

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No. 842 of 2017

Arising Out of PS. Case No.-89 Year-2012 Thana- PARAIYA District- Gaya

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1. Dharmendra Das son of Late Jagdish Das, resident of Village- Mathurapur, Police Station- Guraru, District- Gaya.
 2. Bindu Devi, wife of Late Arjun Ravidas @ Arjun Ram, resident of Village- Jamalpur, Police Station- Paraiya, District- Gaya.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance:

For the Appellants : Mr. Girish Chandra Sharma, Advocate
Mr. Kamlesh Kumar, Advocate
Mr. Pawan Kr. Singh, Advocate
Mr. Sunil Srivastava, Advocate
For the State : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE MR. JUSTICE NANI TAGIA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date: 16-05-2025

1. The present appeal has been preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.') against the judgment of conviction and order of sentence dated 17.05.2017 and 23.05.2017 respectively, passed by the learned Court of Additional District and Sessions Judge-1st, Gaya (hereinafter referred to as the 'learned Trial Judge') in Sessions Trial No.601 of 2013 (S.J.)/31 of 2017 (arising out of Paraiya P.S. case No.89 of 2012



corresponding to G.R. No.4159 of 2012), whereby and whereunder the learned Trial Judge has convicted the appellant No.1 under Section 302 and 120(B) of the Indian Penal Code, 1860 (hereinafter referred to as the 'I.P.C.')

and the appellant No.2 under Section 120(B) of the I.P.C. By the said order dated 23.05.2017, the learned Trial Judge has sentenced the appellant No.1 to undergo rigorous imprisonment for life under Section 302 of the I.P.C. with fine of Rs.25,000/- and in default thereof, he has been directed to further undergo rigorous imprisonment for two years. The learned Trial Judge has further sentenced both the appellants to undergo rigorous imprisonment for life under Section 120(B) of I.P.C. with fine of Rs. 25,000/- and in default thereof, they have been directed to further undergo rigorous imprisonment for two years. All the sentences have been directed to run concurrently. The learned Trial Judge has also directed that 50% of the fine amount will be given to the children of the deceased under Section 357 of the Cr.P.C.

2. The short facts of the case are that on 14.10.2012 at 07:15 a.m., the *fardbeyan* of the informant, namely Bindu Devi, wife of the deceased was recorded by the Sub Inspector of Police, namely Shri Hari Ojha, S.H.O. Paraiya Police Station. In the *fardbeyan*, the wife of the deceased, namely, Bindu Devi has



stated that on the previous night, she was sleeping with her husband on the same bed in the room adjacent to courtyard and all the four children were sleeping in the adjacent room. At about 11:00 p.m. in the night of 13.10.2012, Dharmendra Das (appellant No.1) had called her on her mobile from mobile number 7352209692, who stays at Budh Paraiya, P.S. Paraiya, District Gaya and works as a doctor. The said Dharmendra Das upon having called the wife of the deceased had told her that he has arrived near the river, whereafter the wife of the deceased on the pretext of going to the urinal had gone outside and opened the main door of the house, whereupon Dharmendra Das had entered inside the house and had taken the knife kept in the house from two days back and at that time the deceased (husband of the informant Bindu Devi) was sleeping, whereafter the wife of the deceased had gone to the adjacent room where the children were sleeping. After 10 minutes, a noise 'oof' (screaming) was heard and after 15 minutes, Dharmendra Das had come out of the room and called her, whereupon she had come out from the room in which the children were sleeping and upon looking at the bed on which her husband was lying, Bindu Devi found that the neck of her husband had been cut and one big knife had been inserted in the stomach of her husband.



Thereafter, Bindu Devi became perplexed but Dharmendra Das told her not to worry since her husband Arjun Ram used to harass her and now the problem has been solved. The said Dharmendra Das had then told Bindu Devi not to disclose about the incident to anyone. Bindu Devi has next stated that thereafter, she started crying but in the meantime Dharmendra Das had taken her mobile along with him and fled away. Thereafter, the children had woken up but her elder daughter Deepa Kumari (aged about 12 years) was sleeping. Bindu Devi is stated to have then gone to the house of her brother-in-law, namely, Mohan Das (PW-2) and had told him, his wife, his daughter-in-law and his daughter about the incident as also had requested them to go to the Police Station but they told her that lot of force was present in the Police Station, hence it was not proper to go there in the night. Bindu Devi has further stated in her *fardbeyan* that Dharmendra Das is resident of a village adjacent to her maternal village Mahadipur. About four months back, brother of Bindu Devi had come to her house and Dharmendra Das was also returning to his village Jamalpur, where he had met his brother and then he started coming to her house in absence of her husband. Bindu Devi has also stated that her husband was working as Instructor at I.T.I. at Dehri (Rohtas)



since past 3 years and used to come to the house on every Saturday and on holidays. Bindu Devi has also stated that Dharmendra Das used to allure her and used to talk sweetly with her, which she did not like but he used to also assure her about solving the problem she was having with her husband. Finally, Bindu Devi has stated in her *fardbeyan* that her husband Arjun Ram has been killed by Dharmendra Das by slitting his throat and inserting knife in the stomach.

3. On the basis of the said *fardbeyan* of Bindu Devi, a formal FIR bearing Paraiya P.S. Case No. 89 of 2012 was registered by the Officer-in-Charge, Paraiya Police Station on 14.10.2012 at 10:00 a.m. under Section 302 of the I.P.C. against Dharmendra Das (appellant No.1). After investigation and finding the case to be true qua the appellant No.1 Dharmendra Das as also finding the informant to be an accomplice of appellant No.1, the Police had submitted charge-sheet on 31.12.2012 against both the appellants under Sections 302/120B of the I.P.C. Thereafter, the learned Trial Court had taken cognizance of the offences under Sections 302 and 120(B) of the I.P.C. against the appellants. The case was committed to the Court of Sessions *vide* order dated 21.10.2013, whereafter the same was numbered as Sessions Trial No. 601 of 2013 / 31 of



2017. On 18.01.2014, charges were framed by the learned Trial Judge against the appellants under Sections 302/34 & 120(B) of I.P.C., to which they pleaded not guilty and claimed to be tried.

4. During the course of trial, ten witnesses have been examined on behalf of the prosecution and one on behalf of the defence. PW-1 Deepa Kumari is the daughter of the informant, PW-2 Mohan Das is the elder brother-in-law of the informant, PW-8 Punit Das is the father of the informant. PW-6 Kamalendra Kumar and PW-7 Usha Kumari @ Usha Devi have also been examined on behalf of the prosecution. PW-4 Ajay Paswan has been declared hostile. PW-3 Dr. B.N. Sinha is the Doctor, who has conducted postmortem of the dead body of the deceased, while PW-5 Shri Hari Ojha is the first Investigating Officer of the present case, PW-9 Dr. Ramvilas Prasad Yadav is the second Investigating Officer of the present case and PW-10 Pankaj Kumar Singh is the S.H.O, Paraiya Police Station.

5. The Ld. counsel for the appellants, Shri Girish Chandra Sharma, has submitted that the occurrence had taken place in the night of 13.10.2012 at about 11.30 p.m. and the Paraiya police station is about 700 yards away from the house of the deceased, however no information was given to the police in the night and instead the police was informed on 14.10.2012 at



07.15 p.m. when the *fardebayan* of the appellant No.2 Bindu Devi was recorded by the police official. It is submitted that though the *fardebayan* was recorded on 14.10.2012 at 7.15 p.m., however, the same was sent to the Court only on 18.10.2012 after a huge delay of four days, for which no explanation has been furnished and it is apparent from the testimony of DW-1 Bindu Devi that she had in fact submitted a written report on 14.10.2012, however the same was replaced by a concocted *fardebayan* stated to have been fabricated by the police official and in fact the police official had taken the signature of Bindu Devi on a plain paper and over the same the said fabricated *fardebayan* was written on 18.10.2012, which was ante dated in the date of 14.10.2012 and sent to the Court on 18.10.2012. Thus, admittedly the first version has been withheld by the police and instead a fabricated and concocted *fardebayan* has been prepared and sent to the Court on 18.10.2012.

6. The learned counsel for the appellants has next submitted that as far as PW-1 Deepa Kumari is concerned, she is the daughter of the informant, however she has stated in her cross-examination that she had slept in the night of 13.10.2012 at 08.00 p.m. and woke up only at 05.00 a.m. on the next day morning, hence she is not an eye-witness and has in fact been



tutored inasmuch as she has referred to one Vakil Sahab having told her that her mother had filed FIR. Thus, PW-1 cannot be relied for the purposes of upholding the conviction of the appellants. PW-2 is the brother-in-law of appellant No. 2 Bindu Devi, who is also a hearsay witness and he has stated in his deposition that after the occurrence Bindu Devi had rushed to his house and told him to accompany her to the police station but he had dissuaded her from going to the police station on the pretext that lot of police force is present in the police station, hence, it would not be proper to go to the police station in the midnight. Nonetheless, it is submitted that PW- 2 is a hearsay witness, who has stated in his cross-examination that no family member had woken up at the time Bindu Devi had come to his house after the occurrence had taken place. The learned counsel for the appellants has further submitted that as far as PW-4 Ajay Paswan is concerned, he has been declared hostile and moreover he is a hearsay witness, hence his testimony has got no evidentiary value in the eyes of law. Now coming to PW-5 Sri Hari Ojha, who is the first Investigating Officer of the present case, it has been submitted that though he has stated in paragraph No.3 of his deposition that he had seen the head of the deceased drenched with blood, however no seizure list was



prepared and in fact neither the mosquito net nor the bed soaked with blood nor any clothes were seized from the place of occurrence. It is also submitted that PW-5 had not even made any attempt to recover/ seize the knife which was inserted in the stomach of the deceased and send the same to FSL for examination as also for detecting the fingerprints present over the same so as to ascertain as to whether the appellant No.1 had committed the murder or not. Thus, it is submitted that the investigation conducted by the police is not only faulty but also suffers from a serious lacuna, which has caused great prejudice to the appellants inasmuch as in case the knife had been seized by the police and sent for fingerprint / FSL examination, the same would have revealed the true identity of the person who had killed the deceased and would have also shown the innocence of the appellant No.1.

7. The learned counsel for the appellants has stated that in paragraph No.14 of his deposition, PW-5 has stated that PW-2 Mohan Das had told him that some unknown persons had come and murdered Arjun Das. Therefore, it is submitted that it is not Dharmendra Das who had murdered the deceased but unknown persons had arrived and murdered the deceased. Now coming to PW-6 Kamendra Kumar, it is stated that he is not an eye-



witness and his statement was recorded by the police after a huge delay on 01.12.2012, hence no reliance can be placed on his testimony. As regards PW-7 Usha Kumari @ Usha Devi and PW-8 Punit Das, it is submitted that they are hearsay witnesses and in fact PW-8 has also been declared hostile, hence no reliance can be placed on their testimony. PW-9 Dr. Ramvilas Prasad Yadav is the second Investigating Officer of the present case and he is stated to have received two knives from the doctor, who had conducted the postmortem of the dead body of the deceased, however the same were not sent for forensic examination. The learned counsel for the appellants has also submitted that PW-9 had though produced the CDR/CAF of the mobile number of Bindu Devi, however the same has not been proved in accordance with the provisions contained under Section 65B of the Indian Evidence Act, hence are of no evidentiary value. It is also submitted that neither any mobile nor SIM card was recovered by the police. The learned counsel for the appellants has next relied on a judgment rendered by the Hon'ble Apex Court in the case of *Anant Gopal Sheorey Versus The State of Bombay*, reported in *1958 AIR (SC) 915*, paragraph No. 8 whereof is reproduced herein below:-

“8. In our opinion on the plain construction of the



words used in S. 116 of the amending Act, S. 342A is available to the appellant. The High Court, it appears, was misled into constructing the words in cl. (c) of S. 116 i.e. "as if this Act had not been passed". The High Court was therefore in error and the appellant is entitled, in our view, as a competent witness for the defence to testify in disproof of the charges made against him or any other person charged together with him at the same trial."

It is thus submitted that the deposition of DW-1 Bindu Devi is admissible as evidence and she is a competent witness to testify for the defense in disproof of the charges made against her or any other person charged together with her at the same trial. Thus, it is submitted that the judgment of conviction and order of sentence passed by the learned Trial Judge is perverse and fit to be set aside.

8. The learned APP for the State, Shri Abhimanyu Sharma, has submitted that though informant is the only eye-witness of the present occurrence, nonetheless she has admitted in her *fardebayan* recorded by the police and signed by her, which has also stood proved during the course of trial that she had called the appellant No.1, opened the door of the house, made appellant No.1 enter inside the house and then the appellant No.1 had killed the deceased. During the course of trial, the



illicit relationship in between the appellants has also stood proved. It is further submitted that CDR / CAF reveal that talks were held in between the appellants. Hence, it is submitted that the prosecution has been able to prove the guilt of the appellants beyond all reasonable doubts. Therefore, there being no error in the judgment passed by the learned Trial Judge, no interference is required in the judgment of conviction and the order of sentence rendered by the learned Trial Judge, thus the present appeal is fit to be dismissed. The Ld. APP for the State has also relied on a judgment rendered by the learned Division Bench of this Court in the case of *The State of Bihar Vs. Jhari Sharma & Ors.* reported in *2007 (4) PLJR 14* to submit that it is a well-settled law that mere irregularity in investigation itself shall not be sufficient to discard the case of the prosecution.

9. Besides hearing, the learned counsel for the parties, we have minutely perused both the evidence i.e. oral and documentary. Before proceeding further, it is necessary to cursorily discuss the evidence.

10. PW-1 Deepa Kumari is daughter of the informant and she has stated that the incident dates back to 14.12.2012 at about 11:00 in the night when she was sleeping in the adjacent room and in the other room her father and mother were sleeping.



Dharmendra Das had then knocked on the door, whereupon mother of PW-1 had opened the door and then Dharmendra Das had entered the house. Thereafter, Dharmendra Das had cut the throat of her father and inserted a dagger in the stomach. She has also stated that the throat of her father had been cut and a dagger was inserted in the stomach. PW-1 has also stated that the case has been filed by her mother and she was knowing the accused from before. She had recognized the appellants standing in the dock. In cross-examination, PW-1 has stated that she slept in the night at 8:00 p.m. and woke up in the morning at 5:00 a.m. and her statement was not recorded by the police.

11. PW-2 Mohan Das is the cousin brother-in-law of the informant who has stated in his deposition that the occurrence dates back to about two years when Arjun Ram was killed, who used to work at Dehri. He has stated that Dharmendra Das used to visit the house of Arjun Ram and wife of Arjun Ram was having illicit relation with Dharmendra Das. He has also stated that when Arjun Ram was not present at his home, Dharmendra Das used to visit their house. PW-2 has also stated that Dharmendra Das is involved in the work of doctor and in the morning many people had assembled at the place of occurrence and then he came to know that Dharmendra Das in connivance



with wife of Arjun Ram has killed Arjun Ram. PW-2 has recognized the appellants standing in the dock. PW-2 has further stated that he is the cousin brother of Arjun Ram and his house is situated adjacent to the house of Arjun Ram and he was knowing about the illicit relationship in between the wife of Arjun Ram and Dharmendra Das since one year. PW-2 has also stated that Arjun Ram did not suspect the illicit relationship between his wife and Dharmendra Das. PW-2 has stated in his cross-examination that in the morning at about 6:00 a.m. he heard an alarm, whereafter he had gone to the place of occurrence. He has also stated that Arjun Ram has four children & they woke up in the morning. In paragraph No. 5 of his cross-examination, PW-2 has stated that the children had first come to his house and Bindu Devi had also come along with them.

12. PW-2 has further stated that when he had gone to the house of Arjun Ram, he saw that the stomach of Arjun Ram had been cut and his neck had also been cut as also blood was spread on the bed. He has also stated that when he reached the place of occurrence, 35-40 people were already present from before. PW-2 has also stated that the police had then arrived but he had not seen as to whether the police had taken away the blood-soaked clothes or not. He has next stated that the police



station is situated at a distance of 250 foot-steps from the place of occurrence. Thereafter, the dead body was taken for postmortem and after postmortem was conducted, the dead body was returned on the same day. PW-2 has further stated that Dharmendra Das used to stay at Paraiya, which is at a distance of one mile from his house and he cannot say as to whether Dharmendra Das was married or not. PW-2 has also stated that the maternal home of Bindu Devi is situated at Mahadipur, which is at a distance of six miles from his house. PW-2 has stated that he had told Arjun Ram about Dharmendra Das visiting his house, upon which Arjun Ram had told him that since he is a relative, there is no harm in him visiting his house. PW-2 has stated that the informant of the case is Bindu Devi & he has not read the FIR. He has stated that his statement was recorded by the police after about 10-12 days of the incident.

13. PW-3 Dr. B.N. Sinha is the doctor, who has conducted the postmortem of the dead body of the deceased and he has stated in his deposition that on 14.10.2012, he was posted as Tutor in the Department of F.M.T., ANMMC, Gaya and on the same day at 12:10 p.m. he had conducted postmortem examination of the dead body of the deceased Arjun Ram and had found the following ante mortem injuries:-



(i) Incised wound 1 1/2" x 1/2" below left eye, of size 1" x 1/2" on left angle of mouth, of size 2 1/2" x 1/2" below lower lip and of size 4" x 3/4" on front of neck above thyroid on mid portion standing a little on either side. The wounds are smooth, even, clean cut everted margin having external bleeding with presence of dark blood and clots. The vessels and tracheal rings above thyroid cartilage are clear cut. One sharp cutting pointed metallic (iron) weapon is present on the front on the chest of dimension 16" x 2" with handle 1/2" breadth at pointed one, returned to police in a duly sealed and labelled transparent packet.

(ii) One punctured (stab) wound of size 3" x 2" with irregular shape with clean cutting slit with parallel edge and gaping on right side of abdomen in mid axillary line 11" below right armpit with clean cutting of abdominal muscles, coils of intestine and right kidney with profuse intestinal bleeding. One metallic (iron) sharp cutting pointed weapon of size 15" x 1 1/2" with handle is recovered and handed over to the police in duly sealed and labelled transparent packet. Dark color blood and blood clots are present in the abdominal cavity.

14. PW-3 has opined that the cause of death is shock and hemorrhage caused by sharp cutting metallic (iron) pointed weapon (two in number), which has been returned to the police in a duly sealed and labelled transparent packet, which are of different sizes, as mentioned above. PW-3 has also stated that



time elapsed since death is within 6 to 24 hours since conduct of the postmortem. PW-3 has stated that the postmortem report has been written in his writing and he has identified the same as also his signature made over the same, which has been marked as Exhibit-1. In his cross-examination, PW-3 has stated that he has not mentioned the case number on the postmortem report and the dead body was not directly received by him but by his staff, which has been mentioned in the official register and not in the postmortem report. He has also stated that he has not mentioned separately about the handle and weapon in his postmortem report and has also not mentioned the date on which he had handed over the weapons to the police. He has also stated that today the weapons are not present in the Court and he had put his signature on the sealed weapons. He has next stated that there is difference between *chaaku* (knife) and *chhura* (dagger). PW-3 has also stated that he had not taken any receipt for the return of the weapons to the police and he does not remember the name of the staff who had returned the weapons, however the same was returned in two packets separately and he had called the police when he had found the weapons in the dead body. PW-3 has also stated that though he had returned two weapons but no seizure list was prepared



before him. The weapon was taken out from the abdomen of the deceased by the Postmortem attendant, however he had not mentioned the name of his Attendant in the postmortem report but he had seen the weapons inside the abdomen and the weapons were blood stained.

15. PW-4 Ajay Paswan has stated in his deposition that on 14.10.2012 Arjun Das was murdered and then he had gone to the house of Arjun Das, where he had seen that the throat of Arjun Das had been slit and knife had been inserted in his stomach, however he cannot say as to who had murdered him. The prosecution had declared the said witness to be hostile, however in his cross-examination, PW-4 has stated that it is not a fact that his statement was recorded by the police and that he had told that on 14.10.2012 in the morning he had got information from the co-villagers that Arjun Ram had been murdered by his wife Bindu Devi and his lover Dharmendra Das in connivance with each other. He has also stated that there was illicit relation in between Dharmendra Das and the wife of the deceased since a long time. He had recognized the appellants standing in the dock. In his cross-examination, he has also stated that Bindu Devi is his co-villager whom he knows and his house is situated at a distance of five yards from



the house of the deceased. He has also stated that he had gone to the house of the deceased at about 10:00 in the morning, however he cannot say as to whether the knife was present in the stomach of the deceased or not. He has finally stated that when he reached at the place of occurrence, 500 people had assembled there.

16. PW-5 Shri Hari Ojha has stated in his deposition that the informant of the present case is Bindu Devi, whose statement (*fardbeyan*) was recorded by him on 14.10.2012 at her house, which is in his writing and bears his signature as also the signature of Bindu Devi, which he has recognized and on the basis of the same formal FIR was lodged at Paraiya Police Station bearing No. 89 of 2012, whereafter he had himself assumed the investigation of the case. The *fardbeyan* has been marked as Exhibit-2. PW-5 has further stated that the formal FIR was drawn by Sub-Inspector of Police Om Prakash which is in his writing and bears his signature, which he has identified and the same has been marked as Exhibit-3. PW-5 has also stated that he had conducted an inspection of the place of occurrence, which is situated at Paraiya-Jamalpur Road, adjacent to which, on the eastern side, the mud straw hut of Arjun Ram (deceased) is situated, which has a door and inside



there are two rooms which also have doors and in the room situated on the western side Arjun Ram was found dead on his bed, his throat had been slit and one big dagger was found inserted in his stomach. In the room adjacent to the room of the deceased, on the eastern side, children of Arjun Ram were sleeping. The bed on which the deceased was lying was soaked with blood and mosquito net was also present on the bed. PW-5 has also stated that he had prepared the inquest report in the presence of the witnesses and he had found that assault had been made by sharp cutting weapon on the body of the deceased, his throat had been slit and Knife had been inserted in his stomach as also lot of blood had oozed out. PW-5 had also found cut injury from the left cheek to the mouth as also one cut injury on the left chin of the deceased. PW-5 has also stated that he had recorded the re-statement of the informant as also the statement of Mohan Das (PW-2), Deepa Kumari (PW-1) and Usha Kumari (PW-7). Thereafter, he had received the supervision note. PW-5 has also stated that on the basis of the statement of the witnesses and the evidence collected during the course of investigation, it has been found that Arjun Ram was murdered by Dharmendra Das in connivance with the informant and the complicity of both the accused persons was recorded in



the supervision note, whereafter investigation was handed over to the Sub-Inspector of Police Dr. Ram Bilas Pd. Yadav. PW-5 has stated in his cross-examination that he is not the informant of the present case, however he had written the *fardbeyan* of the informant Bindu Devi at about 07:15 in the morning on 14.10.2012 and the formal FIR was registered on 14.10.2012 at about 10:00 AM in the morning. The place of occurrence is about one and a half kilometer from the police station.

17. PW-5 has stated that he cannot say as to when the FIR was sent to the C.J.M., however it appears that the FIR was received by the C.J.M. on 18.10.2012 but he cannot say about the delay which had taken place in sending the FIR, i.e in between 14th to 18th. Nonetheless, he has stated that the time period for sending the FIR is 24 hours. PW-5 has also stated that he had started investigation on 14.10.2012. PW-5 has stated that he had not prepared any seizure list of mosquito net, bed, blood etc. He has also stated that he had sent the dead body along with the knife for postmortem and he had not been prevented by anyone from preparing the seizure list of the aforesaid articles. PW-5 has also stated that it is not a fact that he had not found mosquito net, blood soaked cloth and blood soaked knife. PW-5 has further stated that the said articles



recovered from the place of occurrence are not present in the Court today. He has stated that nobody had prevented him from taking out the knife inserted in the stomach of the deceased and he had sent the dead body for postmortem. PW-5 has also stated that on 14.10.2012 he had recorded the statement of the informant as also that of three other persons and had sent the inquest report along with the challan and dead body for postmortem. PW-5 has further stated that when he reached the place of occurrence at 07:15 in the morning, he had found the children of the deceased sleeping there and at that time 10-12 people were present there as also he had tried to gather their names but they did not disclose their names. PW-5 has next stated that he has recorded in the case diary, in his writing that the people present at the place of occurrence had not disclosed their names. PW-5 has further stated that the deceased was instructor at ITI. PW-5 has stated that he did not enquire as to whether wash room was present in the house or not. PW-5 has also stated that Mohan Das had stated in his statement that some persons had come and killed the deceased.

18. PW-6 Kamendra Kumar, who is a driver has stated in his deposition that the occurrence dates back to 14.10.2012, on which day Arjun Das was murdered and he came to know about



the incident in the morning, whereafter he had gone to the place of occurrence and found that the dead body was lying on the bed and Bindu Devi was sitting outside the house, who told him that Dharmendra Das had come there, had killed the deceased and had then gone away. PW-6 has also stated that there was illicit relationship in between Bindu Devi and Dharmendra Das. He has also stated that both of them used to roam around together as also used to talk with each other. PW-6 has next stated that both of them have together killed Arjun Das. He had recognized the appellants present in the dock. In cross examination, PW-6 has stated that his statement was recorded by the police on the date of incident and it is not a fact that the statement was recorded after 47-48 days of the incident by the police. He has stated that he had no friendship with Arjun Das and he did not use to go to his house. The Police Station is at a distance of one kilometre from the house of Arjun Ram and 800 yards from his house. He has also stated that his house is at a distance of 200 meters from the house of Arjun Das. PW-6 has stated that he had told the police officer that the occurrence had taken place in the morning of 14.10.2012 and after he came to know that dead body was lying there he had gone there and had seen that Bindu Devi was sitting there, who told him that Dharmendra Das had



come there, killed the deceased and then he had gone away. PW-6 has also stated that Bindu Devi and Dharmendra Das had killed the deceased and that Dharmendra Das used to do the work of Doctor in the village. PW-6 has stated in his cross examination that he knew Dharmendra Das from prior to the incident & he also knows both the accused persons from before. PW-6 has stated that the children of Bindu Devi used to call Dharmendra Das '*mamu*' (maternal uncle). He has stated that he drives a police jeep and is employed in the police department.

19. PW-7 Usha Kumari @ Usha Devi is the sister of the deceased and she has stated in her deposition that on 14.10.2012 at about 8-9 a.m. in the morning, she had gone to the house of Arjun Ram, who had been killed. Bindu Devi along with Dharmendra Das had killed Arjun Ram. Bindu Devi is the wife of deceased Arjun Ram and deceased Arjun Ram is her brother. She has also stated that there was a relationship of brother and sister in between Dharmendra Das and Bindu Devi, however she has also stated that there was illicit relationship in between them. She had recognized the appellants, who were standing in the dock. In cross examination, PW-7 has stated that her statement was recorded by the police and she had stated in her statement made before the police that Dharmendra Das and



Bindu Devi had together killed Arjun Ram. PW-7 has also stated that she is a Teacher in a Primary School at Guraru and she stays at Abdulpur. PW-7 has further stated in her cross examination that when she reached the place of occurrence, she found her brother dead and about 400 people had assembled there as also the police had reached there. PW-7 has next stated that her brother Arjun Ram was Instructor in a College at Dehri and out of the wedlock of Arjun Ram and Bindu Devi four children were born. PW-7 has also stated that when she used to go to the house of her brother, Dharmendra also used to come there and when she used to tell his brother about the same, his brother used to tell her that whenever, he tells his wife about the same, she says that since Dharmendra is her brother, he would definitely come to her house. PW-7 has next stated that Arjun Ram used to tell Dharmendra Das not to come. PW-7 has also stated that her brother was not having any dispute with anyone.

20. PW-8 Punit Das is the father of the informant Bindu Devi and he has stated that the occurrence had taken place on 14.10.2012 when his son-in-law Arjun Ram was murdered, however he has stated that he has no knowledge as to who had killed Arjun Ram. He has also stated that when he came to know about the incident then he had gone to the house of the



deceased and seen that a knife was inserted in the stomach of the deceased. PW-8 has also stated that he never came to know about the person who had killed the deceased. In such view of the matter, PW-8 was declared hostile. In cross examination, he has stated that it is not a fact that he had disclosed before the police that Arjun Ram was killed by Dharmendra Das with the aid of his daughter Bindu Devi and that love affair was going on in between Dharmendra Das and her daughter from a long time. PW-8 has also stated that he had not disclosed before the police that her daughter had given a Samsung mobile phone with Idea SIM. PW-8 has stated in his cross examination that it is not a fact that he had disclosed before the police that her daughter Bindu Devi was possessing many SIM's and one of the SIM's was kept with Dharmendra Das. PW-7 has also stated that Bindu Devi is his own daughter. PW-8 had refused to recognize Dharmendra Das and he has stated that it is not a fact that because of the incident in question he has refused to recognize Dharmendra Das. PW-8 has further stated in his cross examination that his statement was never recorded by the police and his daughter had never given him any mobile phone or SIM as also he had not given any mobile or SIM to the police officials. PW-8 has denied that any illicit relationship was



existing in between Dharmendra Das and her daughter.

21. PW-9 Dr. Ram Bilas Prasad Yadav is the 2nd Investigating Officer of the present case and he has stated in his deposition that on 14.10.2012 he was posted at Dobhi Check post and on 01.11.2012, he was Officer-Incharge of Paraiya Police Station and had undertaken investigation of Paraiya P.S Case No. 89/12. He had gone through the case diary written in the past and had got the instruction to arrest the accused Dharmendra Das and Bindu Devi on 06.01.2012 (correct date is actually 06.11.2012) and he had arrested Bindu Devi from her maternal home. On 06.11.2012, PW-9 had perused the records of the Court and had found that Dharmendra Das has surrendered before the Court. PW-9 had received the postmortem report of late Arjun Ram. Upon investigation, it transpired that both Dharmendra Das and Bindu Devi had hatched a conspiracy and killed Arjun Ram. PW-9 has also stated that when he went to the Medical College, he received two knives on 25.11.2012, which he deposited in the Malkhana. Thereafter, he had given application before the higher police officials for obtaining the call records of Mobile No. 917352209692. He had then obtained the CDR of the Mobile No. 9197352209692, mentioned by the informant in the FIR. PW-9, after going through the CDR, had identified two



mobile numbers i.e. 917352204778 and 918578903881.

22. PW-9 had also recorded the statement of Kamlendra Kumar and Ajay Paswan, whereafter he had recorded the statement of Kamlesh Prasad. PW9 had then obtained the CDR of both the mobile numbers, i.e. 917352204778 & 918578903881, as also obtained CAF of mobile number 917352209692. All the three SIM cards were found registered in the name of the informant, namely Bindu Devi and out of the same she had mentioned, in her *fardbeyan*, about mobile number 917352209692 being in the possession of Dharmendra Das. Upon analysis of the CDR and CAF, it was found that calls were made from the said mobile number 9197352209692, which according to informant was in the possession of Dharmendra Das, to the mobile number of the informant, Bindu Devi bearing number 917352224778 in the night of the date of occurrence on more than 50 occasions. In the said records, the calls made in the mid-night are also recorded, regarding which reference has been made by Bindu Devi in her *fardbeyan* to the effect that Dharmendra Das had made a call to her by his mobile number 919352209692 in the night of the day of occurrence at about 11 pm and told her to open the door. As far as mobile number of the informant Bindu Devi bearing mobile number



917352224778 is concerned, in the night of the day of occurrence i.e. 13.10.2012, calls were made at 11:14 pm, 11:46 pm and 11:57 pm, which is clear from the CDR. It is also clear from the perusal of CDR of mobile number 917352224778 that prior to the night of occurrence i.e. 13.10.2012 and thereafter also contacts were made in between the mobile of Dharmendra Das i.e. mobile number 917352209692 and that of Bindu Devi i.e. mobile number 917352224778 regularly.

23. PW-9 has also stated that it is apparent from the CDR that continuous contact was made in the night of 13.10.2012 in-between both the said mobile numbers. It is also clear from a perusal of the CDR of the suspect mobile number i.e. 918578903881 that regular contact has been made from the mobile number of Dharmendra Das i.e. 917352209692, mentioned in the FIR, with mobile number 918578903881 after the occurrence with effect from 18.10.2012. PW-9 has stated that it is apparent from perusal of the CDR that there has been continuous contact in between the accused Dharmendra Das and the informant Bindu Devi, from a period prior to the date of occurrence, in the night of occurrence and after the occurrence, from which the complicity of both the said persons is apparent and CDR is scientific proof of the same. PW-9 has also stated



that he had obtained the CDR, which is on record, along with the case diary, which he has identified and the same has been marked as Exhibit-4. PW9 has also stated that the CAF of the said mobile was also obtained by him, which has been marked as Exhibit-5. PW-9 has further stated that father of Bindu Devi, namely Punit Das had brought one Samsung Mobile phone containing Idea SIM bearing mobile number 8578903881 at the Police Station and had handed over the same to him and told him that Bindu Devi had given the said mobile to him.

24. PW-9 has also stated that he had prepared the production-cum-seizure list, which is in his writing and bears his signature, which has been identified by him and the same has marked as Exhibit-6. PW-9 has next stated that he had recorded the statement of Punit Das at the Police Station, who has stated in his statement made before the police that the murder of Arjun Ram had been executed by Dharmendra Das in connivance with her daughter Bindu Devi and that love affairs was existing in between Dharmendra Das and her daughter since a very long time. Upon PW-9 having asked Punit Das about the SIM, he disclosed that his daughter Bindu Devi, prior to going to jail had given a mobile along with SIM bearing number 8578903881, which he has handed over to the police officer. Punit Das had



also disclosed before PW9 that her daughter Bindu Devi had told him that she has got many SIMs and one of the SIM's remains with Dharmendra Das. PW-9 has further stated that he had also recorded the statement of Ajay Paswan, who had told him that in the morning of 14.10.2012, he came to know from the co-villagers that Arjun Ram has been killed by his wife Bindu Devi with connivance of Dharmendra Das. Ajay Paswan had also disclosed before PW-9 that illicit relationship was existing in between Bindu Devi and Dharmendra Das, which had resulted in murder of Arjun Ram. Upon PW-9 having asked Ajay Paswan about the mobile, he had disclosed that Bindu Devi was having many SIMs and one SIM was kept and used by Dharmendra Das and in the night of the occurrence also calls were made over mobile by Dharmendra Das to Bindu Devi, which he came to know subsequently.

25. PW-9 has also stated that he had received the final progress report from the higher police officials as also had received the final order from the Senior Superintendent of Police. PW-9 has also stated that upon considering the evidence collected during the course of investigation, supervision note, examination of the place of occurrence and upon taking into account the statement of the witnesses as also the technical



circumstantial evidence, apart from taking into account the report of senior police officials, he had filed charge-sheet under Sections 302/120B of the I.P.C. against FIR named accused Dharmendra Das and non-FIR named accused Bindu Devi upon finding the allegations to be true as also finding ample proof of the same. PW-9 has stated that he had submitted charge-sheet No.103/12 on 31.12.2012. PW-9 had recognized Bindu Devi, who was present in the Court and had been arrested by him earlier. PW-9 in his cross examination has stated that Exhibit-6 is production-cum-seizure list and he had not taken signature of Punit Das on plain paper for preparing Exhibit-6. He has also denied that no statement of Punit Das was recorded. PW-9 has also stated that it is not a fact that Punit Das had not handed over the mobile phone to him. PW-9 has also denied to have met accused Dharmendra Das earlier and he has stated that he had not made any effort to record his statement while he was in jail custody. Dharmendra Das had surrendered on 06.11.2012 and not on 08.11.2012. PW-9 has next stated that after postmortem was conducted on the dead body of the deceased, dagger was handed over to him, which is also termed by some people as knife. PW-9 has next stated that dagger was given to him by the doctor at ANMMCH and he had not written the name of the



person who had handed over the dagger as also he had not prepared any production-cum-seizure list but the dagger was handed over after being sealed, however he had not mentioned in the case diary about his signature being present on the sealed envelope containing the dagger. PW-9 has also stated that there were two daggers and both were kept separately, however he had not mentioned in the case diary that he had received the same separately.

26. PW-9 has further stated in his cross examination that he has mentioned in paragraphs No. 56, 57 and 25 of the case diary about recording of the statements of Kamendra Kumar, Ajay Paswan and Kamleshwar Prasad, who have stated that they had received knowledge about the incident from various people, however PW-9 has stated that he had not recorded the names of the persons from whom they had gained knowledge about the incident, thus these witnesses are hearsay witnesses. PW-9 has also stated that there is difference between knife and dagger and he had not mentioned the length and width of both the knives/daggers, however both the daggers are not present in the Malkhana. PW-9 has also stated that in paragraph No.25 of the case diary he had recorded the statement of Kameshwar Prasad, who has stated that he had come to know about the incident



from various people, however he had not disclosed as to from whom he had gained knowledge about the incident, thus the said witness is a hearsay witness. In paragraph No. 26 of the case diary, PW-9 had recorded that he had arrested Bindu Devi from her house and upon making search no objectionable articles like knife, mobile etc. were recovered. In paragraph No.40 of the case diary PW-9 has recorded the factum of receiving knives along with the postmortem report, however it has been stated that no receipt was made but he had signed on the Hospital register while receiving the said knives. In paragraph No.3 of the case diary PW-9 had recorded that one big dagger was found inserted in the stomach of the deceased but he had not mentioned that two daggers had been found from the stomach as also he had not mentioned about the injuries. PW-9 has further stated in his cross examination that in paragraph No.44 of the case diary he has stated that two metallic knives (laced with blood) were received by him and he had not mentioned the same to be dagger. PW-9 has stated that he had recorded the statement of Bindu Devi in paragraph No.29 and she had not stated in her clarificatory statement regarding giving mobile No. 917352209692 to accused Dharmendra Das. PW-9 had recorded the statement of Kamendra Kumar in paragraph No.56 and the



same was not recorded by Hari Ojha but he had not conducted any enquiry about the mobile.

27. PW-9 has admitted to be not a specialist of CDR and CAF, much less a technical specialist. In paragraph No. 29 of the case diary, PW-9 had recorded that Bindu Devi had neither given any satisfactory reply nor had given any information about the incident in question. PW-9 has further stated in his cross examination that Bindu Devi had not made any statement before him to the effect that she had given a written report on 14.10.2012 before the earlier I.O., namely Shri Hari Ojha stating therein that Arjun Das was killed by unknown persons. PW-9 has further stated that Bindu Devi had stated before him that she had not given any *fardbeyan* but the earlier I.O. had taken her signature on plain paper on 18.10.2012 and on the same *fardbeyan* was prepared by hatching a conspiracy, which was produced before the learned Court of C.J.M. on 18.10.2012, after four days of the date of occurrence. PW-9 has also stated that there was some reason for sending the case to the Court after some delay. PW-9 has also stated that it is not a fact that Bindu Devi had said that murder of her husband was not committed by Dharmendra Das but rather by some other persons. PW-9 has also stated that it is not a fact that Bindu



Devi had not given her mobile bearing mobile No. 917352209692 to Dharmendra Das. PW-9 has also stated that it is not a fact that Bindu Devi did not have illicit relation with Dharmendra Das and that she was spending life happily with her husband and children. PW-9 has next stated that it is not a fact that the present case has been fabricated under a conspiracy and that the murder of the deceased was committed by other people and after they had left, the relatives in connivance with the police have cooked up the present case with the intention of grabbing the property of the husband of the informant, wherein witness No.6 Kamlendra Kumar is the main conspirator, who is yadav by caste and a police jeep driver. PW-9 has also stated that it is not a fact that in order to save the first Investigating Officer, the correct clarificatory statement of the informant has not been recorded in the case diary. PW-9 has also stated that it is not a fact that for the said reasons, the statement of the informant was not got recorded under Section 164 Cr.P.C.

28. PW-10, Pankaj Kumar Singh has stated in his deposition that at the time of occurrence he was Officer-Incharge, Paraiya Police Station and the Material Exhibit i.e. two daggers were sent to the Malkhana in connection with Paraiya P.S. case No. 89/12 by Dr. P.N. Sinha along with the postmortem report



No.780 dated 14.10.2012. He has stated that both the daggers were tied up together and kept in the Malkhana, which he has brought to the Court from the Malkhana, upon being asked by the Court and the same has been marked as Material Exhibits No. I and II. PW-10 has further stated that there is blood on both the knives. The same has also been paginated by Dr. P.N. Sinha, which has been marked as Exhibit-7. PW-10 has stated in his cross examination that out of the two weapons which have been brought by him in the Court today, one which has been marked as Material Exhibit-I is a dagger while the one which has been marked as Material Exhibit-II is a knife, both of which are rusted as also laced with blood and since the color is red, he has stated that blood is present over the same. He has also stated that the color of Nail polish is red. PW-10 has also stated that the blood present on the weapon was not examined to ascertain as to whether the same is human blood or animal blood. PW-10 has also stated that he had not written the length, width and thickness of the Material Exhibits, however he has stated that both the Material Exhibits are sharp cutting weapon. PW-10 has next stated that it is not a fact that both the Material Exhibits are not sharp cutting weapon. PW-10 has stated that the case number is not mentioned on the Material Exhibits. He



has also stated that Exhibit-7 does not bear the signature of either the Officer-Incharge or the Investigating Officer. PW-10 has stated that it is not a fact that Material Exhibits, which he has brought to the Court, do not have any connection with the case in hand. He has also stated that it is not a fact that both the Material Exhibits are blunt and not laced with blood and it is also not a fact that because of the said reason no Material Exhibit was prepared.

29. After closing the prosecution evidence, the learned Trial Court recorded the statement of the appellants on 03.11.2016 under Section 313 of the Cr.P.C. for enabling them to personally explain the circumstances appearing in the evidence against them, however they claimed themselves to be innocent.

30. The defence has examined one witness i.e. DW-1, namely, Bindu Devi who is the informant of the present case as also the wife of the deceased. She has stated in her deposition that her husband was killed in front of her on 13.10.2012 at about 11:30 in the night by unknown persons, who had entered the house after jumping the wall and they had shown pistol and tied her mouth, whereafter they had killed her husband by inserting knife, whereupon she had immediately gone to her brother-in-law, namely Mohan Das while crying, who stays



near her house but he told her that the accused persons must be present around so she should not go to the Police Station. In the morning of 14.10.2012 at about 07:30 AM, DW-1 had given written information at the Police Station, whereafter police had come to her house and had sent the dead body of her husband for postmortem and after postmortem the dead body was handed over to her and then the last rites of her husband was performed. DW-1 has further stated that on 18.10.2013 (should be 18.10.2012) the Officer-Incharge had called her to the Police Station, where he had taken her signature on a blank paper and in place of her written report given on 14th, the Officer-Incharge had written another report on his own and had sent the same to the Court but he did not send her written report dated 14th to the Court. DW-1 has also stated that conspiracy has been hatched by Kavinder Yadav (PW-6), Usha Devi (PW-7) and Mohan Das (PW-2) and while Usha is her sister-in-law, Kavinder Kumar drives police vehicle. DW-1 has next stated that these people, for grabbing her land, have conspired and killed her husband and have falsely implicated her in the present case. She has identified her signature on the F.I.R., which has been marked as Exhibit-A. She has also stated that accused Dharmendra Das is her cousin brother, who is married and has children.



31. DW-1 has also stated that the *fardbeyan* was not read over to her and in fact the same is also not in her handwriting. She has stated that she had never given her sim or mobile to Dharmendra Das and her husband had no objection to Dharmendra Das coming to her house. In her cross-examination DW-1 has stated that she is the informant of the present case and the present case is going on, on the basis of her statement, in which Dharmendra Das is an accused and subsequently she had also been made an accused by the police. She has also stated that she had not made any complaint to any senior Officer regarding wrong recording of the F.I.R. She has next stated that land dispute was existing in between them and Mohan Das, Usha Devi and Kavinder, however she had not filed any case. DW-1 has stated that she did not file any protest petition against the police. She has also stated that Kavinder, Usha and Mohan are witness in the present case. DW-1 has stated that Dharmendra Das used to come to her house after her marriage had taken place. She has also stated that neither she has any sim in her name nor any application was given for sim nor she has got any Voter ID. DW-1 has also stated that it is not a fact that she had given a SIM to Dharmendra Das bearing mobile no.7352209692. She has next stated that her husband



was possessing a mobile. DW-1 has stated that it is not a fact that mobile no. 948578903881 belongs to her. DW-1 has also stated that it is not a fact that after her husband was killed, she had talked to Dharmendra on mobile phone. She has stated that prior to her husband being killed, Dharmendra had talked with her husband over mobile phone with whom she used to talk.

32. The trial Court, upon appreciation, analysis and scrutiny of the evidence adduced at the trial, has found the aforesaid appellants guilty of the offence and has sentenced them to imprisonment and fine, as noted above, by its impugned judgment and order.

33. We have perused the impugned judgment of the learned Trial Court, the entire materials on record and have given thoughtful consideration to the rival submissions made by the Ld. counsel for the appellants and the Ld. APP for the State.

34. We find from the evidence led by the prosecution that there is no eye witness to the crime and in order to bring home the charge, the prosecution has relied on extra-judicial confession said to have been made by the appellant No.2 before the Sub Inspector of Police Shri Hari Ojha, the then S.H.O., Paraiya Police Station on 14.10.2012 at 07:15 a.m. in the form of her *fardebayan*, on the basis of which formal F.I.R. bearing



Paraiya P.S. Case No.89 of 2012 was registered, though on 14.10.2012 at 10:00 a.m. U/s. 302 I.P.C. against the appellant No.1 but the same was sent to the Court only on 18.10.2012. It is apparent that the prosecution has made an attempt to make out a case based on circumstantial evidence. It is a settled law that in case of circumstantial evidence, the onus lies upon the prosecution to prove the complete chain of events, which should undoubtedly point towards the guilt of the accused. Furthermore, in a case of circumstantial evidence, where the prosecution relies upon an extra-judicial confession, the Court has to examine the same with a greater degree of care and caution.

35. As far as P.W.1 Deepa Kumari, i.e., the daughter of the informant is concerned, though she has narrated the sequence of events of the incident in question, however in her cross-examination, she has stated that she slept in the night at 08:00 p.m. and woke up in the morning at 05:00 a.m. and that her statement was not recorded by the police. Thus admittedly, she is not an eye witness inasmuch as she was not awake at the time the alleged occurrence is stated to have taken place, i.e. around 11:00-11:30 p.m. in the night of 13.10.2012. As regards P.W.2 Mohan Das, we find from his evidence that he has admitted therein that after he came to know about the incident in the



morning at about 06:00 a.m., he had then gone to the place of occurrence, hence he is also not an eye witness. P.W.4 Ajay Paswan and P.W.8 Punit Das (father of the informant) have been declared hostile. P.W.6 Kamendra Kumar, an unrelated witness, has also stated in his examination-in-chief that he came to know about the occurrence in question in the morning of 14.10.2012, whereafter he had gone to the place of occurrence and had found the dead body of the deceased lying on the bed, thus he is also not an eye witness. P.W.7 Usha Kumari @ Usha Devi is the sister of the deceased and she has also admitted in her evidence that she had gone to the house of her deceased brother, who had been killed by Dharmendra Das (appellant No.1) in connivance with Bindu Devi (appellant No.2) on 14.10.2012 at 08:00-09:00 a.m. in the morning, therefore she is also not an eye witness to the alleged occurrence. P.W.3 Dr. B.N. Sinha is the doctor, who had conducted the postmortem examination of the dead body of the deceased, P.W.5 Shri Hari Ojha is the Investigating Officer of the present case, P.W.9 Dr. Ram Bilas Prasad Yadav is the second Investigating Officer and P.W.10 Pankaj Kumar Singh was posted as Officer-Incharge of Paraiya Police Station at the time of occurrence. Thus, evidently there is no eye witness to the alleged occurrence.



36. Now coming to the issue of evidentiary value of extra-judicial confession of the informant-appellant No.2, this Court finds that it is a well settled law that as far as extra-judicial confession is concerned, generally it is a very weak piece of evidence, its evidentiary value depends upon trustworthiness of the witness before whom confession is made and in the absence of chain of cogent circumstances, the Court should be reluctant to rely on it for the purposes of recording the conviction and the Courts should generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession. Reference in this connection be had to a judgment rendered by the Hon'ble Apex Court in the case of ***Ratnu Yadav versus the State of Chhattisgarh*** reported in ***2024 SCC online SC 1667***, paragraph Nos. 9 and 10 whereof are reproduced herein below :

“9. As regards the evidentiary value of an extra-judicial confession, a bench of three Hon'ble Judges of this Court in the case of Devi Lal v. State of Rajasthan, in Paragraph 11, this Court held thus:

“11. It is true that an extra-judicial confession is used against its maker but as a matter of caution, advisable for the court to look for a corroboration with the other evidence on record. In Gopal Sah v. State of Bihar [(2008) 17 SCC 128], this Court while



dealing with extra-judicial confession held that extra-judicial confession is, on the face of it, a weak evidence and the Court is reluctant, in the absence of a chain of cogent circumstances, to rely on it, for the purpose of recording a conviction. In the instant case, it may be noticed that there are no additional cogent circumstances on record to rely on it. At the same time, Shambhu Singh (PW 3), while recording his statement under Section 164 CrPC, has not made such statement of extra-judicial confession (Ext. D-5) made by accused Babu Lal. In addition, no other circumstances are on record to support it.”

(emphasis added)

In paragraph 16 of the decision of this Court in the case of Nikhil Chandra Mondal v. State of West Bengal, this Court held thus:

“16. It is a settled principle of law that extra-judicial confession is a weak piece of evidence. It has been held that where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. It has further been held that it is well-settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession. It has been held that there is no doubt that conviction can be based on extra-judicial confession, but in the very nature of things, it is a weak piece of evidence.”

(emphasis added)



10. The normal rule of human conduct is that if a person wants to confess to the crime committed by him, he will do so before the person in whom he has implicit faith. It is not the case of the prosecution that the appellant had a close acquaintance with PW-1 for a certain length of time before the incident. Moreover, the version of the witness in examination-in-chief and cross-examination is entirely different. Therefore, in our considered view the testimony of PW-1 is not reliable. Hence, the case of extra-judicial confession cannot be accepted.”

37. In this connection, it would also be apt to refer to a judgment rendered by the Hon’ble Apex Court in the case of ***Pawan Kumar Chourasia Vs State of Bihar***, reported in (2023) 18 SCC 414, para no.6 whereof is reproduced herein below:-

“6. As far as extra-judicial confession is concerned, the law is well settled. Generally, it is a weak piece of evidence. However, a conviction can be sustained on the basis of extra-judicial confession provided that the confession is proved to be voluntary and truthful. It should be free of any inducement. The evidentiary value of such confession also depends on the person to whom it is made. Going by the natural course of human conduct, normally, a person would confide about a crime committed by him only with such a person in whom he has implicit faith. Normally, a person would not make a confession to someone who is totally a stranger to him. Moreover, the court has to be satisfied with the reliability of the confession keeping in view the circumstances in



which it is made. As a matter of rule, corroboration is not required. However, if an extra-judicial confession is corroborated by other evidence on record, it acquires more credibility.”

38. In a judgment rendered by the Hon’ble Apex Court in the case of *Sahadevan and another versus State of Tamil Nadu*, reported in *(2012) 6 SCC 403*, the Hon’ble Apex Court has laid down the principles which would guide the judicial mind while dealing with the veracity of the cases where the prosecution heavily relies upon extra-judicial confession alleged to have been made by the accused. In this connection, it would be relevant to reproduce paragraph no.16 thereof herein below:

“16. Upon a proper analysis of the above referred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:

(i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

(ii) It should be made voluntarily & should be truthful.



(iii) *It should inspire confidence.*

(iv) *An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.*

(v) *For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.*

(vi) *Such statement essentially has to be proved like any other fact and in accordance with law.”*

39. Yet again, in the case of ***Sanjay versus the State of Uttar Pradesh***, reported in ***2025 SCC online SC 572***, the Hon'ble Apex Court has dealt with the principles of the evidentiary value of extra-judicial confession and in this regard, paragraph Nos. 23 to 26 thereof are reproduced herein below:-

“23. There is no doubt that the case of the prosecution depends entirely on the extra judicial confession of the accused on 28th February, 2004, leading to the recovery of body from the sugarcane field, along with other articles worn by the deceased.

*24. The principles of the evidentiary value of an extra-judicial confession are summarized by this Court recently in *Kalinga v. State of Karnataka* as under:*

“16. It is no more res integra that an extra-judicial confession must be accepted with great care and caution. If it is not supported by other evidence on



record, it fails to inspire confidence and in such a case, it shall not be treated as a strong piece of evidence for the purpose of arriving at the conclusion of guilt. Furthermore, the extent of acceptability of an extra-judicial confession depends on the trustworthiness of the witness before whom it is given and the circumstances in which it was given. The prosecution must establish that a confession was indeed made by the accused, that it was voluntary in nature and that the contents of the confession were true. The standard required for proving an extra-judicial confession to the satisfaction of the Court is on the higher side and these essential ingredients must be established beyond any reasonable doubt. The standard becomes even higher when the entire case of the prosecution necessarily rests on the extra-judicial confession.”

(Emphasis supplied)

25. We must also advert to the exposition of this Court in *Nikhil Chandra Mondal v. State of W.B.*, where B.R. Gavai, J., writing for the bench, observed as follows:

“16. It is a settled principle of law that extra-judicial confession is a weak piece of evidence. It has been held that where suspicious circumstances surround an extra-judicial confession, its credibility becomes doubtful and loses importance. It has further been held that it is well-settled that it is a rule of caution where the Court would generally look for an independent, reliable corroboration before placing any reliance upon such extra-judicial confession. It has been held that there is



no doubt that conviction can be based on extra-judicial confession, but in the very nature of things, it is a weak piece of evidence.”

(Emphasis supplied)

26. The extra-judicial confession and the consequent recovery are also surrounded by suspicious circumstances.”

40. Now coming to facts of the present case, we find that the appellant No.2 in her *fardebayan* recorded by the Sub Inspector of Police on 14.10.2012 at 07:15 a.m. has though confessed to her complicity in the alleged occurrence, however the same suffers from inherent improbabilities, is not supported by a chain of cogent circumstances as also has not stood corroborated by other prosecution evidence apart from the fact that evidentiary value of extra-judicial confession depends upon trustworthiness of the witness before whom confession is made. In the present case, the *fardebayan*, in the form of extra-judicial confession was made before the Sub Inspector of Police Shri Hari Ojha, however he has stated in his cross examination that P.W.2 Mohan Das, in the statement made before him, has stated that some persons had come and killed the deceased. Thus, admittedly, there is a great contradiction inasmuch as the *fardebayan* of informant-appellant No.2 shows that the appellant No.1 had come to the house of the informant, whereafter he had



entered the house upon the appellant No.2 having opened the door and then he had killed her husband. In fact, P.W.9 Dr. Ram Bilas Prasad Yadav, i.e. the second Investigating Officer of the present case, has stated in his cross examination that Bindu Devi, i.e. the informant-appellant No.2 had stated before him that she had not given any *fardbeyan* but the earlier Investigating Officer had taken her signature on a plain paper on 18.10.2012 and on the same, *fardbeyan* was prepared by hatching a conspiracy which was produced before the learned Court of C.J.M. belatedly on 18.10.2012, after four days of the date of occurrence. In fact, neither P.W.5 Shri Hari Ojha nor P.W.9 Dr. Ram Bilas Prasad Yadav, upon having been asked, in cross examination, about the reasons for major delay in sending the case to the Court, have failed to give any reason whatsoever for the said delay. P.W.9 has also admitted that neither the correct clarificatory statement of the informant has been recorded in the case diary nor the statement of the informant was got recorded under Section 164 of the Cr.P.C. All the said circumstances, beyond doubt show that the said extra-judicial confession of the informant-appellant No.2 is shrouded by suspicious circumstances and is neither supported by a chain of cogent circumstances nor is corroborated by the evidence on



record especially that of P.W.5 and P.W.9. In such view of the matter, we find that the *fardbeyan* of the informant-appellant No.2 by way of extra-judicial confession cannot be treated as an admissible piece of evidence for the purposes of forming the basis of conviction of the appellants.

41. Yet another issue which arises for consideration in the present case is that in absence of there being any eye witness to the alleged occurrence as also the extra-judicial confession of the informant-appellant No.2 having been held by us to be inadmissible as evidence for recording conviction of the appellants, whether there is any circumstantial evidence in the present case. It is a settled law that circumstantial evidence is required to be drawn from the established facts as the circumstances lead to particular inferences and the Court has to draw an inference with respect to whether the chain of circumstances is complete and when the circumstances are collectively considered, whether the same only lead to the irresistible conclusion that the accused alone are the perpetrators of the crime in question. All the circumstances so established must be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Reference in this connection be had to a judgment rendered by the Hon'ble Apex



Court in the case of ***Raj Kumar Singh @ Raju @ Batya versus the State of Rajasthan***, reported in (2013) 5 SCC 722. As far as the present case is concerned, we find that the prosecution has failed to bring any circumstantial evidence on record to bring home the guilt of the appellants beyond all reasonable doubt, inasmuch as the chain of links connecting the appellants with the crime remains inconclusive.

42. We also find that the investigation made in the present case by the police and the Investigating Officers have been perfunctory and involves suppression inasmuch as neither the mosquito net nor the blood soaked bed over which the deceased was lying nor the bed present at the place of occurrence nor the knife/dagger was seized by the Investigating Officer from the place of occurrence much less the knife/dagger used to kill the deceased were sent for F.S.L. examination apart from the fact that no attempt, whatsoever was made by the Investigating Officer to get the fingerprints, present on the knife/dagger, compared with that of the appellant No.1 to identify the perpetrator of crime and moreover, ostensibly the first version of the informant has been withheld, which would have conclusively determined the truth, hence we are of the view that the investigation by the police in the present case has been



absolutely perfunctory. Thus, applying the well settled law to the effect that in case of perfunctory investigation, if the Court finds that the foundation of the prosecution case is false and does not confirm to the '*doctrine of fairness*' then the very case of the prosecution falls to the ground, we are of the view that on this score as well the case of the prosecution has failed. Reference in this connection be had to a judgment rendered by the Hon'ble Apex Court in the case of ***Shailesh Kumar versus State of U.P. (now State of Uttarakhand)***, reported in ***2024 SCC online SC 203***, paragraph Nos. 17 to 19 whereof are reproduced hereinbelow:

“17. An investigation of a crime is a lawful search of men and materials relevant in reconstructing and recreating the circumstances of an offence said to have been committed. With the evidence in possession, an Investigating Officer shall travel back in time and, therefore tick off the time zone to reach the exact time and date of the occurrence of the incident under investigation. The goal of investigation is to determine the truth which would help the Investigating Officer to form a correct opinion on the culpability of the named accused or suspect. Once such an opinion is formed on a fair assessment of the evidence collected in the investigation, the role of the court comes into play when the evidence i.e. oral, documentary, circumstantial, scientific, electronic, etc. is presented for and on behalf of the



prosecution. In its journey towards determining the truth, a court shall play an active role while acknowledging the respective roles meant to be played by the prosecution and the defence. During the entire play, the rules of evidence ought to be honoured, sprinkled with the element of fairness through due procedure. Adequate opportunities would have to be given to challenge every assumption. Administration of criminal justice lies in determining the guilt of the accused beyond reasonable doubt. The power of the State to prosecute an accused commences with investigation, collection of evidence and presentation before the Court for acceptance.

18. The investigating agency, the prosecutor and the defence are expected to lend ample assistance to the court in order to decipher the truth. As the investigating agency is supposed to investigate a crime, its primary duty is to find out the plausible offender through the materials collected. It may or may not be possible for the said agency to collect every material, but it has to form its opinion with the available material. There is no need for such an agency to fix someone as an accused at any cost. It is ultimately for the court to decide who the culprit is. Arvind Kumar @ Nemichand v. State of Rajasthan, (2021) 11 SCR 237,

“Fair, Defective, Colourable Investigation

40. An Investigating Officer being a public servant is expected to conduct the investigation fairly. While doing so, he is expected to look for materials available for coming to a correct conclusion. He is



concerned with the offense as against an offender. It is the offense that he investigates. Whenever a homicide happens, an investigating officer is expected to cover all the aspects and, in the process, shall always keep in mind as to whether the offence would come under Section 299 IPC sans Section 300 IPC. In other words, it is his primary duty to satisfy that a case would fall under culpable homicide not amounting to murder and then a murder. When there are adequate materials available, he shall not be overzealous in preparing a case for an offense punishable under Section 302 IPC. We believe that a pliable change is required in the mind of the Investigating Officer. After all, such an officer is an officer of the court also and his duty is to find out the truth and help the court in coming to the correct conclusion. He does not know sides, either of the victim or the accused but shall only be guided by law and be an epitome of fairness in his investigation.

41. There is a subtle difference between a defective investigation, and one brought forth by a calculated and deliberate action or inaction. A defective investigation per se would not enure to the benefit of the accused, unless it goes into the root of the very case of the prosecution being fundamental in nature. While dealing with a defective investigation, a court of law is expected to sift the evidence available and find out the truth on the principle that every case involves a journey towards truth. There shall not be



any pedantic approach either by the prosecution or by the court as a case involves an element of law rather than morality.

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44. We would only reiterate the aforesaid principle qua a fair investigation through the following judgment of *Kumar v. State*, (2018) 7 SCC 536:

“27. The action of investigating authority in pursuing the case in the manner in which they have done must be rebuked. The High Court on this aspect, correctly notices that the police authorities have botched up the arrest for reasons best known to them. Although we are aware of the ratio laid down in *Parbhu v. King Emperor* [*Parbhu v. King Emperor*, AIR 1944 PC 73], wherein the Court had ruled that irregularity and illegality of arrest would not affect the culpability of the offence if the same is proved by cogent evidence, yet in this case at hand, such irregularity should be shown deference as the investigating authorities are responsible for suppression of facts.

28. **The criminal justice must be above reproach. It is irrelevant whether the falsity lie in the statement of witnesses or the guilt of the accused. The investigative authority has a responsibility to investigate in a fair manner and elicit truth. At the cost of repetition, I must remind the authorities concerned to take up the investigation in a neutral**



manner, without having regard to the ultimate result. In this case at hand, we cannot close our eyes to what has happened; regardless of guilt or the asserted persuasiveness of the evidence, the aspect wherein the police has actively connived to suppress the facts, cannot be ignored or overlooked.”

45. A fair investigation would become a colourable one when there involves a suppression. Suppressing the motive, injuries and other existing factors which will have the effect of modifying or altering the charge would amount to a perfunctory investigation and, therefore, become a false narrative. If the courts find that the foundation of the prosecution case is false & would not conform to the doctrine of fairness as against a conscious suppression, then the very case of the prosecution falls to the ground unless there are unimpeachable evidence to come to a conclusion for awarding a punishment on a different charge.”

(emphasis supplied)

19. *Common Cause v. Union of India*, (2015) 6 SCC 332,

“31. There is a very high degree of responsibility placed on an investigating agency to ensure that an innocent person is not subjected to a criminal trial. This responsibility is coupled with an equally high degree of ethical rectitude required of an investigating officer or an investigating agency to ensure that the investigations are carried out without any bias and are conducted in all fairness not only to the accused person but also to the victim of any crime, whether the



victim is an individual or the State.”

42. We also find that there has been considerable delay in dispatch of the F.I.R. to the concerned Magistrate, inasmuch as the *fardbeyan* was recorded at 07:15 a.m. in the morning of 14.10.2012 and the formal F.I.R. was registered on 14.10.2012 at 10:00 a.m., itself but the F.I.R. was received by the learned Chief Judicial Magistrate only on 18.10.2012 and both the Investigating Officers, i.e., P.W.5 and P.W.9 have in their cross examination failed to explain the said delay. Thus, this delay in sending the F.I.R. to the learned Magistrate itself casts a very serious doubt upon the case of the prosecution & the possibility of introduction of any distorted version of the prosecution story and fabrication of the same cannot be ruled out, more so in light of the evidence of the Investigating Officers, i.e., P.W.5 and P.W.9 as also in light of the evidence of the informant-appellant No.2, namely Bindu Devi as D.W.1 wherein she has specifically stated that though in the morning of 14.10.2012 at about 07:30 a.m., she had given written information at the Police Station, whereafter the police had come to her house and had sent the dead body of her husband for postmortem examination but thereafter, on 18.10.2012 the Officer-In-charge of Paraiya Police Station had called her to the Police Station, whereupon he had



taken her signature on a blank paper and in place of her written report given on 14.10.2012, the Officer-Incharge had written another report on his own and had sent the same to the Court but he did not send her written report dated 14.10.2012 to the Court as also that the *fardebayan* is admittedly not in her handwriting, which also stands substantiated from the evidence of P.W.9 to the effect that he has stated in his cross examination that the informant has stated before him that she had not given any *fardebayan* but the earlier Investigating Officer had taken her signature on a plain paper on 18.10.2012, on which he had prepared a fresh *fardebayan* by hatching a conspiracy and the same was produced before the learned Court of C.J.M. on 18.10.2012, after four days of the date of occurrence.

43. At this juncture, it would be relevant to refer to Section 315 of the Cr.P.C., which reads as follows:-

“Accused person to be competent witness.—(1) Any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that—

(a) he shall not be called as a witness except on his own request in writing;



(b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him that the same trial.”

It is a well settled law that defence evidence should not be treated differently from prosecution witnesses and defence witness are entitled to equal respect and treatment as that of the prosecution as also the issue of credibility or trustworthiness ought to be attributed to the defence witnesses at par with that of the prosecution. In this connection, reference be had to a judgment rendered by the Hon’ble Apex Court in the case of ***Munshi Prasad & Ors. Vs. the State of Bihar***, reported in **2002 (1) SCC 351**. Reference be also had to the judgments rendered by the Hon’ble Apex Court in the following cases :-

(i) In the case of ***State of Madhya Pradesh versus Ramesh and another***, reported in **2011 (4) SCC 786**;

(ii) In the case of ***Raj Kumar Singh @ Raju @ Batya versus State of Rajasthan***, reported in **2013 (5) SCC 722**.

44. Now coming back to the issue of delay in dispatch of the F.I.R. to the learned Magistrate casting a serious doubt on the prosecution case, we would gainfully rely on the judgments rendered by the Hon’ble Apex Court in the following cases:-

(i) In the case of ***Radhakrishnan Nair & others Vs. State of Kerala***, reported in **1995 Supp. (1) SCC 217**,



(ii) In the case of ***Kunju Muhammed @ Khumani & Anr. Vs. State of Kerala***, reported in **2004 (9) SCC 193** and

(iii) In the case of ***Chhotu & Anr. Vs. State of Haryana***, reported in **1996 SCC (Cri) 1161**.

It would also be apt to refer to a judgment rendered by the Hon'ble Apex Court in the case of ***Rajeevan & Anr. Vs. State of Kerala***, reported in **2003 (3) SCC 355**, paragraph No. 15 whereof is reproduced herein below:-

“15. This Court in Marudanal Augusti v. State of Kerala [(1980) 4 SCC 425] while deciding a case which involves a question of delayed dispatch of the FIR to the Magistrate, cautioned that such delay would throw serious doubt on the prosecution case, whereas in Arjun Marik v. State of Bihar [1994 Supp (2) SCC 372] it was reminded by this Court that:

“The forwarding of the occurrence report is indispensable and absolute and it has to be forwarded with earliest dispatch which intention is implicit with the use of the word ‘forthwith’ occurring in Section 157 CrPC, which means promptly and without any undue delay. The purpose and object is very obvious which is spelt out from the combined reading of Sections 157 and 159 CrPC. It has the dual purpose, firstly to avoid the possibility of improvement in the prosecution story and introduction of any distorted version by deliberations and consultation and secondly to enable the Magistrate concerned to have a watch on the



progress of the investigation.”

45. We also find that much stress has been laid by the prosecution on the CDR (call detail record) and CAF of the mobile numbers of the appellants to contend that they had talked in between themselves on several occasions not only prior to the date of incident but also in the night of incident and thereafter as well. However, we gather from the evidence led in the present case that neither the attending circumstances show their relevance nor the same have stood proved in terms of the provisions contained in Sections 65A and 65B of the Indian Evidence Act, 1892 inasmuch as neither any certificate under Section 65 B (4) nor the original document (i.e of CDR and CAF) have been produced by its owner hence the same are not admissible as evidence, thus no reliance can be placed upon the same. Reference in this connection be had to a celebrated judgment rendered by the Hon'ble Apex Court in the case of ***Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal & Ors.***, reported in ***2020 (7) SCC 1***.

46. Thus, taking into account an over all perspective of the entire case, emerging out of the totality of the facts and circumstances, as indicated hereinabove, and having perused the entire evidence on record as also for the foregoing reasons, we



find that the prosecution has failed to prove beyond all reasonable doubt the commission of the offence by the appellants. Therefore, we find that the learned Trial Judge has committed a gross error in holding that the evidence adduced by the prosecution, both oral and documentary as well as materials available on record definitely proves the offence U/s. 120B of the I.P.C. against both the appellants as also under Section 302 of the I.P.C. against the appellant No.1.

47. Hence, in the facts and circumstances as discussed hereinabove and for the foregoing reasons, we are of the view that there are compelling reasons in the present case which necessitates that the appellants of the aforesaid appeal be given the benefit of doubt.

48. Accordingly, we find that the finding of conviction recorded by the Ld. Trial Judge, in our opinion is not sustainable and requires interference. Therefore, the judgment of conviction and order of sentence dated 17.05.2017 and 23.05.2017 respectively, passed by the Ld. Court of Additional District and Sessions Judge-1st, Gaya in Sessions Trial No. 601 of 2013 (S.J.)/31 of 2017 (arising out of Paraiya P.S. case No. 89 of 2012 corresponding to G.R. No.4159 of 2012) are set aside. The appellants of the aforesaid appeal are acquitted of the charges



levelled against them.

49. The appellant No.1, namely Dharmendra Das, who is in custody, is directed to be released from the jail forthwith unless required in any other case.

50. As far as the appellant No.2 Bindu Devi is concerned, since she is on bail, she is discharged from the liability of her bail bonds.

51. Accordingly, the aforesaid appeal, i.e., Criminal Appeal (DB) No.842 of 2017 stands allowed.

(Mohit Kumar Shah, J)

I agree
Nani Tagia, J:-

(Nani Tagia, J)

Narendra./-

AFR/NAFR	AFR
CAV DATE	25.02.2025
Uploading Date	16.05.2025
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