

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (DB) No.1231 of 2017**

Arising Out of PS. Case No.-88 Year-2005 Thana- KARJA District- Muzaffarpur

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1. Abdul Alim, Son of Late Md. Diljan,
2. Md. Sarfaraz, Son of Abdul Alim,
3. Md. Aftab, Son of Abdul Alim.
4. Md. Kalam, son of Late Aas Mohammad,
5. Md. Sarafuddin @ Rudal, Son of Late Md. Haneef.
6. Md. Mansoor, Son of Md. Kasim, resident of village- Aina, Vishunpur, P.S.-  
Karja, District- Muzaffarpur.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

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**Appearance :**

For the Appellants	:	Mr. Ajay Kumar Thakur, Advocate
	:	Mrs. Bela Singh, Advocate
	:	Mr. Rajeev Ranjan, Advocate
For the Respondent	:	Mr. Ajay Mishra, APP

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**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI  
and  
HONOURABLE MR. JUSTICE DR. ANSHUMAN  
ORAL JUDGMENT  
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

**Date : 11-12-2024**

The present appeal, filed under Sections- 374(2) and 389(1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code'), arises out of the judgment of conviction dated 21.08.2017 and the order of sentence dated 25.08.2017 passed by learned Additional Sessions Judge, XIV, Muzaffarpur, in S.T. No.114 of 2006, arising out of Karja P.S. Case No.88 of 2005, whereby and whereunder the appellants have been convicted for



the offences punishable under Sections 302 and 201/34 of the Indian Penal Code (hereinafter referred to as 'IPC') and have been sentenced to undergo imprisonment for life and a fine of Rs. 5,000/- each for the offence under Section 302 of IPC, rigorous imprisonment for three years and a fine of Rs. 5000/- each for the offence under Section 201 of IPC. In default of payment of fine, they have been ordered to undergo three months simple imprisonment each. All the sentences have been ordered to run concurrently and period spent under trial will be counted under sentences.

2. The prosecution story in brief is as under:

2.1. The prosecution case is based on the *far-d-beyan* of the informant Jaffar Alam, recorded by the Officer-In-Charge of Karja Police Station on 30.06.2005, at about 14.10 hours, that on 27.06.05, a *baraat* arrived at his village and his son Naqui Alam, after taking meal, left the house at 8:00 O'clock to see that *baraat*. Though the *baraat* returned, his son did not return by 10 o'clock in the night. All the family members started making inquiry about him from their relatives, neighbours, and the persons, who arrived at the *baraat*, and other acquaintances, but could not find his whereabouts. On the next day, i.e., on 28.06.2005, a *Sanha* with regard to missing of child was got



entered in the police station diary, while keeping the search on. It is further stated in the *fard-beyan* that in course of search, one person informed the informant that his son was seen standing near the *baraat* procession where besides him, his co-villagers Abdul Alim, Md. Mansur and Sarfaraj Alam were also present there, closely following his son. At some distance, Aftab Alam, Md. Kalam and Sarfuddin @ Rudal, all co-villagers, were also present. It is further stated in the *fard-beyan* that a case is already going on between the aforesaid persons and the informant as the nephew of the informant, namely, Md. Chand, had been murdered by the said persons in the year 2003, in which case Abdul Alim, Sarfaraj Alam, Md. Kalam and Sarfuddin were accused and evidence was to be adduced in the said case. It is further stated that some days ago, Alim, Sarfaraj Alam and Kalam warned the informant of dire consequences, if that case was not settled, to which he did not pay heed and continued his daily work as usual as he did not apprehend that any such untoward occurrence might happen. On 30.06.05, the villagers of the village Ziun raised an alarm that a decomposed dead body has been found in the bush near the pond of the *Chawar* situated to the south to the village Vishunpur. Upon hearing *hulla*, the informant also reached there and saw the dead body dumped in the pond, which was that of his son Naqui Alam.



The dead body was in decomposed state and acid had been poured on it, muscle of both legs and stomach were in decomposed state. Apart from that, fingers of the right hand had been severed and foul smell was emanating from the dead body. A part of the body also got disappeared so as to conceal the identity and destroy the evidence. It is further stated that upon seeing the dead body of his son and for the reason that those people had been roaming around his son, he realized that his son was kidnapped and eliminated because he did not yield to the pressure of settling the ongoing case from members of the *Baraat* by Abdul Alim, Aftab Alam, Sarfaraj Alam, Md. Mansur, Md. Kalam and Sarafuddin @ Rudal and others. After taking his son to *Chawar* and finding the deserted place there, they had killed him in the pond and to conceal the evidence and hide the identity, they had thrown acid on his face, legs, and other parts of the body and dumped his body into a bush so that it would be eaten by animals, but cattle herders found it and raised an alarm after reaching into village, whereafter the dead body of his son was recovered. It is further stated in the *fard-beyan* that the informant was of firm belief that his son has been murdered by Abdul Alim and other five above mentioned persons because of old animosity, and with a view to conceal the evidence,



they dumped the dead body in the pond which lies in a deserted place in the *Chawar*.

2.2. After recording of the *fard-beyan* of the informant, formal FIR came to be registered before Karja Police Station, bearing Karja P.S. Case No. 88 of 2005 for the offences punishable under Sections 302, 201/34 of the Indian Penal Code.

2.3. After registration of the FIR, the Investigating Officer commenced the investigation and during the course of the investigation, he recorded the statement of the witnesses and collected evidence and thereafter filed the charge-sheet against the appellants-accused before the concerned Magistrate Court. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the same to the Sessions Court under Section 209 of the Code, where the same was registered as Sessions Trial No. 114/2006.

3. Before the trial court, the prosecution examined 08 witnesses and also produced documentary evidence. Thereafter, the statement of the accused under Section 313 of the Code came to be recorded wherein they pleaded not guilty.

3.1. After conclusion of the trial, the trial court passed the impugned judgment of conviction and the order of



sentence, against which the appellants/convicts have preferred the present appeal.

4. Heard Mr. Ajay Kumar Thakur learned counsel for the appellants assisted by Mrs. Bela Singh and Mr. Rajeev Ranjan and Mr. Ajay Mishra, learned A.P.P. for the respondent State.

5. Learned counsel for the appellants would mainly submit that, in the present case, there is no eye-witness to the incident in question and the case of the prosecution rests on circumstantial evidence. The prosecution has miserably failed to complete the chain of circumstances from which it can be established that the appellants herein have kidnapped the deceased and thereafter killed him.

5.1. It has further been submitted that though the prosecution has projected PW 4 as a witness, who has seen some of the accused carrying one boy on the shoulder of one of the accused, the said witness could not identify as to who was that boy. Even otherwise, it is revealed from the deposition of PW 4 that he has seen some of the accused with the boy during night hours and there was no light at that time.

5.2. Learned counsel further submits that while recording the further statement of the accused under Section 313



of the Code, incriminating material was not put to the accused, as a result of which prejudice has been caused to the appellants/accused. Learned counsel, therefore, urged that this appeal be allowed and the impugned judgment and order be quashed and set aside.

6. On the other hand, learned Additional Public Prosecutor has opposed the present appeal. Learned APP would mainly submit that though the present is a case of circumstantial evidence, the prosecution has proved the theory of last seen together by leading cogent evidence by examination of PW 4 as a prosecution witness. The said witness has seen some of the accused with one boy during night hours and, therefore, it was the duty of the defence to explain who was that boy. However, the defence has failed to discharge the said burden.

6.1. Learned APP further submits that there was a motive on the part of the appellants for commission of the alleged offence and the said aspect has been specifically stated by the informant at the time of giving his deposition before the Court. The prosecution has proved the motive on the part of the accused for commission of the alleged offence. Thus, the prosecution has proved the case against the appellants beyond reasonable doubt. Therefore, the trial court has not committed any error by passing



the impugned judgment and order. Learned APP, therefore, urged that the appeal be dismissed.

7. We have considered the submissions canvassed by learned counsel appearing for the parties and also perused the materials placed on record. At this stage, it is pertinent to deal with the evidence of the witnesses. The prosecution has examined 08 witnesses.

8. PW 1, Dr. Mumtaz Ahmad, the doctor, who was then posted in S.K. Medical College, has conducted the *post mortem* examination of the dead body of the deceased Naqui Alam and found as under: -

*“Body was average built. Rigor mortis was absent. Body was in the process of decomposition. Maggots were crawling over the body. Hairs completely lost.”*

*Following ante-mortem injuries were found:*

*(I) Incised wound with clear cut margin was found on right hand 2” below wrist joint cutting ulna carpal bone with loss of all fingers and part of the palm.*

*(II) Abrasion on upper part of front and neck 1-1/2”x1/2”.*

*On dissection the sub-cutaneous tissue of neck was congested and lacerated with fracture and tracheal rings with blood clot.*

*Deceased died due to asphyxia as a result of pressure over neck by injury number II. Injury No. I may be*



*caused by some heavy sharp cutting weapon. Time elapsed since death within 80 to 90 hours.”*

8.1. The defence declined to cross-examine the said witness.

9. PW 2, Razi Ahmad, has deposed in his examination-in-chief that he knows informant Zafar Alam, the age of his son Naqui Alam was 8-10 years. The said boy went missing on the day one *baraat* had arrived at his village. A search was made for the missing boy, however, his decomposed dead body was found from a dry pond after three days and the body was identified by the clothes. He has further deposed that Zafar was on inimical term with Alim and Kalam and their family because a case of murder of the nephew of Zafar, namely, Chand, was going on with them and the accused persons of that case were pressurizing Zafar (informant) to compromise that case.

9.1. In his cross-examination PW 2 deposed that he did not go to see the *baraat* that day. In the morning, he came to know that son of Zafar was missing since night. He has further deposed that he went to the pond and saw the decomposed body of the deceased boy which was eaten away by the animals. He could not tell about the colour of the clothes and said that underwear was not there on the body of the deceased. He deposed that Zafar Alam



is his co-villager and that Alim never discussed about compromise in his presence.

10. PW 3, Md. Quddus, has deposed in his examination-in-chief that he knows Zafar Alam (Informant) and Naqui Alam (deceased) was his son who was about seven years old at the time of incident. Incident took place about two and a half years back. Deceased went missing on the day one *baraat* had arrived in the relation of the accused. A search for deceased was made. Dead body of the deceased was found after two-three days from a dray pond and he had also gone to collect the dead body and identified the deceased. He has also deposed that family of informant and the accused persons were on inimical terms because of complicity of the accused persons in the murder of nephew of the informant and the accused persons used to threaten the informant to enter into compromise in that case.

10.1. In his cross-examination, PW 3 has deposed that he is a retired teacher. He does not remember the date of the incident. It was 8:00 P.M. He does not have the knowledge as to wherefrom the *baraat* had come, but the marriage was of the daughter of one Muslim. *Baraat* arrived at 4:00 P.M. He had not participated in the *baraat*. The house of Muslim is across the road. He came to know about missing of the deceased from the



grandmother of the deceased. He was not the one who went in search of deceased. The body of deceased was decomposed, but was in a state that it could be identified and *Darogaji* had not visited the spot in his presence. He could not recall that he told the police that the dead body of the deceased was recovered from the pond. He denied the suggestion that since he belongs to the caste of the informant, he is giving false deposition. He deposed that the accused persons used to threaten the witnesses of the case in his presence.

11. PW 4, Junaid Alam, has deposed in his examination-in-chief that he is acquainted with the informant and the accused persons. The incident took place on 27.06.2005, when he was at his home. He went to attend the nature's call at around 10:00 PM. He saw that Sarfaraz Alam, Abdul Alim, Md. Kalam, Sarafuddin and two-four unknown persons were going. Sarfaraz and Kalam were carrying a boy on their shoulder. When he asked, they ignored him and went towards east. In the same night marriage at Muslim Mian's house was being solemnized when the incident took place. He came home and went to sleep. In the next morning, he went to Muzaffarpur for his job. When he returned to village on 30.06.2005, he came to know that son of informant, namely, Naqui Alam, has been killed.



11.1. In his cross-examination, PW 4 has deposed that his father is “Hazi” a “Hafiz” and he used to drive his own vehicle. He used to visit his village home at an interval of a week-ten days. One case with regard to custom is pending against him in Muzaffarpur Court. He also deposed that lavatory is there in his house, both inside and outside. He has also deposed that it was a dark night and there was no source of light in his house. Therefore, he went outside to attend the nature’s call. He saw the boy when he was going outside to attend the nature’s call, but he did not tell anyone about it nor he thought it proper to inform the police about it. He met the informant on 30.07.2005. He did not visit the place where the dead body was found nor did he show the spot to police where he saw the accused persons carrying the boy. He further deposed that the distance of his house from that of the informant is about 10/12 *laggi* (yards) and one house is there between the two. The distance of the house of Md. Muslim from that of Alim is 5/6 yards. He has not seen nor talked with the accused persons after the date of the incident, i.e., 30.06.2005. He further deposed that he did not tell the police that he asked Safaraz and Kalam, who were carrying the boy on their shoulder, as to where they were taking the boy. He further deposed that the accused persons went towards east without paying any heed to him. He told the police



that when he went to his house on 30.06.2005, he came to know that son of the informant has been killed. He denied the suggestion that he was not present at his house on the date of incident and he did not see anything. He also denied the suggestion that he has deposed against the accused persons since they have not helped him in the case pending against him. He also deposed that it is not a fact that the accused persons have not committed such act.

12. In his examination-in-chief, PW 5, Ram Naresh Paswan, the Investigating Officer, has deposed that he took charge of the investigation of the case from earlier IO Md. Ayub on 03.01.2006. He conducted raids after assuming the charge of investigation to arrest the accused persons. He came to know on 28.01.2006 that four accused persons have surrendered in the court. After verifying the records, he came to know that accused Md. Sarfaraz, Md. Aftab, Md. Kalam and Md. Mansur have surrendered.

12.1. In his cross-examination he deposed that after perusing the case diary, he conducted raids to arrest the accused persons in furtherance of the investigation.

13. PW 6, Md. Ayub, is the first IO of the case and he has deposed in his examination-in-chief that while he was posted as S.H.O. Karja P.S., he got an information on 30.06.2005



in the evening that mutilated dead body of the son of the informant has been found from the bushes near the pond. A *sanha* entry was made in the station diary on 28.06.2005 with regard to missing of Naqui. On receiving the information, he made necessary entry and rushed for the place of occurrence, where he arrived at noon. He prepared inquest of the dead body and also recorded statements of the witnesses present there. The inquest report was signed by two witnesses and marked as ext.-2. Thereafter, he recorded the *fard-beyan* of the informant in his own handwriting, which has been marked as ext.-3. Thereafter, the dead body was sent to SKMCH for *post mortem*. He came back to the police station and registered FIR. He also recorded the statements of Wasi Ahmad and Md. Kalim while taking the dead body from SKMCH. The spot from where the dead body was recovered was a bush northward to a pond having bank height of nearly 12' situated 300-400 yards south-east from village Aima Bishunpur. Hairs of the dead body was found at a distance of 20 feet in the west direction from the spot where the dead body was found and it appears that the killing was committed there itself, where a white coloured half-vest was recovered. Burnt grass was also found there. It was a deserted place. He has further deposed that he arrested one accused Abdul Alim during raid. He, under the direction of the Senior Police



Officer and on the basis of evidence collected during investigation, found the charges against two accused Abdul Alim and Sarafudin @ Rudal true and submitted charge-sheet against them continuing investigation against other four accused persons. Later on, he was transferred and he handed over the charge of investigation to the then In-charge of the police station and assumed charge at the new place of posting.

13.1. In his cross-examination, PW 6 has deposed that details of the true copy of missing *sanha* is contained in paragraph 10 of the case diary. He had deposed that nothing noteworthy is mentioned in the case diary.

14. PW 7, Zafar Alam, who is the informant and the father of the deceased boy, has deposed in his examination-in-chief that the occurrence took place on 27.06.2005. At about 8 PM, his son went to see the marriage procession and as he did not come back till 10 PM, he searched for him, but did not find him. On the next day, he went to the police station and gave information regarding missing of his son. He has further deposed that he was informed by one person that Abdul Alim, Md. Mansoor and Sarfaraz Alam, were standing behind his son and at some distance Md. Kalam, Sarfuddin and Sarfuddin were also standing. These persons had earlier killed his nephew Md. Chand and a case was



already pending against them with regard to that incident. He further stated that the dead body of his son was found on 30.06.2005 from inside a bush near the pond. Upon hearing *hulla*, he went to pond and saw the dead body of his son lying there and acid had been poured on it and all the five fingers of his right hand were severed and no cloths were there on his body. He deposed that *Darogaji* recorded his statement, on which he put his signatures, which came to be marked as ext.-4 and Wasi Ahmad also affixed his signature, which was marked as ext.-4/1.

14.1. In his cross-examination PW 7 has deposed that Chand was his nephew and he was neither the informant nor a witness in the murder case of Chand. The accused persons used to threaten him to withdraw the case. He had given an information regarding the same, however, he does not remember as to whom he had given that information. He has further deposed that it is not a fact that he has implicated the accused person in the present case because of the enmity. He further deposed that Md. Shamshad, who is son of Sami Ahmed, is his son-in-law. Shami and Wasi are brothers. Son of Wasi, Rafi @ Imtiyaz Alam had contested panchayat election against one of the accused persons and had lost the election. Chand also contested the election for the post of Mukhiya against one Tarkeshwar Giri. He further deposed that



they searched every house in the village looking for the missing boy and people told that the boy was seen in the *baraat* procession. He went to police station with Wasi Ahmad for lodging *Sanha*, he reached police station at about 12 O'clock, wherein he did not name the accused persons. He has again deposed that Md. Shamshad, son of Sami Ahmed, is his son-in-law, son of Wasi Ahmed, Rafi @ Imtiyaz Ali had contested panchayat election against one of the accused persons and lost it. He was not present during the Panchayat elections. Accused Abdul Alim has two sons Mahtab and Sarfaraz. He has further deposed that he had not given statement before the police that the accused persons were following his son. He denied the suggestion that he has given false deposition.

15. PW 8, Md. Kalim, has deposed in his examination-in-chief that the occurrence took place on 27.06.20024. A *baraat* had arrived in the village at the Md. Muslim's place. Accused persons Md. Aftab, Sarfuddin, Kalam and Masoor were present at the *baraat* so also Naqui Alam (deceased) and other persons from the village. The *baraat* arrived at 8 PM. After two hours, he came to know that Naqui Alam, who was 8-9 years old, had gone missing. Despite search, he could not be traced. On 30<sup>th</sup> of the month an alarm was raised that a dead



body has been found in *chaur*, he too went there and saw that it was the dead body of Naqui Alam. He identified accused persons present in the court and claimed to identify others also on seeing them. He further deposed that father of Naqui Alam had an ongoing dispute with the accused persons prior to the occurrence.

15.1. In his cross-examination PW 8 has deposed that the informant is like his brother from village. He operates Lathe machine in Rajasthan and lives there. He was in the village for two and half years to three years at the time of occurrence. He has nothing to do with the enmity between the two parties. He has further deposed that on 30.06.2005 he came to know that a dead body has been found, he also went there. He came to know about everything on that date. He deposed that he had stated before the police that so many boys were dancing in the *baraat* procession. He denied the suggestion that he is falsely deposing on being tutored.

16. We have re-appreciated the entire evidence led by the prosecution. It is revealed from the record that the *fard-beyan* of Zafar Alam (PW 7) was recorded by the police on 30.06.2005 at about 15.10 hours. In the said *fard-beyan*, the informant has stated that on 27.06.2005, at about 8 PM, his son went outside the house with a view to see the marriage procession,



however, his son did not return to the house till 10 PM and, therefore, he and his family members started searching for the boy and inquired with the neighbours and other village people including the persons who were part of the marriage procession. Despite all efforts, they could not get any information with regard to the missing boy and, therefore, on the next date, i.e., on 28.06.2005, the informant gave missing complaint in the police station for which necessary entry was made in the station diary. Thereafter, during the course of search, one person informed him that his son was seen in the company of the accused. It is further stated in the *fard-beyan* that on 30.06.2005, he heard *hulla* from the village people that dead body of one boy is lying in the bushes near the pond. He, therefore, went to the said place and came to know that it was the dead body of his son.

16.1. Thus, from the aforesaid, it is revealed that before the dead body of the deceased was found, the informant did not give the name of the accused while giving missing complaint nor he had disclosed to the police about the name of the person who had informed the informant that son of the informant was seen in company of the accused. Even while giving the missing complaint, the informant did not state that few days before accused Abdul Alim, Sarfaraz Alam and Md. Kalam gave him threats that



the case with regard to killing of his nephew Chand be settled otherwise they will have to face dire consequences.

16.2. From the deposition given by PW 1, Dr. Mumtaz Ahmad, who had conducted the postmortem of the dead body of the deceased, it would reveal that one incised wound and abrasion were found on the body of the deceased and so far as injury No. 1, i.e., incised wound is concerned, specific opinion has been given by the Doctor that the same should be caused by heavy sharp cutting weapon. Further, it is pertinent to note that the so-called weapon, with which the deceased was killed, has not been discovered or recovered by the investigating agency from any of the accused/appellants.

16.3. It is relevant to observe, at this stage, that admittedly there is no eyewitnesses to the incident in question, however, the prosecution has projected PW 4 as the witness, who has deposed before the Court that at about 10 PM on 27.06.2005 when he went outside the house for answering nature's call, he had seen Sarfaraz Alam, Abdul Alim, Md. Kalam, Sarfuddin and other unknown persons and one boy was seen on the shoulder of Sarfaraz. Thus, by examining the aforesaid witness, the prosecution has tried to prove the theory of last seen together. Further, it is revealed from the cross-examination of the said



witness that in paragraph 3 he has admitted that there is a toilet in and outside his house and it was dark night on the date of the said incident, however, as there was no electricity in the house, he went outside the house with a view to answer the nature's call. He has also admitted that he did not inform to the police immediately with regard to the said aspect. The said witness also admitted that he did not point out to the police the place where he had seen the accused in company with the deceased boy. It is relevant to observe that in his entire deposition, PW 4 has not specifically stated that the boy, who was seen on the shoulder of Sarfaraz and Kalam, was the deceased boy, who was son of the informant. Thus, we are of the view that from the deposition given by PW 4 even the theory placed by the prosecution with regard to the last seen together is not duly proved. Thus, simply relying upon the deposition given by PW 4, conviction of the appellants cannot be recorded.

16.4. Another contention has been raised by the learned APP that the prosecution has proved the motive on the part of the appellants/accused for commission of the alleged offence. With a view to appreciate the aforesaid submission, we have gone through the deposition given by PW 7, the informant. In his examination-in-chief, PW 7 has specifically stated that he along



with his family members searched for the missing boy during night hours, however, whereabouts of his son could not be found and, therefore, he gave missing complaint to the concerned police station and after giving the said complaint, one person gave information that the accused were following his son. However, at this stage, it is relevant to note that the informant did not give the name of that person who gave information to him and even that person has also not been examined by the prosecution. Further, it would reveal from the cross-examination of PW 7 that specific suggestions were put to the said witness that one of the relatives of the informant contested panchayat election against one of the accused and his relative lost the said election. He has also admitted that Chand was his nephew, however, in the said case he is neither the informant nor the witness. He has also admitted that he did not remember the date and place where the threats were given to him by the accused. Further, as observed hereinabove, in the missing complaint given by the informant on 28.06.2005, the aspect of giving threats by the accused to the informant was not disclosed by him. Thus, from the evidence led by the prosecution, it can be said that the prosecution has even failed to prove the motive on the part of the accused to kill the son of the informant because PW 7 was not the informant and/or witness in the case of killing of nephew



of the PW 7. Thus, there was no reason for the present appellants/accused to give threat to the present informant and asking him to withdraw the proceeding with regard to the death of the nephew of the informant.

17. In the case of ***Sharad Birdhichand Sarda Vs. State of Maharashtra***, reported in (1984) 4 SCC 116, the Hon'ble Supreme Court has observed in paragraph 150 to 160 as under:

*“150. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a court.*

*151. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh 1952 SCR 1091 : (AIR 1952 SC 343) . This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail v. State of Uttar Pradesh, (1969) 3 SCC 198 and Ramgopal v. State of Maharashtra, AIR 1972 SC*



656. *It may be useful to extract what Mahajan, J. has laid down in Hanumant's case (at pp. 345-46 of AIR) (supra):*

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

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

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

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

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



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

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

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

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

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

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

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

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

*156. This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on*



*pure moral conviction. Horry's case (supra) was approved by this Court in Anant Chintaman Lagu v. State of Bombay, (1960) 2 SCR 460 : (AIR 1960 SC 500). Lagu's case as also the principles enunciated by this Court in Hanumant's case (supra) have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases — Tufail case (1969) 3 SCC 198 (supra), Ramgopal's case (AIR 1972 SC 656) (supra), Chandrakant Nyalchand Seth v. State of Bombay (Criminal Appeal No 120 of 1957 decided on 19-2-1958), Dharambir Singh v. State of Punjab (Criminal Appeal No 98 of 1958 decided on 4-11-1958). There are a number of other cases where although Hanumant's case has not been expressly noticed but the same principles have been expounded and reiterated, as in Naseem Ahmed v. Delhi Administration, (1974) 2 SCR 694 (696) : (AIR 1974 SC 691 at p. 693), Mohan Lal Pangasa v. State of U.P., AIR 1974 SC 1144 (1146), Shankarlal Gyarsilal Dixit v. State of Maharashtra, (1981) 2 SCR 384 (390) : (AIR 1981 SC 765 at p. 767) and M.G. Agarwal v. State of Maharashtra, (1963) 2 SCR 405 (419) : (AIR 1963 SC 200 at p. 206) a five-Judge Bench decision.*

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

*“But in a case like this where the various links as stated above have been satisfactorily*



*made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation. . . such absence of explanation or false explanation would itself be an additional link which completes the chain.”*

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

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

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

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

159. *If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was examined in Shankarlal’s case (AIR 1981 SC 765) (supra) where this Court observed thus:*

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

160. *This Court, therefore, has in no way departed from the five conditions laid down in Hanumant’s case (AIR 1952 SC 343) (supra). Unfortunately, however, the high Court also seems to*



*have misconstrued this decision and used the so-called false defence put up by the appellant as one of the additional circumstances connected with the chain. There is a vital difference between an incomplete chain of circumstances and a circumstance which, after the chain is complete, is added to it merely to reinforce the conclusion of the Court. When the prosecution is unable to prove any of the essential principles laid down in Hanumant's case, the High Court cannot supply the weakness or the lacuna by taking aid of or recourse to a false defence or a false plea. We are, therefore, unable to accept the argument of the Additional Solicitor-General."*

18. From the aforesaid observation made by the Hon'ble Supreme Court, it can be said that certain essential conditions must be satisfied, such as the accused 'must be' and not merely 'may be' guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions. The facts so established should be consistent only with the hypothesis of the guilt of the accused. Further, the circumstances should be of a conclusive nature and tendency and there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

19. Keeping in view the aforesaid decision rendered by Hon'ble Supreme Court, if the evidence of the present



case is appreciated, we are of the view that the prosecution has miserably failed to establish the case against the appellants herein beyond reasonable doubt, despite which the trial court has passed the impugned judgment and order of conviction and sentences against the appellants. Hence, the same deserves to be quashed set aside.

20. It is pertinent to observe, at this stage, that in a case of circumstantial evidence, motive assumes importance, whereas in the present case, the prosecution has failed to point out motive on the part of the accused to commit the alleged offences.

21. Accordingly, the impugned judgment of conviction dated 21.08.2017 and order of sentence dated 25.08.2017 passed by learned Additional Sessions Judge-XIV, Muzaffarpur, in connection with Sessions Trial No.114 of 2006, arising out of Karja P.S. Case No.88 of 2005/G.R.No. 1047/2005 is quashed and set aside. The appellants are acquitted of the charges levelled against them by the learned trial court.

22. Since the appellants no. 1, 3, 5 and 6, namely, Abdul Alim, Md. Aftab, Md. Sarafuddin @ Sarafuddin @ Rudal and Md. Mansoor respectively, are on bail. They are discharged of the liabilities of their bail bonds. Appellant no.2, namely, Md. Sarfaraz, and appellant no.4, namely, Md. Kalam, are in jail, they



are directed to be released forthwith, if their presence are not required in any other case.

23. The present appeal stand allowed.

**(Vipul M. Pancholi, J)**

**(Dr. Anshuman, J)**

Pawan/-

<b>AFR/NAFR</b>	AFR
<b>CAV DATE</b>	N/A
<b>Uploading Date</b>	18.12.2024.
<b>Transmission Date</b>	18.12.2024.

