

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.792 of 2018

Arising Out of PS. Case No.-94 Year-2014 Thana- KAHALGAON District- Bhagalpur

Pappu Mandal S/o Late Bhagwat Mandal, R/o Vill.- Mushari Pannuchak,
Kamalkund Babu Tola, P.S.- Ghogha, District- Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Dr. Ranjeet Kumar, Adv
	:	Mr. Dilip Kumar, Adv
	:	Mr. Mohit Srivastava, Adv
	:	Mr. Ayush Kumar, Adv
	:	Mr. Kanishk Kaustubh, Adv
	:	Mr. Rajnish Prakash, Adv
	:	Ms. Lakshmi Kumari, Adv
	:	Mr. Ankesh Kumar Sinha, Adv
	:	Ms. Perna, Adv
For the Respondent/s	:	Mr. Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA)

Date : 10-04-2026

Heard learned counsel appearing on behalf of
petitioner and learned A.P.P. for the State.

2. The present appeal has been preferred by aforesaid
appellant-convict under Section 374(2) of the Code of Criminal
Procedure, 1973 (hereinafter referred to as 'the Code')
challenging the impugned judgment of conviction dated
24.05.2018 and order of sentence dated 29.05.2018 respectively
passed by learned Additional District and Sessions Judge No. 2,
Bhagalpur in Sessions Trial No. 800 of 2014, arising out of



Kahalgaon (Ghogha) P.S. Case No. 94 of 2014, whereby and whereunder the learned Trial Court has convicted the appellant for the offences punishable under Sections 302 read with 34 of the Indian Penal Code (hereinafter referred to as 'I.P.C.') and Section 27 of the Arms Act. Appellant has been sentenced to undergo rigorous imprisonment for life alongwith fine of Rs. 10,000/- under Section 302 read with Section 34 of the I.P.C. and in default of payment of fine appellant shall further directed to undergo simple imprisonment of six months and further sentenced to undergo rigorous imprisonment for three years alongwith fine of Rs. 2,000/- under Section 27 of the Arms Act and in default of payment of fine appellant shall undergo simple imprisonment of one month. All the aforesaid sentences have been ordered to run concurrently.

Case of prosecution

3. The brief case of prosecution as founded upon the “*fardbeyan*” of Girija Devi (P.W. 3), wife of Devendra Mandal, that on 09.03.2014, after having dinner, she returned to her house at around 10:00 PM. At that time, her son Prashant was sleeping on a cot at the doorstep along with Pappu Mandal (appellant), a resident of her village, while her middle son, Raghuveer Kumar, was sleeping alone on a nearby cot. At



around 11:00 PM, she heard a noise from outside. She initially thought that there was a fire cracker bursting at nearby wedding in the village. After some time, Raghuveer and Pappu raised an alarm, saying that blood was coming out of Prashant's mouth. Upon hearing this, she came out and saw that blood was flowing from his mouth. Hearing the commotion, nearby villagers gathered and speculated that it might be due to the bursting of a vein in the brain. However, she suspected that her son had been shot, as blood was flowing from his body. At that time, Prashant's body was covered with a blanket up to his neck, due to which no bullet injury was visible. On the morning of 10.03.2014 at about 6:00 AM, when several people gathered and the blanket was removed, it was found that blood was flowing from the left side of his neck and also from rib cage. This made her firmly believe that Pappu Mandal, a resident of Musahari, Pannuchak, Kamalakund Babu Tola, along with unknown associates, had shot and killed her son, Prashant.

4. On the basis of aforesaid information/*fardbeyan*, Kahalgaon (Ghogha) P.S. Case No.94 of 2014 was lodged for the offences punishable under Sections 302/34 of the I.P.C. and Section 27 of the Arms Act on 10.03.2014.

5. After completion of investigation, the police



submitted Charge-Sheet No. 188 of 2014 for the offences punishable under Sections 302/34 of the I.P.C. and Section 27 of the Arms Act on 31.05.2014 against appellant before the learned Jurisdictional Magistrate.

6. Upon perusal of materials available on record, the learned jurisdictional Magistrate took cognizance of the offences punishable under Sections 302/34 of I.P.C. and Section 27 of the Arms Act against the appellant and after compliance of Section 207 of the Code, committed the case of appellant in view of Section 209 of the Code to the Court of Sessions on 08.01.2015 for trial and disposal.

7. After commitment, learned trial court explained charges to appellant/accused, on the basis of materials collected during investigation, which he pleaded “not guilty” and claimed trial.

8. To substantiate its case before learned trial court, the prosecution has, in total, examined eight witnesses, which are:-

Sr. No(s).	Prosecution Witnesses
P.W. 1	Suman Kumar
P.W. 2	Raghuveer Kumar (younger brother of deceased)
P.W. 3	Girija Devi (mother of the deceased and informant of this case)
P.W. 4	Devendra Mandal (father of the deceased)



P.W. 5	Surin Mandal (uncle of deceased)
P.W. 6	Dr. Sandeep Lal
P.W. 7	Jai Ram Mandal
P.W. 8	Randhir Kumar Singh (Investigating Officer)

9. The prosecution has also relied upon the following documents as to substantiate its case, which are as under:-

Sr. No.	Exhibit No(s).	List of documents.
1.	Exhibit -1	Seizure List
2.	Exhibit-2	Inquest Report
3.	Exhibit-3	Postmortem Report
4.	Exhibit-4	Signature of Jairam Mandal on the <i>fardbeyan</i> .
5.	Exhibit-5	Formal FIR

10. The statement of the appellant-accused was recorded under Section 313 of the Code after stating to him incriminating evidence/circumstances as surfaced during the trial, which he denied and showed his complete innocence.

11. On the basis of evidences as surfaced during the trial, the learned trial court convicted and sentenced the appellant/convict, in aforesaid terms. Being aggrieved of which present appeal was preferred.

12. Hence, the present appeal.

Argument on behalf of appellant

13. Learned counsel appearing for appellant while assailing through impugned judgment for conviction submitted



that the conviction of appellant was recorded not on the basis of “direct evidence” rather on the basis of “circumstantial evidence” as he was sleeping with the deceased on same bed/cot covered with mosquito net. It is submitted that another incriminating circumstance which was considered by the learned Trial Court was that despite sleeping on the same bed/cot with deceased no blood stain was found on the cloth of the appellant and, therefore, it was presumed that at the time of occurrence he was not on the bed and committed the murder. It is submitted by learned counsel that both appellant and deceased were sleeping in the outer courtyard (*darwaza*) on which just at the distance of two yards on another bed younger brother of deceased namely Raguveer Kumar (P.W. 2) was sleeping, whose cloth was found stained with blood. In this context, it is further submitted that the place of occurrence is an open place accessible to all. It is pointed out that no material *qua* enmities surfaced during the trial and save and except suspicion that the murder was committed for the reason that deceased was in love with same girl with whom this appellant was in love and due to this love triangle present occurrence took place, no any cogent motive was assigned.

14. It is further submitted that beside aforesaid, no fire-



arm was recovered from the possession of this appellant in support of gunshot injury as ascertained and no other incriminating material surfaced during the trial, which may suggest his involvement with crime in question, rather it was ascertained that appellant woke up after half an hour of the firing and noticing the profused bleeding he informed the P.W. 2 who was sleeping on next cot/bed, whereafter out of their cry the occurrence came into the knowledge of mother of deceased (P.W. 3), who was sleeping inside the room. It is submitted that by any prudent imagination, the conviction of appellant with aforesaid circumstances cannot be said justified. The incriminating circumstances are not within the principles of “*panchsheel*” as evolved through leading legal report **Sharad Birdhichand Sarda Vs. State of Maharashtra, [(1984) 4 SCC 116]** and, therefore, the impugned judgment of conviction is fit to be set aside.

Argument on behalf of State

15. Learned A.P.P. appearing on behalf of State, while opposing the appeal submitted that entire bed sheet was stained with blood on which the appellant was sleeping with deceased and, therefore, non-finding of blood stain on his clothes leads to a serious doubt that how it happened ?, suggesting on its face



that at the time of occurrence he was not on the bed. It is submitted that this is an incriminating circumstance, which must be duly explained by him.

16. It is further submitted by learned A.P.P. that to inform the informant and his brother regarding occurrence is also creating doubt against him, which was rightly considered by learned Trial Court, while recording the judgment of conviction. It is submitted that on the basis of single circumstance, the conviction can be recorded, if it is so convincing and, therefore, the judgment of conviction as recorded by learned Trial Court is not required to interfere.

17. We have perused the materials available on the record and also taken note of the argument as advanced by learned counsel appearing on behalf of the parties. It appears to this Court that re-appreciation of evidence is required for just and proper disposal of the present appeal.

Deposition of witnesses

18. PW-1 Suman Kumar, stated in his examination-in-chief that Prashant Mandal was sleeping on same bed along with appellant and on another bed Raghuveer Kumar (P.W. 2) was sleeping. They were sleeping in outer courtyard (*darwaza*) of the house. P.W. 1 categorically stated that he heard two



sounds of firing, but he thought that same was bursting of firecracker in nearby marriage. It was stated by him that after half an hour the appellant tried to woke up P.W. 2 and other family members. P.W. 1 came to the place of occurrence and found that bed/cot was stained with blood and the left side of the neck of deceased was with penetrating bullet wound and another wound was below the left chest. No injury was on appellant and no blood stain was found on his clothes. P.W. 1 ascertained that mosquito net and blanket was also having one hole. He also ascertained that the deceased and appellant was in love with same girl and due to said love triangle and enmity, present occurrence took place. It was also ascertained by him that the cloth of deceased along with, cloth of appellant, the blood stained soil from the place of occurrence, mobile and also mosquito net were seized. The seizure list was prepared before him. Two seizure lists were ascertained to be prepared, which upon his identification was exhibited as **Exhibit-1** and **Exhibit 1/A**. He also identified the signature of Shambhu Mandal on the carbon copy of the seizure list, which upon his identification was exhibited as **Exhibit-1/B**. In terms of testimony the distance between the two beds i.e., of the deceased and P.W. 2, who is none but the younger brother of the deceased was hardly of two



yards. It was categorically stated by him that he was woken up by Pappu Mandal (appellant) and when he arrived at the place of occurrence he found P.W. 3, Ashok Mandal, Manjula Devi, Mala Devi and other children. The distance between the place of occurrence and the place where marriage procession was taking place was about one kilometer. It was ascertained that Pappu Mandal came along with him at the place of occurrence and found that P.W. 2 was not sleeping and has woken up. He also noticed one hole in mosquito net, but by that time it was dismantled.

19. PW-2 Raghuveer Kumar, who is none but the younger brother of the deceased. His testimony contradicts the testimony of P.W. 1, namely Suman Kumar on material aspects, as it was testified by P.W. 2 that he woke up by the appellant after half an hour of the occurrence, but as per P.W. 1, he came to the place of occurrence along with appellant and found that P.W. 2 was sleeping. Interestingly P.W. 2 ascertained during the trial that after hearing sound of firing he woke up and saw vigilantly in his surroundings and upon finding nothing noticeable he again slept, whereafter half an hour appellant raised *halla* saying that brain of his brother Prashant burst and blood is coming, whereafter he went inside to call his mother



(P.W. 3), who was also coming by that time after opening the gate and they all came near to deceased and found him dead. They also noticed the cot and bed was found heavily blood stained, but no blood stain was noticed upon appellant's clothes. He categorically said that he did not saw anyone firing upon his deceased brother. He identified the appellant being co-villager. His testimony simply suggest that he suspect this appellant to commit murder of his brother only for the reason that, despite sleeping on the same bed, which was heavily blood-stained no blood was found upon the appellant. He did not found anything objectionable when he woke up after hearing the sound of firing meaning thereby he found the appellant sleeping with his brother. It is an admitted position that being co-villagers and neighbors, the appellant was allowed to sleep with deceased out of consent.

20. PW-3 Girija Devi, who is the mother of the deceased and informant of this case stated in her examination-in-chief that she arrived at the place of the occurrence that is outer courtyard (*darwaza*). She also heard two sounds of firing at about 11 PM and thought that same was fired in connection with marriage processions, but after sometime P.W. 2 and appellant/accused raised *halla*, whereafter she came out of the



house and saw profused bleeding from the mouth of Prashant (deceased son). She did not find any blood on the body of the appellant. She ascertained that firing was made by appellant due to which brain of his son was burst. It is ascertained by her that due to love triangle the appellant committed murder of her son. She stated in her cross-examination that her younger son namely Raghuveer Kumar (P.W. 2) was also sleeping in the same courtyard (*darwaza*) hardly at the distance of two yards. She ascertained that she saw appellant firing the accused, but subsequently ascertained that when appellant and P.W. 2 came to her only after that she woke up and by the time when she arrived at the outer courtyard (*darwaza*), several persons were gathered over there. She also noticed blood on the body of P.W. 2, her own son.

21. PW-4 Devendra Mandal, who is the father of the deceased and from his testimony it appears that at the time of occurrence he was not available at home rather, he went along with Naresh in connection with one marriage negotiation, where he received information over phone as given by his younger son P.W. 2, that appellant and his associates committed murder of Prashant *bhaiya* (deceased). Upon his instruction only police was informed. He stated that the occurrence took place as his



deceased son was in love with one Bimli with whom the appellant was also in love.

22. PW-5 Surin Mandal, is the witness of inquest who during the trial identified the signature on inquest report which upon his identification was exhibited as **Exhibit-2**.

23. PW-6 Dr. Sandeep Lal, is the doctor who conducted the post-mortem examination on the dead body of Prashant Kumar, son of Devendra Mandal, resident of Village Mushahari, P.S. Ghogha, District Bhagalpur, at about 4:00 P.M. The dead body was brought and identified by a relative, namely Bhola Narayan Das.

External Examination & Injuries:

On examination of the dead body, I found the following injuries:

1. Firearm Entry Wound:- One wound of entry measuring approximately $\frac{1}{2}$ " $\times$ $\frac{1}{2}$ ", with inverted and worn margins, present over the neck. Blackening was present around the wound.
2. Lacerated Wound on Neck:- A lacerated wound present on the left side of the neck, deep in nature, with exposure of underlying structures/bone cavity.
3. Firearm Injury on Chest:- A projectile wound present on the left front of the chest.

On dissection, blackening and ecchymosis were present around the wound.

The size of the wound was approximately 3" $\times$ 1".
The direction of the wound was from left to back and downward.



4. Diffuse Swelling: Diffuse swelling was present over the affected regions.

Internal Examination:

- a. The thorax was punctured.
- b. There was collection of blood and clotted blood in the left side of the chest cavity.
- c. Blood was also present in the abdominal cavity.

Opinion:

1. The above-mentioned injuries were ante-mortem in nature.
2. The injuries were grievous and sufficient in the ordinary course of nature to cause death.
3. Cause of Death: Death was caused due to firearm injury, resulting in hemorrhage and shock.
4. Time Since Death: Approximately 12 to 24 hours prior to the post-mortem examination.

23.1. Upon cross-examination, it was ascertained by him that no sign of burning was found outside injury and no bullet was found inside.

24. PW-7 Jai Ram Mandal, is a formal witness, who identified his signature over *fardbeyan*, which upon his identification was exhibited as Exhibit-4.

25. PW-8 Randhir Kumar Singh, is the I.O. of this case who recorded the *fardbeyan* in his own handwriting, which upon his identification was exhibited as **Exhibit-4/1**. He also identified formal FIR, which was in his handwriting which upon



his identification was exhibited as **Exhibit-5**. He also identified his signature on seizure list, which upon his identification was exhibited as **Exhibit-2/6** and **Exhibit-1/C**, respectively.

26. From the face of occurrence it transpires that, place of occurrence was an open place accessible to general public.

27. It would be apposite to reproduce para-153 and 154 of the **Sharad Birdhichand Sarda case (supra)**, which are as under:-

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

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

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and



divides vague conjectures from sure conclusions.”

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

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

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

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

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

Discussion & Conclusion

28. No doubt, as we are convinced enough that the impugned judgment of conviction appears recorded on the basis of circumstantial evidence. From the aforesaid discussed evidence it transpires to us that merely on the basis of the fact as the informant was under suspicion that deceased was in love with same girl with whom the appellant was in love and as he was sleeping on the same cot, but despite profused bleeding no



blood stain was found upon the appellant, he was suspected to be involved in the present crime in question. The testimony of P.W. 3/informant also suggest that she is not the eye-witness of the occurrence. P.W. 1 was also sleeping on his *darwaza*, which was hardly 10-12 steps ahead. It cannot be said with certainty that the murder was committed by appellant, moreover P.W. 2 was also sleeping over there near to the bed of deceased and to the contrary his clothes was noticed with blood in terms of testimony of P.W. 3, who is none, but his mother and also mother of the deceased. Therefore, on the basis of available evidence out of testimony of P.W. 1, P.W. 2 and P.W. 3 only a suspicion can be gathered against appellant. Their testimony also supporting the fact that appellant was sleeping with the deceased without any objection and it was well within the knowledge of P.W. 2 and P.W. 3.

29. Thus, we are convinced that the circumstances as discussed aforesaid are not sufficiently incriminating against appellant which by taking a guiding note of “*panchsheel*” as discussed aforesaid, it can be said with certainty that none else than appellant-accused committed murder of the son of the informant.

30. Accordingly, the impugned judgment of



conviction dated 24.05.2018 and order of sentence dated 29.05.2018 respectively as passed by learned Additional District and Sessions Judge No. 2, Bhagalpur in Sessions Trial No. 800 of 2014 arising out of Kahalgaon (Ghogha) P.S. Case No. 94 of 2014, is hereby set-aside.

31. Hence, Criminal Appeal (DB) No.792 of 2018, as preferred by appellant namely, Pappu Mandal stands allowed.

32. The appellant, namely, Pappu Mandal is acquitted of the charges levelled against him by the learned trial court. Since appellant is in custody in connection with this case, he is directed to be released forthwith, if not required in any other case.

33. Fine, if any paid, be returned to the appellant immediately.

34. Let a copy of this judgment along with the Trial Court Records be sent to the learned Trial Court forthwith.

(Chandra Shekhar Jha, J.)

Bibek Chaudhuri, J:- I agree.

S.Tripathi/-

(Bibek Chaudhuri, J.)

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