

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.44 of 2014

Arising Out of PS. Case No.-110 Year-2009 Thana- SHRIKRISHNAPURI District- Patna

Vijay Krishna, son of Late Sabuj Singh, resident Of Village-Kalyanpur, Police Station- Athmalgola, District - Patna

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 165 of 2014

Arising Out of PS. Case No.-110 Year-2009 Thana- SHRIKRISHNAPURI District- Patna

Gagan Kumar, son of Late Arjun Kumar, resident of Village-Bahapur, P.S.- Shalimpur, Bakhtiyarpur District-Patna

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 167 of 2014

Arising Out of PS. Case No.-110 Year-2009 Thana- SHRIKRISHNAPURI District- Patna

Chanakya @ Guddu, son of Vijay Krishna, resident of Village-Kalyanpur, Police Station-Athmalgola, District-Patna

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 211 of 2014

Arising Out of PS. Case No.-110 Year-2009 Thana- SHRIKRISHNAPURI District- Patna

Umesh Singh @ Umesh Prasad Singh, son of Late Rajendra Prasad Singh, resident of Village-Alawalpur, Police Station-Gaurichak, District-Patna

... .. Appellant/s

Versus

The State of Bihar



... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 44 of 2014)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate

Mr. Rajesh Singh, Advocate

Mr. Ram Binay Singh, Advocate

For the Informant : Mr. Jai Prakash Singh, Advocate

Mr. Amit Narayan, Advocate

For the State : Mr. Dr. Mayanand Jha, APP

(In CRIMINAL APPEAL (DB) No. 165 of 2014)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate

Mr. Rajesh Singh, Advocate

Mr. Ram Binay Singh, Advocate

For the Informant : Mr. Jai Prakash Singh, Advocate

Mr. Amit Narayan, Advocate

For the State : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 167 of 2014)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate

Mr. Rajesh Singh, Advocate

Mr. Ram Binay Singh, Advocate

For the Informant : Mr. Jai Prakash Singh, Advocate

Mr. Amit Narayan, Advocate

For the State : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 211 of 2014)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate

Mr. Rajesh Singh, Advocate

Mr. Ram Binay Singh, Advocate

For the Informant : Mr. Jai Prakash Singh, Advocate

Mr. Amit Narayan, Advocate

For the State : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

And

HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR)

Date : 20-05-2022

Heard the parties.

2. The appellants have challenged the judgment of conviction dated 2nd of December, 2013 and the order of sentence dated 4th of December, 2013 passed by the learned Additional District & Sessions Judge, Xth, Patna in connection



with Sessions Trial Nos. 1007 of 2010, 1008 of 2010 and 1009 of 2010, arising out of Shri Krishna Puri P.S. Case No. 110 of 2009.

3. By the aforesaid judgment dated 2nd of December, 2013, the appellant/Chankya @ Guddu has been convicted under Sections 302, 201, 120(B) of the Indian Penal Code and Section 27 of the Arms Act whereas other appellants have been convicted for the offences punishable under Sections 302/34, 201/34 and Section 120(B) of the Indian Penal Code (for short I.P.C).

4. After hearing the convicts on the point of sentence, vide consequential order dated 4th of December, 2013, the Trial Court sentenced the appellant/Chankya @ Guddu to undergo imprisonment for life, fine of rupees twenty five thousands and in default of payment of fine, three months simple imprisonment for the offence punishable under Section 302 of the Indian Penal Code, rigorous imprisonment for three years, fine of rupees five thousands and in default of payment of fine, three months simple



imprisonment for the offence punishable under Section 201 of the Indian Penal Code and rigorous imprisonment for three years, fine of rupees five thousands and in default of payment of fine, three months simple imprisonment for the offence under Section 27 of the Arms Act. The appellant/Vijay Krishna has been directed to undergo imprisonment for life, fine of rupees twenty five thousands and in default of payment of fine, three months simple imprisonment for the offence punishable under Section 302/34 of the Indian Penal Code, rigorous imprisonment for three years, fine of rupees five thousands and in default of payment of fine, three months simple imprisonment for the offence punishable under Section 201/34 of the Indian Penal Code. The appellants Umesh Prasad Singh and Gagan Kumar have been directed to undergo imprisonment for life, fine of rupees five thousands each and in default of payment of fine, three months simple imprisonment for the offence punishable under Section 302/34 of the Indian Penal Code, rigorous imprisonment for three years, fine of rupees one thousand



each and in default of payment of fine, three months simple imprisonment for the offence punishable under Section 201/34 of the Indian Penal Code. The appellants were not sentenced under Section 120(B) of the Indian Penal Code. All the sentences were directed to run concurrently.

5. The Sessions Trial in which the impugned judgment and order was passed relates to the First Information Report (in short 'F.I.R') that had been registered on 24.05.2009 as Shri Krishna Puri P.S. Case No. 110 of 2009 under Sections 365, 364, 302, 201, 120(B) of the Indian Penal Code and Section 27 of the Arms Act.

6. The prosecution case as recapitulated hereunder is based on the written report of Girish Prasad Singh (P.W. 1) who has stated that on 23.05.2009, his younger brother Satyendra Prasad Singh (deceased) went out from his house along with his relative appellant/Vijay Krishna, Ex. M.P in the morning by Sumo Victa car and got down at Guinni Motors, Boring Canal Road and told to appellant/Vijay Krishna to go as he would have to go for by-election after taking bath and



meal. However, when after a considerable period of time, he did not return home, the informant contacted him on his mobile numbers but both numbers were found switched off. Thereafter, an information was given to the police control room in the late night. In the next morning, one of the mobile numbers of the brother of the informant was found busy but after several attempts, no response was made from the other side. The informant raised a suspicion that his brother might have been kidnapped.

7. On the basis of the written application of the informant, on 24.05.2009, a formal F.IR was lodged against unknown and investigation was accordingly initiated.

8. During the course of investigation, the driver of the Sumo Victa car namely Vivek Singh (P.W.8) in his 164 Cr.P.C statement has stated that on the alleged date of occurrence, Satyendra Singh (deceased) went to MLA Flat No. 83 from his house where he met appellant/Vijay Krishna and from there, Satendra Singh(deceased), appellant/Vijay Krishna and his bodyguard namely appellant/Umesh Prasad



Singh went to an apartment situated in Boring Canal Road. As soon as car was stopped, all the three persons went upstairs of the apartment but only two persons appellant/Vijay Krishna and his bodyguard came down and sat in the car. P.W. 13, Dharmendra Kumar has stated in his 164 Cr.P.C statement (Ext-12) that on 23.05.2009 at about 11 a.m, he heard sound of such like falling of anyone. He saw that appellant/Vijay Krishna and his bodyguard are coming down stair from the flat. Thereafter, they went away sitting in the car. P.W. 14, Chunkeshwar Prasad has stated in his statement under Section 164 Cr.P.C that about 9 a.m, Ex-MP Vijay Krishna along with his bodyguard sat into the Summo Victa Car and went away from there. On the identification of appellant/Gagan Kumar, blood stained pochha (a cloth used for cleaning the floor), blood from the bottom of bucket and blood from the drain of bathroom were found in Flat No. D/2 at Jhula Niketan. The blood was seized from the place of occurrence and sent to the Forensic Science Laboratory for examination. The dead body of the kidnapped



was recovered from the river Ganga and was identified from his clothes by his relatives. The dead body was thereafter sent for postmortem. In the postmortem report, the cause of death was due to firearm injuries.

9. After completing the investigation, charge-sheet has been submitted against the appellants under Sections 364, 302, 201, 120(B) of the Indian Penal Code and Section 27 of the Arms Act after finding the case true, and cognizance has been taken. Thereafter, the case was committed to the Court of Sessions for trial and disposal. The charges were read over and explained to the accused/appellants to which they pleaded not guilty and claimed to be tried. Their defence is that they have falsely been implicated in this case and the occurrence did not take place in the manner as alleged by the prosecution.

10. After hearing the parties, learned Trial Court held the appellants guilty. Accordingly, the appellants were convicted and sentenced as indicated in the opening paragraph of the judgment.



11. We have heard learned counsel for the appellants, informant as well as learned A.P.P for the State.

12. To substantiate the charges levelled against the accused persons, altogether twenty four witnesses have been examined on behalf of the prosecution.

13. **P.W.1 Girish Prasad Singh** is the informant and brother of the deceased who has stated in his evidence that on the alleged date, he along with Satyendra Singh (deceased) and his wife were taking tea at the house of Satyendra Singh (deceased) when appellant/Vijay Krishna called on his mobile. After talking on phone, the deceased went to the MLA Flat No. 83 with his driver Vivek Singh (P.W. 8) by Sumo Victa car. When the deceased did not return home after a considerable period of time, the informant contacted on his mobile phones but the numbers were found to be switched off. When he did not return home by the evening, his friend Umesh Ji contacted appellant/Vijay Krishna on his mobile and asked about Satyendra Singh (deceased) but he completely denied about the whereabouts



of the deceased and stated that he met him in the morning but he got down at Boring Canal road to get some repair work in the car. The appellant/Vijay Krishna suggested to search him in the Railway Station or Hospital and inform to the P.C.R. The informant has further stated that appellant/Vijay Krishna has suggested him to lodge a case of kidnapping of Satyendra Singh (deceased) at Shri Krishnapuri Police Station and told to talk to the officials in this matter. One day after lodging of the case, this witness came to know that his brother had been murdered. The dead body of Satyendra Singh was recovered on 11.06.2009 from the river. The informant also stated that these appellants are involved in the murder of his brother. The informant denied the suggestion of the defence that he has wrongly said that he has got the F.I.R registered on the advice of appellant/Vijay Krishna. He has also denied that he has registered the case on the advice of the politicians. In his cross-examination at para 25, he has admitted that dead body of his brother was found floating near Dullighat of river



Ganga. He also denied the suggestion of the defence that only he and the Investigating Officer were present at the time of fishing out the dead body.

14. **P.W. 2 Sanjay Kumar Singh** is the nephew of the deceased who has stated in his evidence that at 6 to 7 a.m in the morning on 23.05.2009, he was sitting on the ground floor of his house when he saw from his window that his uncle Satyendra Singh (deceased) went out of his house with his driver Vivek Singh (P.W. 8) by his Sumo Victa car. When he enquired from his aunt (P.W. 17), she told that appellant/Vijay Krishna had made a call and his uncle had gone to meet him at M.L.A. Flat No. 83. P.W. 2 has stated that when till 10 P.M in the night, his uncle could not be traced then his aunt called him and Girish Prasad Singh of his locality and told us to go to the residence of appellant/Vijay Krishna and enquire about Satyendra Singh (deceased) who stays at night in White House at Buddha Marg. He has deposed that appellant/Vijay Krishna suggested them to go to P.M.C.H and Railway Station to locate him. After searching



everywhere, a complaint was lodged at 3 a.m to the P.C.R. This witness further deposed that he went to M.L.A Flat No. 83 along with Girish Prasad in the morning 25.05.2009 when appellant/Vijay Krishna suggested to lodge an F.I.R at Shri Krishnapuri Police Station. This witness has also deposed that Vivek Singh(P.W. 8), driver of Sumo Victa car told Sudhir Kumar (P.W. 4), driver of his uncle that appellant/Vijay Krishna had gone to Jhula Niketan with his bodyguard appellant/Umesh Prasad Singh and Satyendra Singh(deceased). Again on 26.05.2009, he repeated the same facts before him and Girish Prasad. He stated that all the three persons appellants Vijay Krishna, Umesh Prasad Singh and Satyendra Singh (deceased) had gone to Jhula Niketan. Satyendra Singh (deceased) stayed upstairs and appellants Vijay Krishna Umesh Prasad Singh had returned to MLA Flat No. 83 by the same car. P.W. 2 has deposed that on 26.05.2009, the lock of Flat No. D/2 of Jhula Niketan was broke-open before the Magistrate and Police and from the bedroom of appellant/Chanakya @ Guddu, electricity bill,



passbook of State Bank of India, Cheque book, papers of car, papers of mobile were seized by the Investigating Officer Ravindra Prasad Yadav and accordingly, seizure list (Ext-2) was prepared. Again on 03.06.2009, the lock of Flat No. D/2 of Jhula Niketan was opened in presence of the Magistrate, Police and officials of the Forensic Science Laboratory. The mark of blood was found in the drain of the bathroom. The F.S.L officials took the sample of blood, fiber of cloth and a short of white colour which was stained with blood. The Investigating Officer Ravindra Prasad Yadav seized the articles and prepared seizure list. This witness further deposed that on 11.06.2009, the police called him at Gaighat. He along with Girish Prasad Singh(P.W. 1), naval personnel and Investigating Officer Girish Prasad Singh proceeded by a boat to look for the dead body of Satyendra Singh. While looking for the dead body they reached near Dullighat where they saw a dead body. The dead body wearing white shirt and white trouser was very much decomposed. The dead body was fished out and examined



after putting off the trouser. The aunt and cousin sister identified the dead body as of Satyendra Singh. A number was inscribed with black thread on the inner pocket of trouser. The aunt said that uncle used to stitch his trouser in Fine Tailor. The number was verified at the shop and it was confirmed that the dead body was of Satyendra Singh. This witness has also deposed that his statement was recorded by the police under Section 164 of the Cr.P.C on which he put his signature (Ext-5). This witness has denied the suggestion of the defence that in the day and night of 23.05.2009 appellant/Vijay Krishna was in his village Kalyanpur and was not present in Patna and after receiving information of missing of Satyendra Singh(deceased), he came to Munna Chak in the evening on 24.05.2009. This witness also denied that he is unintentionally concealing this fact that appellant/Vijay Krishna visited his house at Munna Chak in the morning of 24.05.2009. The statement of this witness (Ext-5) recorded under Section 164 Cr.P.C appears to be based on hearsay.



15. **P.W. 3 Aisa Singh** is the daughter of the deceased who has identified the dead body of her father. She was called by the Police in P.M.C.H on 06.06.2009 for her sample of blood. In para 6 of her evidence she had denied to have stated before the police that on 27.05.2009 she was at her matrimonial house at Gaurichak. This witness appears to be a hearsay witness.

16 **P.W. 4 Sudhir Kumar** is the driver of Satyendra Singh who has deposed that on 23.05.2009 at about 6 to 7 p.m. the wife of Satyendra Singh (deceased) called him and informed that her husband had gone to meet appellant/Vijay Krishna with his driver Vivek Singh (P.W. 8) by Bolero vehicle and since then he is traceless. At about 6 p.m. in the evening, he went along with Sanjay Kumar Singh (P.W. 2) and Girish Prasad Singh (P.W.1) to the White house where appellant/Vijay Krishna used to reside. Appellant/Vijay Krishna suggested them to search him at Railway station and hospital and do not tell anything to media people. In the morning of 24.05.2009, he again went to M.L.A Flat No. 83



with Lakshmi Devi (deceased wife), Sanjay Kumar Singh and Girish Prasad Singh. Till that time, Vivek Singh (P.W. 8) was outside. He further stated that when he enquired from Vivek Singh (P.W.8) about Satyendra Singh(deceased), he had stated that the deceased had stayed in the flat at Jhula Niketan and only appellant/Vijay Krishna and his bodyguard appellant/Umesh Prasad Singh returned. While he was asking from Vivek Singh (P.W.8), appellant/Umesh Prasad Singh came there and informed that Satyendra Singh (deceased) got down at Guini Motors. This witness has identified his signature (Ext-8) on his statement made under Section 164 Cr.P.C but in para 15 of his cross examination, he has stated that he does not remember that he has stated before the Magistrate that the occurrence has taken place on 23.05.2009. His statement under Section 164 Cr.P.C (Ext-8) was recorded where he has stated the fact on the basis of hearsay. He has deposed that he does not remember the statement which was given before the Magistrate.

17. **P.W. 5 Veer Bahadur Prasad** is also a driver



who has stated in his evidence that on 23.05.2009, he was on leave. On 11.06.2009, he was at his house when he came to know that dead body of Satyendra Singh had been recovered from the river. He went to Dullighat and identified the dead body as of Satyendra Singh. He has also deposed that on 16.06.2009, he went along with Sanjay Kumar Singh (P.W. 2) to Jhula Niketan where the properties of appellant/Vijay Krishna was being attached. He put his signature on the seizure list (Ext-6/1) prepared by the Police.

18. **P.W. 6 Sunil Kumar Singh** is a witness to the inquest report of Satyendra Singh (deceased). He has deposed that he had gone to Dullighat in the night of 11.06.2009 and put his signature on the panchanama of the dead body of Satyendra Singh.

19. **P.W. 7 Popindra Prabhat @ Bunti** is a resident of Jhula Niketan who was living on fourth floor in Flat No. B/4. This witness has deposed that on 23.05.2009, he came to know from the Security Guards and some people of the apartment that a sound of gunshot firing was heard



from Flat No. D/2 which was being used by appellant/Chankya@Gudddu. He also came to know that appellant/Gagan Kumar was also residing in the said flat with appellant/Chankya@Gudddu.

20. **P.W. 8 Vivek Singh** is the prime and star witness of last seen and the driver of Satyendra Singh (deceased). As per the prosecution case, on 23.05.2009 Satyendra Singh (deceased) went along with P.W. 8 to meet appellant/Vijay Krishna in M.L.A Flat No. 83 and since then he was traceless. But, P.W. 8, in his evidence has denied to go anywhere on 23.05.2009. He completely denied to go in the residence of Satyendra Singh (deceased) on 23.05.2009. In course of trial, he did not identify the accused persons present in the Court room. This witness has denied the suggestion of the prosecution that he has concealed the true facts in collusion with the accused persons and given false evidence in the Court.

21. **P.W. 9 Md. Iqbal** is the owner of Fine Tailor where Satyendra Singh (deceased) used to stitch his clothes.



He has stated in his evidence that he stitches the label of fine tailor and mentions serial number and customer number. He identified the number stitched in the trouser of the deceased after verifying it from his computer to be of Satyendra Singh (deceased).

22. **P.W. 10, Krishna Dome** has stated in his evidence that at 4:00 p.m in the evening of 11.06.2009, he was at Dulhighat. He fished out the dead body of Satyendra Singh from the river Ganga.

23. **P.W. 11, Rajeev Kumar** is a driver who has stated in his evidence that before the occurrence, he was driver of Satyendra Singh(deceased). He has stated that about 4-5 days before the occurrence, he had gone to the Jhula Niketan with appellants Vijay Krishna and Umesh Prasad Singh where appellant/Vijay Krishna told his son Chanakya @ Guddu to shoot Satyendra Singh (deceased) and throw him in river Ganga, keeping his body in a box. However, this witness has not stated anything either to Satyendra Singh (deceased) or any family members of



Satyendra Singh. He had gone to Jhula Niketan on 03.06.2009 with the nephew of the deceased where the evidences were collected and properties of appellant/ Vijay Krishna were being attached but there also he did not disclose anything either to the Investigating Officer or any family member of Satyendra Singh which creates serious doubt about the authenticity of the version of this witness.

24. P.W. 12 Brajesh Kumar Singh @ Vijendra Singh has stated in his evidence that on 23.05.2009 at about 7 p.m, Lakshmi Singh (P.W. 17) enquired from him on phone whether he had seen Satyendra Singh(deceased). This witness has stated that he had gone along with other family members of deceased to M.L.A Flat No. 83 to meet appellant/Vijay Krishna and made an enquiry regarding the whereabouts of Satyendra Singh (deceased) but he completely denied to know anything about the deceased and suggested to register an F.I.R. He does not identify appellant/Gagan Kumar. He also denies that deceased was his relative.



25. **P.W. 13 Dharmendra Kumar** is a Security Guard who has stated in his evidence that on 23.05.2009, he was working in an apartment near Boring Road. Chunkeshwar Prasad (P.W. 14) was also working with him. This witness has stated that he was beaten up badly by the police before recording the statement because he was not stating what the police wanted. While deposing before the Magistrate, he did not tell that he was beaten up by the police because the police was accompanying him. This witness has been declared hostile. He has retracted from the statement which was given before the Magistrate and stated that he made such statement due to pressure, torture and assault caused by the Police.

26. **P.W. 14 Chunkeshwar Prasad** is also a Security Guard who has stated in his evidence that on 23.05.2009 at 9 a.m in the morning he was cooking meal. Dharmendra Kumar (P.W. 13) was also working with him as Security Guard. He has deposed that nobody had come in the apartment so long as they were present there. In the next



day, the police came, caught him and locked him up from 24.05.2009 to 01.06.2009. In his knowledge, no Investigating Team had come in the apartment and neither any blood stained cloth was seized. This witness has also been declared hostile. He has also retracted from the statement which was given before the Magistrate and stated that he made such statement due to pressure, torture and assault caused by the police

27. **P.W. 15 Sumit Kumar Singh** has stated in his evidence that he went in the shop of Fine Tailor to tally the number stitched on the trouser of the deceased. He has admitted that deceased was his Fufa (Husband of father's sister).

28. **P.W. 16 Shailendra Kumar Singh** has stated in his evidence that on 26.05.2009, when the lock of Flat No. D/2 was opened, he was there with the Police. He put his signature on the seizure list prepared by the police.

29. **P.W. 17, Lakshmi Singh** is the wife of the deceased who has stated in her evidence that on 23.05.2009



at about 8 to 9 a.m, appellant/Vijay Krishna called her husband and told him to immediately come at MLA Flat No. 83. His husband thereafter rushed to the MLA Flat No. 83 along with his driver Vivek Singh (P.W. 8) by his Sumo Victa car. He has deposed that when her husband did not return whole day, she called driver Sudhir Kumar (P.W.4) at about 6 to 7 p.m in the evening and told him to go to M.L.A Flat No. 83 and enquire from appellant/Vijay Krishna about her husband. Her family members made a call to appellant/Vijay Krishna who received his call and stated that Satyendra Singh (deceased) got down near Guini Motors at 8:30 a.m. He also conveyed that he returned back to M.L.A Club No. 83 with driver Vivek Singh (P.W. 8). She further deposed that Girish Prasad Singh (P.W.1) and Sanjay Kumar Singh (P.W.2) went to meet appellant/Vijay Krishna at White House who conveyed that Satyendra Singh (deceased) got down from the car at 8 am near Guinni Motors for going to the house. He also suggested to search in the Railway Station, private nursing home and P.M.C.H. He also suggested to register a



case in this regard. She further deposed that driver Sudhir Kumar (P.W. 4) told her that when he asked driver Vivek Singh (P.W. 8) as to where did he drop Satyendra Singh (deceased), he said that he went to M.L.A Flat No. 83 taking Satyendra Singh (deceased) and from there, Satyendra Singh (deceased), appellant/Vijay Krishna and his bodyguard appellant/Umesh Prasad Singh sat in the car and came to Jhula Niketan. All the three went up stairs in the flat where son of appellant/Vijay Krishna namely appellant/Chankya @ Guddu was living along with his servant appellant/Gagan Kumar and he (P.W.8) stayed on the ground floor. After 10-15 minutes, appellants Vijay Krishna and Umesh Prasad Singh came down stairs quite nervous and asked him to move and when he enquired about Satyendra Singh (deceased) they told that he had gone away. On getting such information from Sudhir Kumar (P.W. 4), Police was informed. The police, thereafter started investigating the matter. The dead body of her husband was recovered from Dullighat on 11th of June, 2009 and in order to ensure the identification of the dead



body and DNA test, blood samples of her daughter, Aisha, Girish Prasad Singh were taken.

30. **P.W. 18, Dr. Pankaj Kumar** is a formal witness who has proved the postmortem report (Ext-15). On inspection and dissection of the dead body, he found the following *ante-mortem* injuries:-

"External appears:- R.M absent, decomposition was present adipocere formation present on chest, abdomen upper and lower limb, skull and face was devoid of soft tissues and skin mandible was missing small bones of hand and foot was missing, penis and serotium was present sixteen secant on upper jaw was present.

On examination, the body was in advance stage of decomposition. On entry wound 1/4" X 1/4" was found on left side back of skull near left parietal occipital of rupture 3 1/2" above and behind left ear orifice 2" left from midline. On exit wound 3 1/2" x 2" found on right side of skull and, face (right nekillo right temporal, right occipital bones was missing) 2" right from midline one linear fracture 4" long was found on right temporal parietal area of skull. Brain matter was not found cranial cavity was filled with mud, xiphoid was found united with



sternum. Stomach was found empty. Viscera were in advance way of decomposition.

Routine viscera was preserved for chemical analysis of a precautionary measures, two teeth, on humerus bone, part of heart muscle, sternum bone was present for DNA test and handed over to the constable accompanied the body."

31. In the opinion of the doctor, the death occurred two to three weeks before from the date of autopsy and the cause of death was due to head injury by firearm.

32. **P.W. 19 Shiva Kumar**, technical officer of the Forensic Science Laboratory has stated in his evidence that he received cloth piece (Mark-A), Cotton Swab (Mark-B), Cotton Swab (Mark-C). On chemical examination, human blood was found in both of them. The blood group was AB. In para 5 of his evidence, this witness has stated that he was in the team at the time of autopsy of the deceased.

33. **P.W. 20, Ravindra Kumar Yadav** is the Investigating Officer of this case who has stated in his evidence that he has been handed over the charge of investigation. He has recorded the re-statement of the



informant. He, thereafter reached at the place of occurrence near Guinni Motors at Boring Canal Road on 24.05.2009 at about 10 a.m and inspected the place of occurrence but no clue in respect of Satyendra Singh (deceased) was found there. Thereafter, he went to M.L.A Club No. 83 and met appellant/Vijay Krishna and recorded his statement. He interrogated Vivek Singh (P.W. 8) and recorded his statement. In order to verify the statement of Vivek Singh (P.W. 8), he went to Jhula Niketan and recorded the statements of its security Guards namely Dharmendra Kumar @ Tuntun (P.W. 13) and Chunkeshwar Prasad (P.W. 14) and sent them to Court to get their statements recorded under Section 164 Cr.P.C. He has deposed that on 26.05.2009, Flat No. D/2 was unlocked and subsequently seizure list was prepared. This witness has further deposed that on 26.05.2009, no useful clue was found in course of examination by the officials of Forensic Science Laboratory in Flat No. D/2. On 27.05.2009, in presence of Magistrate and FSL team, Flat No. D/2 was again unlocked but again the FSL



team could not find any useful clue. This witness has further deposed that on 31.05.2009, he reached Khusarupur Police Station and recorded the statement of witness Santosh Kumar and on the basis of such statement, he apprehended appellant/Gagan Kumar and on the basis of confessional statement of appellant/Gagan Kumar, he went to the Gaighat along with other police officials in search of the dead body of Satyendra Singh (deceased). He has proved the confessional statement of appellant/Gagan Kumar(Ext-19). P.W. 20 has further deposed that on the basis of confessional statement of appellant/Gagan Kumar, Flat No. D/2 was again opened and forensic team inspected the flat. Appellant/Gagan Kumar showed the cloth with which he had wiped blood. During preliminary examination of a piece of cloth (Pochha) by the F.S.L team, it was found that there were drops of blood on it and drops of blood were also found on the bottom of green bucket kept in the bathroom. Thereafter, a seizure list(Ext-14/1) of both the articles were prepared and Deepak Tiwary and Chunkeshwar Prasad put their signatures on the seizure



list. On the basis of confessional statement (Ext-20) of appellant/ Gagan Kumar, appellant/Umesh Prasad Singh was arrested. The dead body was searched in Ganga river but no dead body was recovered. Again on 03.06.2009, Flat No. D/2 was opened and blood drop was recovered from the drain of bathroom. A white shirt containing blood stains was also recovered and seized. This witness has further deposed that on 11.06.2009, a dead body was found at Dullighat which was identified by the family members of the deceased to be the dead body of Satyendra Singh. He prepared inquest report of the dead body and brought it to the PMCH for its postmortem. The postmortem was done on 12.06.2009. He took the blood samples of Mrs Lakshmi Singh (P.W. 17) and Girish Prasad Singh (P.W.1) and sent the same to the F.S.L, Hyderabad. He has recorded the confessional statement of appellant/Vijay Krishna on 21.08.2009. He also recorded the statement of appellant/Chanakya @ Guddu and submitted charge-sheet against Umesh Prasad Singh and Gagan Kumar on 28.08.2009. On the basis of confessional statement of



appellant Chanakya @ Guddu the C.D.R of his mobile and mobile of Umesh Prasad Singh was perused when it was found that on 23.05.2009 at 9:37 a.m, he talked with Umesh Prasad Singh and the mobile location of Umesh Prasad Singh was found near the vicinity of Gandhi Setu. This witness has further stated that on 29.01.2020, he recorded the statement of Radhe Prasad (Court Witness No. 1) who has stated that on the date of occurrence, he had talked with the deceased. In para 73, this witness has accepted that since the said flat of Jhula Niketan was unlocked on 26.05.2009, it was under his care and he was keeping the lock and key in his possession since then as no body came to take the same. He has further stated that on 26.05.2009, Flat No. D/2 was not inspected and searched nor Sumo Victa car was inspected. In para 80, this witness has accepted that in the case diary, he has not mentioned the name of the expert who had collected the blood sample from drains, bucket and a piece of cloth meant for wiping the floor. He has also accepted in para 95 of the case diary that after arresting



appellant/Gagan Kumar from Tulsigarh, he had not prepared the arrest memo, which he should have prepared. In para 109, this witness has denied the suggestion of the defence that appellant Umesh Prasad Singh was arrested on 26.05.2009 and kept under Hazat till 31.05.2009. In para 121, this witness has accepted that he has not recorded this fact in the case diary that the dead body was recovered on the basis of confessional statement of Umesh Prasad Singh. This witness has further stated that he has not seized the mobile of Chanakya @ Guddu, the call details of which has been stated and he had also not seized the mobile through which Satyendra Singh(deceased) was called on 23.05.2009. He had also not seized the mobile of Umesh Prasad Singh and Raju Prasad. In para 126, this witness has stated that while the dead body was found on 11.06.2009, the box was searched in its vicinity but the same was not found. In his confessional statement, appellant/Gagan Kumar had stated about keeping the dead body inside the box and throwing the same in the river. In para 128, this witness has stated that in



course of investigation, the wife of the deceased, his nephew, brother and other family members have not stated as such that enmity between appellant/Vijay Krishna and the deceased was going on from before. In para 134, he has stated that Aisha Singh (P.W. 3) had made statement before him that on 27.05.2009, she was in her matrimonial house at Gaurishak and from there she talked to her mother(deceased wife). This witness had not stated as such that she was present in Pune on 23.05.2009.

34. **P.W. 21 Akhilesh Kumar Singh** has stated in his evidence that on 26.05.2009, he was working as Judicial Magistrate, 1st Class, Patna and recorded the statements of Vivek Singh (Ext-11/1), Chunkeshwar Prasad (Ext-13/1) and Sudhir Kumar (Ext-8/1) under Section 164 of the Cr.PC. They put their signatures after finding the same to be correct. In his cross examination, he has stated that witness Sudhir Kumar had not stated the number of Sumo Victa Car and the name of Driver Vivek Singh.

35. **P.W. 22, Rajendra Kumar Tripathi** has stated



in his evidence that on 30.05.2009, he was posted as Judicial Magistrate, 1st Class, Patna and recorded the statements of Popindra Prabhat (Ext-10/1), Dharmendra Kumar (Ext-12/1) and Sanjay Kumar Singh @ Pappu (Ext-5/1) under Section 164 of the Cr.P.C. They put their signatures after finding the same to be correct. In his cross examination, this witness has stated that Sanjay Kumar Singh has not stated the number of Sumo Victa and the name of driver Vivek Singh rather, he stated the name of Raju.

36. **P.W. 23 Sainky Singh** is the son of the deceased who has stated in his evidence that on 23.05.2009, he was in America. On 27/28.05.2009, he came to know that his father was missing from his house since 23.05.2009. He came to his house at Patna on 08.06.2009. On 11.06.2009, he went along with his mother and sister at Dhulighat and identified the dead body of his father. He has also stated that his father used to talk with him every day and he had a wish to fight election but he had apprehension from appellant/Vijay Krishna because he did not want him to fight election.



37. **P.W. 24, Anirudh Kumar** has stated in his evidence that Satyendra Singh (deceased) used to live with appellant/Vijay Krishna. This witness has been declared hostile.

38. On behalf of the defence one Court witness and four defence witnesses have been examined.

39. **Court Witness No. 1, Radhe Prasad** has been examined on behalf of the defence who has stated in his evidence that SIM no. 9304492140 through which a call was made to Satyendra Singh (deceased) is in the name of his wife Fula Devi. He has stated in his evidence that someone demanded his mobile on 23.05.2009 and talked to Satyendra Singh(deceased). He completely denied that appellant/Vijay Krishna used his mobile to call Satyendra Singh. He also denied that on 23.05.2009 at 7:45 a.m. he had gone to M.L.A Flat No. 83.

40. **D.W. 1 Vishundeo Prasad** has stated in his evidence that he met with appellant/Vijay Krishna on 22.05.2009 and stayed at his house till 12 o' clock on



23.05.2009.

41. **D.W. 2 Raghuveer Prasad** has stated in his evidence that on 22.05.2009, he went to meet appellant/Vijay Krishna at his residence in Kehan Lane, Delhi where his son Chankya @ Guddu informed him that he had gone to his village. On 23.05.2009, in the morning, he again went to meet appellant/Vijay Krishna, but he was not available. However, he met with his son Chankya @ Guddu again on that day also.

42. **D.W. 3 Arun Lal**, in his evidence has stated that he met appellant/Vijay Krishna at Athmalgola Market on 22.05.2009. He had also gone to his village on 23.5.2009 and stayed there till 8 to 11 a.m. He denied the suggestion of the prosecution that appellant/Vijay Krishna was present in MLA Flat No. 83 on 23.05.2009.

43. **D.W. 4, Ram Kewal Singh** has stated in his evidence that on the occasion of completing 25th years of married life, he had organized a puja on 22.05.2009 and dinner was also served to the guests. The progrmme



continued till 23.05.2009. During this period, appellant/Umesh Prasad accompanied him.

44. Learned counsel for the informant as well as learned A.P.P appearing on behalf of the State have submitted that prosecution has substantiated the charges levelled against the accused persons on the basis of ocular and documentary evidence produced by it which are sufficient for conviction of the accused persons/appellants.

45. The learned counsel appearing on behalf of the appellants has submitted that there is no eye witness to the occurrence. The prosecution has failed to prove any motive of the murder. From the evidences of the informant and wife of the deceased, it is apparent that there was cordial relationship between the deceased and appellant/Vijay Krishna. It is the case of the prosecution that on call from the appellant/Vijay Krishna, the deceased went to meet him in M.L.A Flat No. 83 with his driver Vivek Singh on 23.05.2009 but Vivek Singh (P.W. 8) in his evidence has completely denied this fact that he had gone with the deceased to meet



appellant/Vijay Singh in the morning of 23.05.2009. The Investigating Officer of this case viz. Ravindra Prasad Singh (P.W. 20) in his evidence in para 85 has stated that except Vivek Singh, none had stated that Satyendra Singh (deceased) was seen getting down near M.L.A. Flat No.83 nor any independent witness has stated that appellant/Vijay Krishna and his bodyguard appellant/Umesh Prasad Singh was seen in M.L.A. Flat No. 83 in the morning of 23.05.2009. Hence, the prosecution has failed to prove that deceased had gone to meet appellant/Vijay Krishna in M.L.A Flat No. 83 along with his driver Vivek Singh on the day of occurrence.

46. The learned counsel for the appellants has further submitted that it is the case of the prosecution that deceased was accompanied by appellant/Vijay Krishna and his bodyguard appellant/Umesh Prasad Singh to Jhula Niketan on 23.05.2009 in Flat No. D/2 where his son appellant/Chankya @ Guddu used to reside and only appellant/Vijay Krishna and his bodyguard came out and went away inside the vehicle



with driver Vivek Singh (P.W. 8) but the Security Guards of the aforesaid apartment namely Dharmendra Kumar (P.W. 13) and Chunkeshwar Prasad (P.W. 14) have not corroborated as such and they have been declared hostile. No other independent witness has stated to have seen appellant/Vijay Krishna, his bodyguard, appellant/Umesh Prasad Singh and the deceased near Jhula Niketan. Hence, the prosecution has also failed to prove that appellant/Vijay Krishna went along with the deceased and his bodyguard to Jhula Niketan in Flat No. D/2 but only above two appellants came downstairs and went away with driver Vivek Singh (P.W. 8).

47. The learned counsel for the appellants has also submitted that the Investigating Officer (P.W. 20) vide para 16, 19 and 20 has deposed that Flat No. D/2 was searched on 26.05.2009 and 27.05.2009 in presence of the Magistrate and F.S.L. officials but no useful clue was found. In para 73, this very witness has stated that key of Flat No. D/2 was under his possession from 26.05.2009. Hence, it cannot be



denied from the possibility that he has planted the evidence against the appellants and kept blood stained materials in Flat No. D/2. It is further submitted that as per prosecution case, on 31.05.2009, a piece of cloth with blood, blood stained bucket and a white shirt was found in Flat No. D/2 which were taken by the experts as sample of blood but the prosecution has not examined the experts nor evidences were sealed or signature of the witnesses was taken on it. The Investigating Officer has admitted that he had kept the exhibits in the Malkhana but the number of Malkhana in respect of the seized exhibit has not been mentioned. The prosecution has also failed to prove that the blood found in Flat No. D/2 was that of the deceased.

48. It is submitted that on the point of criminal conspiracy, the prosecution has examined Rajeev Kumar Singh as P.W. 11 who has stated in his evidence that 4-5 days before the occurrence, he had gone to Jhula Niketan along with the appellant/Vijay Krishna where they made a conspiracy to kill Satyendra Singh (deceased) and throw his



dead body in the river. This witness was also a witness to the seizure list prepared on 03.06.2009 in Jhula Niketan but he did not say anything to the police or any family members of the deceased though he claims that he was driver of the deceased. The police has recorded the statement of this witness after six months of the occurrence. Hence, the case of the prosecution that under criminal conspiracy, Satyendra Singh(deceased) has been killed, does not appear to be convincing.

49. The learned counsel appearing on behalf of the appellants has submitted that P.Ws. 1, 2, 3, 4, 5, 11, 12, 15, 16, 17 and 23 are either brother, son, daughter, wife, niece of the deceased or relatives of the deceased, hence the possibility of giving false deposition by them cannot be denied. The statement recorded under Section 164 Cr.P.C is not a substantive piece of evidence. Hence, the statements given under Section 164 Cr.P.C by P.W.7, Popindra Prabhat, P.W. 8 Vivek Singh, P.W. 13, Dharmendra Kumar and P.W. 14, Chunkeshwar Prasad have no evidentiary value. It is the



case of the prosecution that after killing the deceased, the dead body was locked in a trunk and thrown away in the river but the dead body of the deceased was recovered in the river Ganga without it being covered with any trunk.

50. Learned counsel for the appellants has submitted that the Trial Court ought to have appreciated the fact that there was no chain of circumstantial evidence in the prosecution case and there are various discrepancies inherent in it. Hence, benefits of doubt must be given to the appellants while setting aside the judgment and order passed by the Trial Court.

51. In this case, the death of the deceased was not accidental but homicidal. From the evidence of the Doctor (P.W. 18), it appears that deceased died due to gunshot injuries.

52. It is the fact that in this case, there is no direct evidence to prove the crime. The whole prosecution case is based on circumstances and in case of circumstantial evidence, the motive is required to be proved in respect of



commission of murder of the deceased.

53. We have heard learned counsel for the respective parties at length. With their able assistance, we have also examined the relevant records, the judgments rendered by the Trial Court and the reported judgments cited by the parties during arguments.

54. The prosecution case hinges on circumstantial evidence. The following circumstances have been pressed into service by the prosecution; (i) last seen in the company of appellant/Vijay Krishna (ii) motive (iii) murder of the deceased in the flat owned by appellant/Vijay Krishna where his son appellant/Chanakya @ Guddu used to reside along with his servant appellant/Gagan Kumar and disposal of the dead body by throwing into the current of Gaighat in locked box (iv) the recovery of the dead body and its identification (v) the discovery of location, on the basis of disclosure made by the appellants where the dead body was thrown in current of river Ganga.

55. The prosecution case is based on this fact that



on the day of occurrence, Vivek Singh (P.W. 8) had accompanied the deceased to M.L.A Flat No. 83 by Sumo Victa car to meet appellant/Vijay Krishna and from there, the deceased went to Jhula Niketan along with appellant/Vijay Krishna and his bodyguard appellant/Umesh Prasad Singh. They went upstairs in the apartment where appellant/Chanakya @ Guddu used to reside but after some time only appellant/Vijay Krishna and his bodyguard appellant/Umesh Prasad Singh came down. Dharmendra Kumar (P.W. 13) and Chunkeshwar Prasad (P.W. 14), the Security Guards of the apartment have also corroborated the fact that they saw appellant/Vijay Krishna and his bodyguard appellant/Umesh Prasad coming down from the apartment and went away from there. P.W.s 1, 2 and 17 have also testified the same facts in their evidence. However, Vivek Singh (P.W. 8) who was the driver of the deceased has admitted in his evidence that in the morning of 23.05.2009, he had not gone with any person to anywhere. He had completely retracted from the statement made before learned



Magistrate under Section 164 of Cr.P.C. It would be worthy to mention here that according to the prosecution, P.W. 8 was the eye witness of this fact that the deceased had gone with him from his residence on 23.05.2009 in the morning to meet the appellants. All other witnesses are hearsay in respect of last seen who deposed accordingly as conveyed by Vivek Singh (P.W. 8). From the entire facts discussed above, this inference is taken by us that no one had seen the deceased along with the appellants either in M.L.A Flat No. 83 or in Jhula Niketan.

56. The next contention raised on behalf of the appellants is that the statements made under Sections 164 Cr.P.C by P.Ws. 8, 13, 14 in respect of last seen of the deceased with the appellants does not have any relevance since they all have retracted from the statement recorded under Section 164 Cr.P.C. The Hon'ble Apex Court in the case of ***R. Shaji versus State of Kerala(2003)14 SCC 266*** has clearly observed that the statement recorded under Section 164Cr.P.C cannot be treated as substantive evidence.



Paragraphs 26, 27 and 28 of the judgment reads as under:-

"26. Evidence given in a court under oath has great sanctity, which is why the same is called substantive evidence. Statements under Section 161 Cr.P.C can be used only for the purpose of contradiction and statements under Section 164 Cr.P.C can be used for both corroboration and contradiction. In a case where the Magistrate has to perform the duty of recording a statement under Section 164 Cr.P.C, he is under an obligation to elicit all information which the witness wishes to disclose, as a witness who may be an illiterate, rustic villager may not be aware of the purpose for which he has been brought, and what he must disclose in his statements under Section 164 Cr.P.C. Hence, the Magistrate should ask the witness explanatory questions and obtain all possible information in relation to the said case.

27. So far as the statement of witnesses recorded under Section 164 is concerned, the object is two fold; in the first place, to deter the witness from changing his stand by denying the contents of his previously recorded statement; and secondly, to ride over immunity from prosecution by the witness under Section 164. A proposition to the effect that if a statement of a witness is recorded under Section 164, his evidence in court



should be discarded, is not at all warranted. (Vide Jogendra Nahak v. State of Orissa and CCE v. Duncan Agro Industries Ltd.)

28. Section 157 of the Evidence Act makes it clear that a statement recorded under Section 164 Cr.P.C can be relied upon for the purpose of corroborating statements made by witnesses in the committal court or even to contradict the same. As the defence had no opportunity to cross-examine the witnesses whose statements are recorded under Section 164 Cr.P.C, such statements cannot be treated as substantive evidence."

57. The Hon'ble Apex Court has also observed in the case of ***Somasundaram @ Somu versus State AIR 2020 SC 3327*** which is quoted hereinabove.

"68. Section 164 of the Cr.P.C enables the recording of the statement or confession before the Magistrate. Is such statement substantive evidence ? What is the purpose of recording the statement or confession under Section 164?. What would be the position if the person giving the statement resiles from the same completely when he is examined as a witness. These questions are not res integra. Ordinarily, the prosecution which is conducted through the



State and the police machinery would have custody of the person. Though, Section 164 does provide for safeguards to ensure that the statement or a confession is a voluntary affair it may turn out to be otherwise. We may advert to statements of law enunciated by this Court over time.

69. As to the importance of the evidence of the statement recorded under Section 164 and as to whether it constitutes substantial evidence, we may only to advert to the following judgment, i.e. , in George and others v. State of Kerala and another.

"In making the above and similar comments the trial Court again ignored a fundamental rule of criminal jurisprudence under S. 164 Cr.P.C, cannot be used as substantive evidence and can be used only for the purpose of contradicting or corroborating him."

71. Thus, in a case where a witness, in his statement under Section 164 of the Cr.P.C makes culpability of the accused beyond doubt but when he is put on the witness stand in the trial, he does a complete somersault, as the statement under Section 164 is not substantial



evidence then what would be the position?. The substantive evidence is the evidence rendered in the Court. Should there be no other evidence against the accused, it would be impermissible to convict the accused on the basis of statement under Section 164."

58. Section 27 of the Indian Evidence Act also reads as under:-

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

59. We are of the opinion that the statements recorded under Section 164 Cr.P.C have been falsified by the witnesses. Hence, these statements have no relevance in the eyes of law.

60. The other contention raised on behalf of the appellants is that the case is based on circumstantial evidence. To prove the case based on circumstantial



evidence, the motive behind the occurrence is necessary. In this case, appellant/Vijay Krishna had good relationship with the deceased and his family and this fact has also been corroborated by the wife (P.W. 17) and brother (P.W.1) of the deceased. Hence, there is no reason to believe that the appellants, in conspiracy with each other have committed the murder of Satyendra Singh (deceased) without any plausible reason.

61. The place of occurrence of committing murder of Satyendra Singh (deceased) is said to be Flat No. D/2 situated in Jhula Apartment on the basis of information gathered by the witnesses namely PW. 13 and P.W. 14. They were Security Guards in the said apartment. The prosecution has tried to prove that these witnesses deposed in their statements recorded under Section 164 Cr.P.C that on 23.05.2009, Satyendra Singh (deceased) came along with appellant/Vijay Singh and his bodyguard appellant/Umesh Prasad Singh in the apartment and went in Flat No. D/2 and after some time, only appellants Satyendra Singh and Umesh



Prasad Singh came down from the flat and went away with driver Vivek Singh (P.W. 8). However, these two witnesses have not corroborated the evidence before the Trial Court at the time of their evidence. They both have retracted from the statement given under Section 164 Cr.P.C and they have been declared hostile. So, the prosecution has failed to prove that the deceased came along with appellants Vijay Krishna, Umesh Prasad Singh and his driver Vivek Singh(P.W. 8) to Jhula Niketan from M.L.A Flat No. 83. P.W. 7 Popindra Prabhat @ Bunti who was also a resident of Jhula Niketan and was living in Flat No. B/4 has deposed that on 23.05.2009, the Security Guards and some people of the apartment told him that they have heard the sound of gunshot firing which came from Flat No. D/2 in which appellant/Chanakya @ Guddu was residing with his servant appellant/Gagan Kumar. He came to know on 26.05.2009 about breaking of the lock of said flat by the police. He heard that appellants Chanakya @ Guddu and Gagan Kumar are residing in the apartment. He had not seen appellant/



Chanakya @ Guddu to have shot fired at the deceased in Flat No. D/2.

62. P.W. 11, Rajeev Kumar is driver of the deceased who has deposed that 4-5 days before the occurrence, he took away appellants Vijay Krishna and Umesh Prasad Singh to Jhula Niketan in Flat No. D/2 where appellants Chanakya @ Guddu and Gagan Kumar were present. He stepped back in dining room. Appellant/Vijay Krishna whispered that he will come with Satyendra Singh (deceased) and you all will kill him and throw him into river Ganga, keeping the body locked in a box. The evidence given by this witness is beyond reasonable thought. He is a man of apathy. The life of a person was in danger but he had adopted a lackadaisical view to not inform to the concerned, his family members or the Police about the conspiracy of commission of murder. Hence, the evidence of this witness is not trustworthy and consistent because he was well aware about this fact that appellants may commit some wrong with Satyendra Singh (deceased) and it was his ample responsibility to inform about this to the



deceased, his family members and the police so that they can save the deceased's life but he did not do so. Therefore, his evidence appears to be concocted and based on surmises to implicate the appellants.

63. P.W. 20, the Investigating Officer of this case has asserted that on 26.05.2009, Flat No. D/2 was opened and some papers were seized and accordingly seizure list was prepared. On that day, the F.S.L. officials were also present in Flat No. D/2 but neither he nor the F.S.L. officials have succeeded to find any clue or evidence relating to the commission of murder of the deceased in that flat. On 27.05.2009, again in presence of the Magistrate viz. Shri Surya Prakash Rai and the F.S.L team leading by Mr. Ravindra Kumar Sinha, the lock of Flat No. D/2 was opened and it was inspected scientifically to find any clue regarding the occurrence but they could not succeed to find any clue. He further deposed that on the basis of confessional statement of appellant/Gagan Kumar, Flat No. D/2 was again inspected by the F.S.L. officials and blood stained materials



were recovered and accordingly seizure list was prepared in respect of the discovered materials/objects. On the basis of confessional statements of appellants Gagan Kumar and Umesh Prasad Singh, this witness went to river Ganga for recovery of the dead body but the same was not recovered. In para 73, this witness has deposed that the key of Flat No. D/2 was in his possession from 26.05.2009. We find substance in the submission of the appellants that there may be a possibility of plantation of false evidence by the Investigation Officer to implicate the appellants in this case.

64. The prosecution case is that during search and seizure, the human blood was found from Flat No. D/2. The blood samples of daughter of the deceased was also taken for DNA test but the prosecution has failed to prove that the blood stained seized from Flat No. D/2 is matching with the blood of the deceased.

65. The learned Trial Court although accepted this fact vide para 47 of its judgment that the materials contained human blood was seized from Flat No. D/2 but the same was



not confirmed with the blood group of the deceased but mistakenly relied upon the confessional statement of appellant/Gagan Kumar made before the Police which is not in consonance with the provision of Section 27 of the Evidence Act.

66. The Hon'ble Apex Court further observed in **Cr. Appeal Nos. 1476-1477 of 2018(Venkatesh @ Chandra @ Anr versus State Of Karnataka)** that:-

"19. We must observe that we have repeatedly found a tendency on part of the Prosecuting Agency in getting the entire statement recorded rather than only that part of the statement which leads to the discovery of facts. In the process, a confession of an accused which is otherwise hit by the principles of Evidence Act finds its place on record. Such kind of statements may have a direct tendency to influence and prejudice the mind of the Court. This practice must immediately be stopped. In the present case, the Trial Court not only extracted the entire statements but also relied upon them."

67. The dead body of the deceased was recovered on



11.06.2009 from Dullighat under P.S. Khajekalan. After proper identification and verification from the deceased family members and wearing clothes, it was ascertained to be the dead body of Satyendra Singh. The inquest report was thereafter prepared. The case of the prosecution is that the appellants Gagan Kumar and Umesh Prasad Singh in their confessional statements have confessed that the dead body was thrown in river Ganga in a locked trunk (box) but the prosecution evidence shows that the dead body was not recovered in a locked trunk. The prosecution has failed to establish that under what circumstance, the dead body came out of the locked box. It is the fact that identification of the dead body was not challenged by the prosecution side.

68. In our considered view, this only circumstance itself may not be sufficient to establish the guilt of the accused. It was also submitted on behalf of the appellants that the accused in their questioning under Sections 313 Cr.P.C have denied making of any such statement and recovery of dead body at their behest. It would be pertinent



to mention here that charge under Section 364 I.P.C was framed against the appellants but in absence of any evidence in respect of abduction of the deceased, the appellants have been acquitted by the Trial Court.

69. We do not find any force in the submission of the prosecution that before and after the occurrence, the appellants were engaged with each other by telephone call. Their mobile phone tower location were in Patna, so chain of circumstance is complete. From perusal of the materials available on record, it is established that deceased and appellants were residing in Patna at the time of occurrence and they all have good relations with each other. Therefore, it is natural that they have connected with mobile at Patna at the time of occurrence. The connection between the culprit and the victim may be taken into consideration when they are strangers and unknown to each other.

70. We have gone through the entire evidence and material statements under Section 164 Cr.P.C given by the witnesses. We have no hesitation to say that the Trial Court



has wrongly upheld the guilt to the accused without any reliable and circumstantial evidence. The Trial Court observed that the prosecution has succeeded its case beyond reasonable doubt and held the appellants guilty of the charges levelled against them.

71. The Hon'ble Apex Court in ***Sharad Birodhichand Sard versus State of Maharashtra (1098) 4, SCC, 116***, has postulated the cardinal principle regarding the appreciation of circumstantial evidence by holding that whenever the case is based on circumstantial evidence, the following features are required to be complied with and proved by cogent evidence.

(i) the circumstances for which the conclusion of guilt is to be drawn must or should be and not merely may be fully established.

(ii) the fact 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



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

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

(v) there must be a chain of evidence so complete as not to leave any reasonable ground from 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.

72. The Hon'ble Apex Court in ***Kanhaiya Lal versus State of Rajasthan reported in (2014) 4 SCC 715*** has been pleased to rule that the circumstances of last seen together does not by itself necessarily lead to inference that it was accused who committed crime. There must be something more connection between accused and crime. It is further held that where a case rests squarely on circumstantial evidence, inference of guilt can be justified only when all incriminating facts and circumstances are found to be incompatible with innocence of accused or guilt of any other



person. Circumstances from which an inference as to guilt of accused is drawn have to be proved beyond reasonable doubt.

73. In the case of ***Navaneethakrishnan versus State AIR 2018 SC 2027***, the Hon'ble Apex Court has observed that

"23. The law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must from a chain of events from which only irresistible conclusion about the guilt of the deceased can be safely drawn and no other hypothesis against the guilt is possible. In a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The court must satisfy itself that various circumstances in the chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. When the important link goes, the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish



the guilt of the accused beyond all reasonable doubt. The Court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and legal proof. There is a long mental distance between "may be true" and "must be true" and the same divides conjectures from sure conclusions. The Court in mindful of caution by the settled principles of law and the decisions rendered by this Court that in a given case like this, where the prosecution rests on the circumstantial evidence, the prosecution must place and prove all the necessary circumstances, which would constitute a complete chain without a snap and pointing to the hypothesis that except the accused, no one had committed the offence, which in the present case, the prosecution has failed to prove."

74. In the fact and circumstances of the case, we find and hold that the prosecution has utterly and miserably failed to substantiate the prosecution case and bringing home the charge levelled against the appellants beyond all reasonable doubts by adducing consistent, trustworthy and



reliable evidence.

75. Considering the entire evidence on record, we find that it is not a case based on the theory of last seen because P.W. 8, Vivek Singh who was the driver of the deceased has flatly denied that on the fateful day, he had gone with the deceased Satyendra Singh by driving the Sumo Victa car to meet the appellant/Vijay Krishna. The prosecution witnesses testified that the deceased went with driver Vivek Singh by Sumo Victa Car but P.W. 8 does not support the prosecution case. P.W.s 13 and 14 denied that they had seen appellants Vijay Krishna, Umesh Prasad Singh and deceased Satyendra Singh to enter into the Jhula apartment and went to Flat No. D/2 where appellants Chanakya @ Guddu and Gagan Kumar used to reside. They also denied about hearing of any gunshot firing from this flat. The materials/objects also do not support the prosecution version. No one of the vicinity of the place of occurrence supports the prosecution version. The evidence testified by the P.W. 7 in respect of hearing of gunshot firing is based on



hearsay. The weapon used in the said crime has not been recovered. The blood stained collected at the place of occurrence also have not been matched with the blood of deceased. We find that it is not a case suggesting that circumstances in this case makes a complete chain leading to the only conclusion that appellants have committed the murder of the deceased. Hence, the appeals are fit to be allowed.

76. In the result, all the appeals stand allowed.

77. The judgment of conviction dated 2nd of December, 2013 and the order of sentence dated 4th of December, 2013 passed by the learned Additional District & Sessions Judge, Xth, Patna in connection with Sessions Trial Nos. 1007 of 2010, 1008 of 2010 and 1009 of 2010, arising out of Shri Krishna Puri P.S. Case No. 110 of 2009 is quashed and set aside.

78. The appellants are acquitted from all the charges levelled against them and they are directed to be set free forthwith.



79. Since the appellants namely Vijay Krishna (Cr. Appeal (DB) No. 44 of 2014) and Umesh Prasad Singh @ Umesh Singh (Cr. Appeal (DB) No. 211 of 2014) are in jail, they are directed to be released forthwith, if not wanted in any other case.

80. Since the appellants Gagan Kumar (Cr. Appeal (DB) No. 165 of 2014) and Chanakya @ Guddu (Cr. Appeal (DB) No. 167 of 2014) are on bail, they are discharged from the liabilities of their bail bonds.

(Sunil Kumar Panwar, J)

A.M. Badar, J.

(A. M. Badar, J)

Shageer/-

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