 of the Evidence Act, as it is not necessary in the facts of this case. To this rule, an exception, though not "artistically worded" has been carved out. It lifts the ban on such admission of confession, if any fact is deposed to as discovered in consequence of information received from a persons accused of the offence, in the custody of a police officer; but only so much of such information whether it amounts to a confession or not, as would remain distinctly to the fact thereby discovered can be proved. The conditions necessary for lifting the ban on proving the confession is that there should be a discovery of fact, in consequence of an information received from the accused; discovery of such facts to be deposed to; the accused must be in police custody when he gave information; and so much of information as it relates distinctly to the fact

thereby discovered, only would be admissible.

32. Broadly, therefore, it would appear that for Section 27 of the Evidence Act to be triggered, two conditions must apply *viz.* (I) the information must be such as would cause discovery of the fact; and (II) information must relate distinctly to the fact discovered.

33. Guddu Mandal is the only person who is said to have made confession before the police. There is no certainty that he was in police custody. In that case, the recovery of the truncated body of the deceased becomes suspect and inadmissible as well. Even otherwise, the discovery of a truncated body, said to be of the deceased, may not be the fact discovered as a "fact discovered" under Section 27 of the Evidence Act need not necessarily be equated with the "object recovered". Even if we assume that Guddu Mandal was in the custody of the police after having been made an

accused even as a suspect who made a statement pursuant to which there was a recovery of a truncated body which is identified to be of the deceased, it would only be a link in the case and cannot form the basis for concluding the guilt of Guddu Mandal along with others.

34. The scope and ambit of the construction of Section 27 of the Evidence Act would be best understood by referring to the *locus classicus* viz. the declaration of the privy council through Justice Beaumont in ***Pulukuri Kottaya vs. King -Emperor, AIR 1947 Privy Council 67***. This case had travelled to the privy council from Madras. It was a case of assault and consequent death as a result of fight between two factions of the village. The eye-witnesses were all hostile to the accused, but the Sessions Judge trying the case found their version to be substantially true and convicted them. Such decision was upheld by

the High Court. In the appeal to his Majesty council, it was urged that the failure of the prosecution to supply the defence at the proper time with copies of statements which were made by important P.Ws. during the course of preliminary police investigation involved a breach of the express provision of Section 162 of the Cr.P.C. and that the alleged wrongful admission and use in evidence of confession, alleged to have been made while in the police custody by two of the appellant, involved an important question as to the construction of Section 27 of the Evidence Act.

35. Finding that the opinions of High Courts of India were in conflict with respect to the construction of Section 27 of the Evidence Act, the privy council proceeded to explain the same. After noting the contents of the Section, the privy council found that Section 27 of the Evidence Act provided an exception to the prohibition imposed

by the Section 26 of the Evidence Act and enabled certain statements made by an accused in police custody to be proved. The condition necessary to bring the section into operation is that discovery of a fact in consequence of information received from a person accused of any offence in the custody of a police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved.

36. This seemed to the privy council to be based on the view that if a fact is actually discovered in consequence of the information given, there could be some guarantee in holding that the information was true and accordingly it could be allowed to be taken in evidence. However, the extent of the information admissible would only depend on the exact nature of the fact discovered to which such information is required to relate. It was further explained that if the expression “fact discovered” is

to be taken as a physical object produced and if any information which related distinctly to that object could be proved, then perhaps the whole purpose of the ban under Section 26 of the Evidence Act would be frustrated. The ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by exercise of undue pressure. If any information relating to the recovery of a physical object is permitted to be proved, then the so-called statement by the maker that he killed the deceased by the weapon which was recovered would also become admissible.

37. The privy council very pithily expressed that it would be fallacious to treat the "fact discovered" in Section 27 of the Evidence Act as equivalent to the "object produced". The fact discovered would embrace the place from which the object is produced as also the knowledge of the accused as

to this and the information given must distinctly relate to this fact. Any information as to past user or past history of the object produced is not related to its discovery in the setting in which it was discovered.

38. In ***State of UP vs. Deoman Upadhyaya, AIR 1960 SC 1125*****,** the Supreme Court has explained that classification of accused persons in two categories has been made by the law in question: one would be those who have the danger brought home to them by detention on a charge; and the other who are let free. In the former category are also those persons who surrendered to the custody by words or action. The protection given to these two classes is different.

39. In case of persons belonging to the first category, the law has ruled that their statements are not admissible, and in case of the second category, only that portion of the statement is

admissible as is guaranteed by the discovery of a relevant fact, unknown before the statement to the Investigating Authority. That statement may even be confessional in nature.

40. Very surprisingly and almost inexplicable to us is the failure of police in not recording such confession before independent persons; not bringing on record the arrest-memo of Guddu Mandal as also the recovery-memo of the truncated body. Equally intriguing for us is the non-production of the fly-axe which admittedly was used for cutting the neck of the deceased, even though the same was seized and sealed. That the blood stains on it was never sent for chemical examination is another factor which would make the prosecution version highly suspect. Thus, the recovery of the so-called dead body of the deceased is no discovery which would be admissible under Section 27 of the Evidence Act.

[Aslo refer to; ***Mohd. Inayatullah vs. State of Maharashtra (1976) 1 SCC 828; Anter Singh vs. State of Rajastahan, (2004) 10 SCC 657; Jafarudheen and Ors. vs. State of Kerala (2022) 8 SCC 440; Ramanand @ Nandlal Bharti vs. State of U.P. AIR 2022 SC 5273; Rajesh and Anr. vs. State of Madhya Pradesh, 2023 SCC Online 1202***]

41. Testing the case further, we have examined to the postmortem report and the evidence of the doctor (P.W. 13). The postmortem was performed on 27.10.2015. An incised wound was found at the base of the neck and the head was amputated but was present on the operation table. The body was swollen and was emitting foul odour. The skin had also peeled off from various places. The tongue was protruding. The cause of death was assessed to be cardio-respiratory failure because of amputation of head by a sharp cutting

instrument.

42. In his cross-examination, Dr. Dhirendra Prasad Singh (P.W. 13), referred to above, disclosed that the dead body was identified by one chawkidar/Gorelal Paswan but the dead body was the subject matter of which case was not disclosed to him nor did he mention it in the postmortem report. He admitted of having operated upon a truncated body but agreed that it was decomposed. Though answering a specific question, he has said that anybody could have recognized the dead body but it appears to us that such statement was made *ipse-dixit.*

43. What has caught our attention is that the Doctor (P.W. 13) sensed from seeing the dead body that it had been buried underground but never wrote that in his report. There is a problem there. The first doubt in the list of inconsistencies galore is that in the absence of recovery-memo,

there is nothing on record to indicate that the body was exhumed. If it were exhumed, the entire body would be covered with mud. There is nothing in evidence to suggest that the body was cleaned before being put to postmortem examination and when the Doctor conducting the postmortem examination got a feeling that the dead body had been buried, which was one of the first objective findings of a doctor, that ought to have been penned down.

44. Which dead body then was subjected to the postmortem examination ?

45. We have already noted that the case connection of the dead body was neither told to the Doctor nor was it mentioned in the column reserved for it in the Post-mortem Chart. There is no categorical assertion of any one of the witnesses that the truncated body was that of the deceased.

46. A very casual reference has been made by the wife and the bother of the deceased that the body parts which were recovered at the instance of Guddu Mandal were of the deceased/Sanjeet. It appears to be very difficult to accept that five days of the dead body having been buried and the decomposition having set in, the dead body would be identified. If at all it was identified, there should have been a specific statement regarding its identification.

47. With these facts, only one thing appears to the fore, i.e. the police took the shortest possible route to avowedly solve the murder mystery. Only the confession appears to have been relied upon solely and the Trial Court unsuspectingly accepted such circumstances *viz.* the recovery of truncated dead body to be of the deceased and used it as the compelling evidence for coming to the conclusion of guilt of the

appellants.

48. If this is the manner in which the police investigation is conducted, the functioning of the criminal justice system would, for sure, take a jolt. A serious miscarriage of justice has resulted in this case because of such errors and possibly the malpractice of finding out some way to anyhow solve the case and be done with the investigation.

49. It is very perplexing for us to see that the Trial Court went along with the proposition of the prosecution, despite the innumerable weak links and cavernous wedge in the prosecution version.

50. The yawning infirmities and the gaps in the chain of circumstantial evidence in this case would only warrant an acquittal of the appellants.

51. The basis of the entire prosecution case, in our estimation, has vanished in thin air.

52. Though we have found that the Trial Court has reminded itself of the requirements in a case

of circumstantial evidence but the same do not appear to have been put in practice. One is reminded of the categorization of a circumstantial evidence to be like a "gossamer thread" which is so light and intangible as the air itself, which might vanish with the merest of the touches.

53. For the afore-noted reasons, we set aside the judgment and order of conviction; allow the appeals and acquit the appellants of all the charges

54. Except for appellants Sanjay Mandal and Guddu Mandal, the other appellant viz. Niranjan Kumar @ Niranjan Mandal, Dilawar Mandal, Suresh Mahto @ Suresh Mandal and Bhonu Mahto @ Bhonu Mandal are on bai.

55. Their liabilities under the bail bonds are discharged.

56. Appellants Sanjay Mandal and Guddu Mandal are directed to be released forthwith from jail, if

not required or detained in any other case.

57. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

58. The records of this case be returned to the Trial Court forthwith.

59. Interlocutory application/s, if any, also stand disposed off accordingly

(Ashutosh Kumar, J)

(Nani Tagia, J)

Sunilkumar/
manoj-

AFR/NAFR	AFR
CAV DATE	NA
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