

Reserved on 04.04.2022

Delivered on 31.05.2022

A.F.R.

Case :- CRIMINAL APPEAL No. - 4098 of 2004

Appellant :- Suresh Chandra

Respondent :- State of U.P.

Counsel for Appellant :- S.K. Tiwari, Shashank Shekhar Giri

Counsel for Respondent :- Govt. Advocate

Hon'ble Mrs. Sunita Agarwal, J.

Hon'ble Shamim Ahmed, J.

1. This appeal is directed against the judgment and order dated 22.07.2004 passed by Additional Sessions Judge Fast Track Court Maharajganj in Session Trial No. 19 of 2002, State Vs. Suresh Chandra, arising out of Crime No. 128 of 2002, under Sections 302 and 201 I.P.C., Police Station Farendra, District Maharajganj, convicting the appellant and sentencing him to undergo imprisonment for life under Section 302 IPC, undergo three years rigorous imprisonment under Section 201 IPC and to pay fine of Rs. 2000/- and in default of payment of fine to further undergo six months imprisonment. All the sentences were directed to run concurrently.

#### INTRODUCTORY FACTS

2. The prosecution case, in brief, is that a written report dated 03.02.2002 was given by Ram Kishore, S/o Shiv Harsh resident of Gram Ranipur Chauraha, P.S. Purandarpur District Maharajganj with the averment that his nephew Suresh Chandra, S/o Mewa Lal, who was slightly deranged for about a week, went missing since night of 01.03.2002, without telling anyone. On the next day, he came at around 12:00 o'clock in the noon and took his younger son Amarnath and went out of the house quietly. The first informant along with other family members searched Amarnath in the village and nearby places but his whereabouts could not be known. When the first informant was searching Amarnath in the

morning at about 8.00 a.m. on 03.02.2002, the other family members enquired from the appellant about his son Amarnath, whereupon he started doing *maarpeet* with them. When the villagers took the appellant to one side and asked about the child, the appellant told that he had murdered his own son. On being further enquired, the appellant told that he had thrown the dead body of the child in the gutter of the railway line near Bargadwan village. When the first informant along with other villagers went there, the dead body of son of Suresh Chandra namely Amarnath was found lying in the water. Leaving the dead body on the spot, the first informant went to lodge the report.

3. On the basis of the aforesaid written report, a first information report was registered on the same day, i.e., 03.02.2002 being Crime No.128 of 2002 for the offence under Section 302 and 201 IPC at the Police Station Farenda District Maharajganj. The investigation of the case was entrusted to S.I. Ganesh Prasad Shukla. On 03.02.2002, brief details of offence was made in the G.D. (Ext. Ka.4). On 03.02.2002 itself, a special report was forwarded from P.S. Farenda, carbon copy of which is Ext. Ka.5. The Investigating Officer went to the spot and prepared Panchnama of the dead body which is Ext. Ka.6. The dead body of deceased Amarnath was found on the banks of railway gutter. Thereafter, inquest of the body was conducted in the presence of witnesses and for finding out the exact reason of death, Photo Nash (Ext. Ka.7), Police Paper No.13 (Ext. Ka.8), letter to Inspector Gorakhpur (Ext. Ka.9), letter sent to CMS Gorakhpur (Ext. Ka.10) were prepared and the body was sent for post mortem examination after giving custody to Constable Surendra Nath Maurya and Constable Pawan Kumar Singh. The Investigating Officer inspected the spot on 03.02.2002 and prepared site plan (Ext.Ka.11). The return of SHO was disclosed in the Rapat and accordingly, Rojnamcha was prepared, which is Ext. Ka.12.

4. The written report of the first informant was mentioned in Parcha No.1 of case diary on 03.02.2002. The written report of informant, Nakal Rapat, Nakal Panchnama and the statement of inquest witnesses namely, Uma Shankar Chaurasia, Jai Prakash Sharma, Sri Vindeshwari, Sri Bechan and Sri Ram Kishore. Thereafter statement of neighbours namely Krishna Dev Mishra, Sri Ori Lal, Rajman Yadav and Sri Nibu Lal and the statements of Shopkeeper Ram Kewal and villager Shakir under Section 161 CrPC were mentioned in Parcha No.2 of case diary on 04.02.2002. The statements of other witnesses were mentioned in Parcha Nos. 3 to 6 of the case diary.

5. After recording statements of witnesses and collection of evidence, charge-sheet no.35 of 2002 for offence under Section 302 and 201 IPC was submitted against accused Suresh Chandra and the case was remitted to the Court of Sessions for trial.

6. During the course of investigation, post mortem was conducted on 04.02.2002 by Dr. R.A.N Rai at District Hospital, Gorakhpur. According to the post mortem report, contused traumatic swelling of size 6.0 cm x 4.0 cm on back of head on entering haematoma was present underneath. There was haematoma on membrane and brain all over. In the opinion of doctor, the cause of death was coma as a result of ante mortem injury. The proximate time of death was about two days back and was caused due to some hard blunt object.

7. The Chief Judicial Magistrate, Maharajganj vide order dated 07.05.2002 remitted the case to the Court of Sessions for trial. Thereafter, the Sessions Judge, Maharajganj vide order dated 11.07.2002 transferred the case to the court of Additional Sessions Judge, Maharajganj. The trial Court framed charges against accused Suresh Chandra for the offence under Section 302 and 201 IPC. The accused pleaded not guilty and claimed to be tried. Thereafter,

the case was transferred to the court of Additional Sessions Judge (Fast Track), Maharajganj by Sessions Judge, Maharajganj vide order dated 01.07.2003 for disposal.

#### **PROSECUTION EVIDENCE**

8. To bring home the guilt of the accused appellant, the prosecution examined as many as twelve witnesses, viz.- informant Ram Kishore(P.W.1), Dharmraj (P.W.2), Uma Shankar Chaurasia (P.W.3), Bindeshwari Pandey (P.W.4), Krishnadev (P.W.5), Rajman Yadav (P.W.6), Dr. R. N. Rai (P.W.7), Sub Inspector Ganesh Prasad Shukla (P.W.8), Smt. Gyanwati Devi (P.W.9), Bechu Prasad Chaurasia (P.W.10), Indrawati (P.W.11), Vijaylaxmi (P.W.12).

9. After completion of the prosecution evidence, the statements of the accused appellant was recorded under Section 313 Cr.P.C. He was confronted with the incriminating evidence adduced against him during the course of trial, which he denied and pleaded innocence and stated that he was falsely implicated. In defence the accused appellant produced his wife as a witness, Smt. Meena Jaiswal (D.W.1).

#### **TRIAL COURT FINDINGS**

10. The trial court after examining the evidence available on record believed the evidence of prosecution witnesses trustworthy and reliable, hence, by means of the impugned judgment and order convicted and sentenced the accused appellant for the offence as stated hereinabove.

11. Hence, this appeal at the behest of the convicted appellant.

12. Heard Sri S. K. Tiwari, learned counsel for the appellant and Sri Patanjali Mishra, learned AGA for the State-respondent and scanned the entire record and considered the arguments advanced.

**SUBMISSIONS ON BEHALF OF APPELLANT**

**13.** Learned counsel for the appellant has submitted that the accused-appellant has been convicted and sentenced under Sections 302 and 201 I.P.C. without there being any concrete evidence against him. The judgment of the trial court is based on surmises and conjectures. It is a case of circumstantial evidence and without there being a chain of circumstances, the appellant has been convicted.

**14.** To substantiate the aforesaid submission, it has been argued by the learned counsel for the appellant that the informant Ram Kishore (P.W.1) had lodged the first information report against the appellant merely narrating a false story. No one had seen the alleged incident and there is no eye witness account of the alleged incident. There are discrepancies in the testimonies of the witnesses.

**15.** Learned counsel for the appellant further submitted that in the postmortem of the deceased a contused swelling of size 6.0 c.m. x 4.0 c.m. on the back side of head was found and on entering haematoma was present underneath and there was haematoma on membrane and brain all over. In the opinion of doctor cause of death of the deceased was due to coma. The death was about two days back and was caused by some hard and blunt object.

**16.** Learned counsel for the appellant further argued that the case rests on circumstantial evidence but none of the circumstances from which inference of guilt against the accused appellant can be drawn could be established by the prosecution. The mental condition of the appellant was not sound, he was a person of unsound mind at the time of the alleged incident and was suffering

from mental disorder and was in fact insane within the meaning of Section 84 I.P.C.

17. Learned counsel for the appellant has also argued that motive to commit murder of deceased Amarnath was not proved by the prosecution but even then, the trial court has convicted the accused appellant by misappreciation of the evidence adduced by the prosecution.

#### **SUBMISSIONS ON BEHALF OF STATE RESPONDENT**

18. Learned counsel appearing for State-respondent, on the other hand, submitted that though the case rests on circumstantial evidence, but the chain of circumstances was established on the basis of cogent evidence available on record which clearly indicate involvement of the accused-appellant in the commission of the crime in question.

19. It is pointed out that the accused-appellant committed murder of Amarnath (deceased) who was his own son and threw his body. The dead body of the deceased Amarnath was discovered at the pointing out of the accused appellant. All these circumstances established the guilt of the accused appellant in committing the murder of the deceased.

#### **ANALYSIS**

20. We have heard learned counsel for the parties and gone through the material brought on record. It is manifestly clear that the trial Court has convicted the accused appellant merely on the basis of testimonies of the witnesses.

21. To examine the guilt of the accused appellant, we must appreciate the evidence adduced by the prosecution. The present case being a case of circumstantial evidence, it is a well settled law that where there is no direct evidence against the accused and

the prosecution rests its case on circumstantial evidence; the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused. In other words, there must be a chain of evidence so 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. All the links in the chain of circumstances must be complete and should be proved by cogent evidence.

**22.** In the case of **Padala Veera Reddy v. State of A.P. : AIR 1990 SC 79**, wherein the Hon'ble Supreme Court laid down the guiding principle with regard to **appreciation of circumstantial evidence:-**

“(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

**23.** In the case of **State of U.P. v. Ashok Kumar Srivastava : [1992] 1 SCR 37**, the Apex Court pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence

relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

**24.** In the case of **Sanatan Naskar and Anr. v. State of West Bengal** reported in **(2010) 8 SCC 249**, the Hon'ble Supreme Court propounded as under:-

"**13.** There cannot be any dispute to the fact that it is a case of circumstantial evidence as there was no eye witness to the occurrence. It is a settled principle of law that an accused can be punished if he is found guilty even in cases of circumstantial evidence provided, the prosecution is able to prove beyond reasonable doubt complete chain of events and circumstances which definitely points towards the involvement and guilt of the suspect or accused, as the case may be. The accused will not be entitled to acquittal merely because there is no eye witness in the case. It is also equally true that an accused can be convicted on the basis of circumstantial evidence subject to satisfaction of accepted principles in that regard. "

**25.** In regard to **appreciation of circumstantial evidence**, the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra : 1984 Cri. L.J. 178** was pleased to observe in paras-150 to 158, which are quoted below:-

"**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 than 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 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 fundamental and basic decision of the Apex Court is **Hanumant v. The State of Madhya Pradesh**.<sup>(1)</sup> This case has been uniformly followed and applied by this Court in a large number of later decisions upto date, for instance, the cases of **Tufail (Alias) Simmi v. State of Uttar Pradesh**<sup>(2)</sup> and **Ramgopal v. State of Maharashtra**<sup>(3)</sup>. It may be useful to extract what Mahajan, J. has laid down in **Hanumant's** case (*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 & Anr. v. State of Maharashtra** where the following 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**,<sup>(1)</sup> 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 up on 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. The State of Bombay*<sup>(2)</sup> 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's case* (supra), *Ramgopals case* (supra), *Chandrakant Nyalchand Seth v. The State of Bombay* (Criminal Appeal No. 120 of 1957 decided on 19.2.58), *Dharmbir Singh v. The 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*<sup>(1)</sup>, *Mohan Lal Pangasa v. State of U.P.*,<sup>(2)</sup> *Shankarlal Gyarasilal Dixit v. State of Maharashtra*<sup>(3)</sup> and *M.C. Agarwal v. State of Maharashtra*<sup>(4)</sup>-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. The State of Bihar**<sup>(5)</sup>, to supplement this 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 started 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 of 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."

**26.** In regard to **motive**, in the case of **Sampath Kumar v. Inspector of Police Krishnagiri : 2010 Cri. L.J. 3889 (SC)**, the Apex Court was pleased to observe in para 15 which is quoted below :-

**"15.** .....One could even say that the presence of motive in the facts and circumstances of the case creates a strong suspicion against the appellant but suspicion, howsoever strong, also cannot be a substitute for proof of the guilt of the accused beyond a reasonable doubt."

**27.** In the case of **Bhagwan Jagannath Markad v. State Of Maharashtra : (2016) 10 SCC 537** the Hon'ble Apex Court summarized the principles for the appreciation of the credibility of witness where there are discrepancies or infirmaries in the statement:

"**19.** While appreciating the evidence of a witness, the Court has to assess whether read as a whole it is truthful. in doing so the court has to keep in mind the deficiencies, drawback and infirmaries to find out whether such discrepancies shake the truthfulness. ...Only when discrepancies are so incompatible as to effect the credibility of the version of witness , the Court may reject the evidence. ...The Court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected accepted."

**28.** In the case of **Ratan Lal vs. State of Madhya Pradesh : 1970 LawSuit (SC) 495**, the Hon'ble Apex Court was pleased to observe in paragraphs-14 and 15 as under:

**14.** We are inclined to agree with the conclusion arrived at by the learned Magistrate. We hold that the appellant has discharged the burden. There is no reason why the evidence of Shyam Lal, D.W.1, and Than Singh, D.W.2, should not be believed. It is true that they are relations of the appellant, but it is the relations who are likely to remain in intimate contact. The behaviour of the appellant on the day of occurrence, failure of the police to lead evidence as to his condition when the appellant was in custody, and the medical evidence indicate that the appellant was insane within the meaning of Section 84, I.P.C.

**15.** We accordingly allow the appeal and acquit the appellant of the offence under Section 435, I.P.C., because at the time of the incident he was a person of unsound mind within the meaning of Section 84 of the Indian Penal Code. His bail bond shall stand cancelled.

Appeal allowed.

**29.** For the sake of convenience, in the present case the testimonies which have been relied upon by the trial court are

being referred hereinafter, which would go to show that **there are material contradictions in their statements**, which cannot be thrown away lightly.

**30.** PW-1 Ram Kishore who is the informant of the case and the grand-father of deceased Amarnath, stated that the incident occurred 1-1/2 years back. He further stated that the incident occurred near the bridge of railway line at the distance of one kilometre towards the south of Purandarpur. He also stated that prior to one week of the incident his nephew Suresh had gone mad and he went somewhere one day before the incident and on the next day he came at 12 o'clock and took his son Amarnath whose age was 8 years and went out of the house. The accused appellant took his son Amarnath from the school itself. Thereafter he came to know only after the children of the school had told him that the accused-appellant Suresh had taken away Amarnath. The first informant along with other family members searched Amarnath in the village and nearby places but his whereabouts could not be known. On the next day at about 7.00 a.m. The accused-appellant himself came to the house and started behaving with the family members like a mad. After some time when the family members and other villagers enquired from the appellant about his son, Amarnath, he started *maarpeet* with them and abused them. When the villagers cajoled and asked about his son, he told that he had murdered his son and thrown his dead body down the gutter of railway line. This witness in his cross-examination stated that Suresh had gone mad one week prior to the incident and during his madness he tried to kill them also. He further stated that the appellant was not having the ability to understand the consequences of the act done by him. He was also not having the ability to differentiate between legal and illegal acts and stated that P.W.1 was not present on the spot at the time of the alleged incident.

**31.** PW-2, Dharmraj, who is the uncle of accused Suresh Chandra and younger brother of PW-1, has reiterated almost the same statement which was made by PW-1 Ram Kishore. He stated that on 2<sup>nd</sup> February, 2002 the son of Suresh Chandra, namely Amarnath fallen sick due to fever. Suresh Chandra took his son saying that he was going for his treatment. Thereafter, the whereabouts of Amarnath could not be known to anyone. On suspicion of some untoward incident, the family members started searching him. On the day of the incident deceased Amarnath had gone to the school in the state of fever itself and after school was over, the accused-appellant took his son from the school. Thereafter, on the next day, in the morning at about 7:00-8:00 o'clock, the accused-appellant came home and on being enquired about his son Amarnath, he told that he had murdered his son and thrown his dead body down the gutter of the railway line. In the cross-examination, PW-2 stated that when the accused-appellant was in the state of madness, during that period he used to assault his family members or neighbours with bricks and danda. During the period of fits of insanity, on many occasions, the accused-appellant had been tied with string. Once before the incident, the accused-appellant had assaulted a person with bricks, due to which he sustained injuries in his head. P.W.2 stated that the Investigating Officer had not recorded his statement regarding this incident. When the statement under Section 161 CrPC of this witness was read over to him, he stated that he did not give the statement and he could not tell as to how it was recorded.

**32.** PW-3, Uma Shankar Chaurasia stated that on 03.02.2002 when he was informed that the dead body of a boy was lying in a ditch near the gutter of the railway line in village Bargadwan Ram Sahai, he went at the spot and came to know that the body was sent to the police station, where the Investigating Officer took his signature on a blank paper. He stated that the inquest was not

conducted before him. In the cross-examination, this witness stated that his signature was taken on a blank paper at the police station. When his signature on the inquest was shown to him he admitted that when the Investigating Officer took his signature, the paper was blank and stated that his signature was taken at the police station.

**33.** PW-4 Vindeshwari Pandey stated that he did not know Suresh of Raniyapur and inquest of deceased Amarnath, son of Suresh, was not conducted before him. He admitted that at the back side of the paper No. 8Ka/2 which is inquest his signature were there, which he did recognize, but stated that when his signature was taken at the last page of the inquest, it was blank and nothing was written on it. This witness stated that the Investigating Officer took his signature, naked dead body was lying in the jeep, but he did not enquire about the dead body from the Investigating Officer. He further stated that he met the Investigating Officer at the side of the railway line of the village and at that time it was 12:00-1:00 o'clock in the day.

**34.** PW-5 Krishna Dev Mishra stated that accused Suresh is the resident of Ranipur Chauraha and his father was Mewa Lal, who was working in BSF Military. Suresh is the only son of Mewa Lal. Accused Suresh was not doing any job and used to roam around the whole day. He stated that Dr. V.P. Chaurasia resides in Ranipur Chauraha itself; Suresh went to the doctor with his son for his treatment, but he did not remember the date and did not know as to where Suresh had gone along with his son after treatment. On the next day, when he met Suresh, but he did not meet Amarnath. On being asked about the deceased Amarnath from accused Suresh, he told that the deceased Amarnath went there from where he came. The dead body of Amarnath was found lying near the bridge of the railway line but he did not go to see it. In

the cross-examination, this witness stated that accused Suresh had gone mad about 10-12 months prior to the incident, his mental condition was not sound. The accused-appellant used to assault people randomly. In a day itself, sometimes he remained in sound mental condition and sometimes in unsound state and when he was in sound state, he used to speak properly. P.W.5 further stated that the accused-appellant had committed the murder when he was in unsound state of mind and was not having the ability to make out difference between legal and illegal acts.

**35.** PW-6, Rajman Yadav, stated that his shop of scrape was at the distance of 20-25 paces from the house of Suresh. Deceased Amarnath was the son of Suresh. The dead body was found lying near the gutter of the Bargadwa railway line. The age of the deceased Amarnath might be 7-8 years. The son was killed by his father accused Suresh who thrown the dead body in the water. He did not know as to why the accused killed his son, but the accused-appellant was of unsound mind. On the day, before to the day, when the dead body of child Amarnath was found, the accused Suresh took the deceased to Dr. Chaurasia at Ranipur Chauraha and thereafter, the child Amarnath did not return to his home. In the cross-examination, this witness stated that when Suresh was in sound mental condition, he used to treat his wife, children and neighbours properly but when he was in unsound state of mind, he some times used to beat people randomly. When accused Suresh had taken deceased Amarnath to the clinic of Dr. Chaurasia, the doctor had given him a dose of medicine.

**36.** PW-7, Dr. R.A.N. Rai stated that, on 04.02.2002, he was posted as Assistant at the District Hospital, Gorakhpur. On 04.02.2002, he conducted the post mortem of the body of Master Amarnath whose age was 7 years. The injuries found the dead body were contused traumatic swelling 6.0 cm x 4.0 cm on back of

head on internal examination haematoma was found present underneath. There was haematoma on membrane and brain all over. The doctor stated that, in his opinion, the cause of death was due to coma as a result of ante-mortem injuries. The proximate time of death was about two days prior to the postmortem and the injury was caused by some hard blunt object. The post mortem examination report was prepared by him, which was exhibited as Ext.Ka.2.

**37.** PW-8 Ganesh Prasad Shukla, who was the S.I. Kotwali Chowki Incharge Collectrate Maharajganj, stated that he was the prior investigating officer of the case and, thereafter, on 06.02.2002, the investigation was entrusted to S.H.O. Sri Arun Kumar Singh, but due to injury in his finger the reports of the proceedings were written by him. In the cross-examination, this witness stated that according to law, the investigation of the case started only after registration of the first information report. It was clearly mentioned in the first information report that the accused was of unsound mind and during the course of the investigation he enquired about the mental condition of the accused from his family members and witnesses but no one told him about any unsound mental condition, that is why he did not get his medical done to ascertain the fact of unsoundness of the accused. P.W.8 further stated that the informant had given his statement during the course of the investigation that accused Suresh was of unsound mind. Except the informant, none of the other witnesses said about the accused being of unsound mind. He had recorded the statement of a neighbour Krishna Dev Mishra, who also stated one week prior to the incident, accused Suresh was not in the sound mental condition. On being confronted that once the mental condition of accused was disclosed by the witnesses, why did he not take steps to ascertain the mental condition of the accused, this witness offered an explanation that the investigation was entrusted to him

only for a period of three days w.e.f. 03.02.2002 to 05.02.2002 and, thereafter, the investigation was handed over to S.H.O. He stated that during three days of investigation he only made searches for accused Suresh Chandra, due to which the mental condition test of the accused or expert opinion could not be done/obtained. This witness further stated that when the accused was arrested, the investigation was with the S.H.O. and that he was present at the time of the arrest.

**38.** PW-9, Smt. Gyanmati Devi, grandmother of the deceased, stated that she had only one son namely accused Suresh and two daughters Neelam and Poonam. Poonam was married but Neelam was unmarried. The deceased Amarnath was the son of accused Suresh and at the time of the incident, the accused-appellant was not in sound mental condition and he had cut his fingers also. Due to his madness, the accused was locked in a room inside the house. She came to know, thereafter, that someone had killed her grand-son and thrown his dead body. The people started asking from her as to why her son was locked in the room while her grand-son was killed. She further stated that Meena, her daughter-in-law was at home at that time and on the day of the incident, deceased Amarnath went somewhere on his own. She further stated that on the day of the incident deceased Amarnath was suffering from fever and Meena went to Dr. V.P. Chaurasia with Amarnath and after taking medicines, she returned back home while the child Amarnath went outside. On confrontation she stated that on 02.02.2002, accused Suresh did not go to Dr. V.P. Charuasia with his son Amarnath for his treatment and she never came to know that after taking medicines, Suresh had gone somewhere else. Her suggestion in this regard had been given categorically denied by P.W.9. A further suggestion was given to P.W.9 that the accused-appellant Suresh had suspicion that the child was not his son as the child's face did not resemble with his face and killed him for

that reason, was categorically denied by P.W.9. She also refused the suggestion that accused Suresh came back on 03.02.2022 in the morning and told that he killed his son Amarnath. The suggestion that she was making a false statement in order to save her son (accused Suresh) was also denied.

**39.** PW-10 Dr. Bechu Prasad Chaurasia stated that, on 02.02.2002 at about 12 o'clock in noon, when he was in his clinic, the wife of Suresh, whose name he did not recollect, came with her son Amarnath and after taking medicines for fever of her son, she along with her son went away. In the cross-examination, he stated that he knew Amarnath and Suresh because they were his neighbours. He came to know that some one had committed murder of Amarnath. He denied the suggestion that when Suresh came to his clinic for treatment of Amarnath, his mental condition was not sound. He further denied that he was making a false statement being neighbour.

**40.** PW-11, Indrawati stated that accused Suresh Chandra was her nephew, he had two sons and two daughters, and out of them one son Amarnath was killed by someone and his dead body was thrown down the gutter near the Bargadwan Ram Sahai. She stated that on the day of the incident due to fever, Suresh had taken Amarnath to show him to Dr. V. P. Chaurasia for taking medicines.

**41.** PW-12, Vijay Laxmi stated that deceased Amarnath was her brother and she did not know as to who had committed his murder. Her brother Amarnath was suffering from fever on the day of the incident and her mother went to Dr. V.P. Chaurasia for taking medicine and thereafter, she returned back home. Thereafter, her brother Amarnath had gone somewhere and could not be found. In the cross-examination, she denied the suggestion that on 03.02.2002 at about 8.00 a.m., in the morning, her father came to home. On being confronted with the portion of her

statement recorded under Section 161 CrPC that she had stated therein that on 03.02.2002 at about 8.00 a.m., when her father came home alone, the family members started enquiring about her brother Amarnath, the appellant (her father) then told that he had killed him, this witness replied that she had not given such a statement and she did not know as to how it was written by the Investigating Officer. She further added that on the day when the dead body of deceased Amarnath was found, her father was already at home, but she could not remember as to from how many days before the incident, he was at home. She denied the suggestion that she was making a false statement in order to save her father.

**42.** After completion of the prosecution evidence, the statement of accused Suresh Chandra was recorded under Section 313 Cr.P.C. on 22.6.2004. The accused produced a witness namely Smt. Meena Jaiswal, his wife as D.W.1, in defence, apart from the documents to prove his innocence. Smt. Meena Jaiswal (D.W.1), in her deposition, stated that the deceased Amarnath was her youngest son. One year prior to the murder of her son mental condition of his husband, i.e., the accused-appellant, was not sound, he used to behave like a person of unsound mind. When her son was murdered then also the mental condition of her husband was not good and was locked inside the house. Whenever his mental condition would be fine he would behave like a fit person and his behaviour was good with her and her son. D.W.1 further stated that one day before the incident she went with her son for taking his medicines, her husband did not go for medicine. When she went for medicine, mental condition of her husband was not good and he was locked inside the house. At about 7:00 p.m. her son went outside to play on his own, and, thereafter, his dead body was found. His husband was not well, therefore, no one asked him about her son and she did not ask her husband about her son even

after 3-4 days of his death, the reason being that mental condition of her husband was not good. D.W.1 has denied the suggestion since her husband had suspicion because the face of the child did not resemble his face and that is why on the pretext of taking medicine of his son, her husband had taken away her son and committed his murder and thrown away his dead body. D.W.1 also denied she is making a wrong statement in order to save her husband.

**43.** Analysing the evidence on record, it may be noted that it is true that the F.I.R. of the incident was lodged as per the story narrated by P.W.1-Ram Kishore and P.W.2-Dharmaj, but they did not see the deceased going along with the accused-appellant before the murder of the deceased or the dead body was found. P.W.1-Ram Kishore and P.W.2-Dharmaj had completely denied in their testimonies that they had seen the deceased along with the accused appellant before the murder of the deceased, hence the very basis of lodging of the F.I.R. against the accused/ appellant becomes doubtful and creates suspicion on the prosecution story.

**44.** So far as the statements given by P.W.1, P.W.2, P.W.3 and P.W.4 are concerned, wherein they have clearly stated that the accused-appellant was a person of unsound mind and was insane at the time of the alleged incident, we may record that not only the Investigating Officer, but the trial court also overlooked this part of the testimony while convicting the accused-appellant. Had the accused Suresh suffering from any mental illness, it could not be ignored. The trial court was under obligation to verify the truth in the testimony of witnesses that the accused-appellant was of unsound mind and was insane.

**45.** The deposition of D.W.1-Smt. Meena Jaiswal also could not be ignored when she had categorically stated that her husband, the accused-appellant, was of unsound mind at the time of the alleged

incident and was locked inside the house when his son had gone missing and died. This testimony of D.W.1 was conveniently overlooked by the trial court while convicting the accused-appellant. It has completely ignored this fact that D.W.1, who is the wife of the accused-appellant and the deceased was whose son, had clearly stated that her husband was suffering from mental illness and he was of unsound mind at the time of the alleged incident. The testimony of D.W.1 carries a weight because of the fact that cannot be ignored she is the real mother of the deceased and her denial about involvement of the accused was categorical.

**46.** We have further perused the report dated 29/30.03.2022 submitted by the Senior Superintendent, Central Jail, Varanasi, pursuant to the order dated 04.03.2022 passed by this Court. The said report contains two enclosures, one a diagnosis by the doctor of the Mental Hospital, Varanasi and the second, report of the Medical Superintendent, Central Jail, Varanasi, which indicate that appellant, Suresh Chandra, S/o Mewa Lal, aged about 60 years, is suffering from mental disorder and still needs treatment for the said disease.

**47.** The instant case purely rests on circumstantial evidence. In order to sustain conviction, a complete chain the circumstantial evidence must be formed which is incapable of explanation of any other hypothesis than that of the guilt of the accused. Such evidence should not only be consistent with the guilt of the accused but inconsistent with his innocence. No hard-and-fast rule can be laid to say that the particular circumstances are conclusive to establish guilt. It is basically a question of appreciation of evidence which exercise is to be done by the Court in the facts and circumstances of each case.

**48.** The evidence tendered in a court of law is either direct or circumstantial. Evidence is said to be direct if it consists an

eyewitness account of the facts in issue in a criminal case. On the other hand, circumstantial evidence is evidence of relevant facts from which, one can, by process of intuitive reasoning, infer about the existence of facts in issue or *factum probandum*. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, at the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic one on one hand and inference of facts to be drawn from them on the other hand. In regard to proof of primary facts, the Court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that facts lead to an inference of guilt of the accused person should be considered.

**49.** It would be significant to add that while dealing with circumstantial evidence there is always a danger that conjecture or suspicion lingering in the mind may take place of proof. Suspicion, however, strong cannot be allowed to take place of proof and, therefore, the Court has to be watchful and ensure that conjectures and suspicions do not take place of legal proof.

**50.** There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistence with the innocence of the accused and must show that in all human probability the act must have been done by the accused, where various links in chain are in themselves complete.

**51.** The present case, which undoubtedly, is a case of circumstantial evidence, is to be looked into in the backdrop of the aforesaid legal principles. In the circumstances before us, we find that the prosecution has completely failed to prove beyond reasonable doubt complete chain of event and circumstances which

unerringly point towards the involvement and guilt of the appellant. The prosecution also failed to establish any motive to the accused appellant for committing murder of the deceased, who is the son of the appellant. It was the duty of the prosecution that the appellant was medically examined at the time of his arrest, in which they failed.

**52.** In the aforesaid facts and circumstances of the case and particularly that the suggestion of the prosecution witness of mental illness of the appellant is found substantiated from the recent medical report, called buy this Court, we are of the considered view that there are various lacunae in the case of the prosecution in establishing the chain of circumstantial evidence against the accused appellant. Further, there is no cogent or clinching evidence on record which proves the guilt of the accused-appellant beyond reasonable doubt. Henceforth, we hold that the prosecution has failed to produce evidence to complete the chain of circumstances and guilt of the appellant beyond all reasonable doubt, the benefit undoubtedly has to go to the accused-appellant Suresh. The impugned judgment of conviction is, thus, found unsustainable and is liable to be set aside. The appellant is entitled to acquittal by giving him benefit of doubt.

**53.** Accordingly, the appeal is **allowed**. The impugned judgment and order of conviction and sentence dated 22.07.2004 passed by Additional Sessions Judge Fast Track Court Maharajganj in Session Trial No. 19 of 2002, State Vs. Suresh Chandra, arising out of Crime No. 128 of 2002, under Sections 302 and 201 I.P.C., Police Station Farenda, District Maharajganj, is hereby set aside.

**54.** The appellant, **Suresh Chandra**, is acquitted of the charges under Sections 302 and 201 IPC. The appellant shall be released from the jail forthwith, unless wanted in any other case, subject to

compliance of the provisions of Section 437-A Cr.P.C. to the satisfaction of the trial court.

**55.** The office is directed to send back the lower court record along with a certified copy of this judgment for information and necessary action.

**56.** The compliance report be submitted to this Court through the Registry General, High Court, Allahabad.

**Order Date :- 31.05.2022**

Mustaqem.