

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (DB) No. 821 of 2014

(Against the judgment of conviction dated 25.09.2014 and the order of sentence dated 29.09.2014 passed by the learned Additional Sessions Judge-IV, Garhwa in S. T. Case No.354 of 2009/ Sessions Trial No.28 of 2014)

Upendra Mahto @ Upendra Mehta, son of Rajendra Mehta, resident of Village- Barwadih, P.O. & P.S. Kandi, District Garhwa **Appellant**

Versus

The State of Jharkhand **Respondent**

**CORAM: SRI ANANDA SEN, J.
 SRI SUBHASH CHAND, J.**

For the Appellant : Mr. Yogesh Modi, Advocate
For the State : Mrs. Priya Shrestha, Spl.PP

C.A.V. on: 08/05/2024

Pronounced on:24/05/2024

J U D G M E N T

Per: Subhash Chand, J.

1. The instant Criminal Appeal has been preferred against the judgment of conviction dated 25.09.2014 and the order of sentence dated 29.09.2014 passed by the learned Additional Sessions Judge-IV, Garhwa in S. T. Case No.354 of 2009/ Sessions Trial No.28 of 2014, whereby the learned trial Court has convicted the appellant under Sections 302 and 377 of the Indian Penal Code and sentenced him to undergo imprisonment for life along with fine of Rs.10,000/-, in default of payment of fine, he was directed to undergo SI for three months for the offence under Section 302 of the Indian Penal Code. The appellant was further sentenced to undergo RI for 10 years along with fine of Rs.5000/-, in default of payment of fine, he was directed to undergo SI for two months for the offence under Section 377 of the Indian Penal Code.

2. The brief facts of the prosecution case leading to this Criminal Appeal are that the *fardbeyan* of the informant Vijay Mehta was recorded by the police officer wherein he made the allegations that on 28.09.2009 in the night, Upendra Mehta of his village took his brother to Barwadih School to watch T.V., thereafter, from Barwadih School he took him to Sonepurwa on the pretext of watching T.V. Till late night, his cousin did not come back and no whereabouts was known to him despite hectic search. The queries was also made from Upendra Mehta who avoided to give any information. In the morning, the dead body of his cousin brother Narayan Mehta was found in the bush and nearby the dead body spectacle was also found and that spectacle was identified by the informant and other villagers to be of Upendra Mehta. Thereafter, all the villagers and the informant asked Upendra Mehta who told that he had established carnal intercourse against the order of nature. He throttled him to death causing injury on the chest and left the dead body beneath the Nenua plants. The accused was 25 years old while the deceased Narayan Mehta was 10 years old. On the basis of fardbeyan of the informant Vijay Mehta, Kandi P.S. Case No.03 of 2009 was registered with the police station concerned under Sections 302 and 377 of the Indian Penal Code against the accused Upendra Mehta.

3. The Investigating Officer after having concluded the investigation, filed charge-sheet against the accused Upendra Mehta under Sections 302 and 377 of the Indian Penal Code to the Court of learned Magistrate Concerned, who took the cognizance thereon and committed the case for trial to the Court of learned Sessions Judge, Garhwa.

4. The learned Trial Court framed the charge against the accused Upendra Mehta under Sections 302 and 377 of the Indian Penal Code and

the same was explained to him, the accused denied the charge and claimed to face the trial.

5. On behalf of the prosecution to prove the charge against the accused in oral evidence examined altogether fourteen witnesses i.e. P.W.-1, Vishwanath Mehta; P.W.-2, Sunil Kumar Mehta; P.W.-3, Ram Krit Ram; P.W.-4, Janeshwar Mahto; P.W.-5, Ram Chandra Mehta; P.W.-6, Gorakh Mehta; P.W.-7, Nand Lal Mehta; P.W.-8, Suresh Mehta; P.W.-9, Asha Kumari; P.W.-10, Kiran Kumari; P.W.-11, Dr. Mohan Prasad; P.W.-12, Vijay Mehta; P.W.-13, Radhika Raman Minz and; P.W.-14, Diwakar Mandal; and in documentary evidence the prosecution has adduced Exhibit-1, Signature of Vishwanath Mehta containing at seizure-list; Exhibit-1/1, Signature of Ram Krit Ram containing at seizure-list; Exhibit-1/2, seizure list; Exhibit-2, Postmortem report; Exhibit-3, Signature of the informant Vijay Mehta containing at statement of fardbeyan; Exhibit-3/1, statement on fardbeyan; Exhibit-4, Endorsement on statement on fardbeyan regarding registering the case by the then officer-in-charge of P.S. Kandi; Exhibit-5, Formal FIR and; Exhibit-6, Inquest report; Exhibit-7, Challan marked is 'X'. The prosecution has also got exhibited an article Exhibit i.e. spectacles which is marked as article Exhibit (i).

6. The statement of accused was recorded under Section 313 of the Code of Criminal Procedure, in which, the accused denied the incriminating circumstances in the evidence against him and stated himself to be innocent and also stated that he confessed the guilt under pressure and the spectacle was not of him.

7. The learned Trial Court after hearing the rival submissions of the

learned counsel for the accused and learned counsel for the State, passed the impugned judgment of conviction dated 25.09.2014 and the order of sentence dated 29.09.2014 holding the accused guilty for the offence under Sections 302 and 377 of the Indian Penal Code and sentenced him as aforesaid.

8. Aggrieved from the impugned judgment of conviction dated 25.09.2014 and the order of sentence dated 29.09.2014, this Criminal Appeal has been preferred on behalf of the accused on the ground that the impugned judgment of conviction and the order of sentence passed by the learned Trial Court is bad in the eyes of law and the same is not based on proper appreciation of evidence. The case is being based on circumstantial evidence. The chain of circumstantial evidence is not complete. The learned Trial Court relied upon the extra judicial confession of the appellant-convict, which was not voluntarily as per the testimony of prosecution witnesses. Further, the spectacle which is alleged to have been recovered near the dead body of the deceased was not identified. Even in the seizure memo, the details of spectacle were not mentioned and while it was produced before the learned Trial Court, it was not sealed. The seizure witnesses have also not proved the seizure memo of the spectacle. As such, the findings recorded by the learned Trial Court is perverse. In view of the above, prayed to allow this Criminal Appeal and set aside the impugned judgment of conviction and the order of sentence.

9. We have heard the rival submissions of the learned counsel for the appellant and learned Spl.PP for the State and perused the materials available on record.

10. In order to decide the legality and propriety of the impugned judgment

of conviction and the order of sentence passed by the learned Trial Court, we scrutinize the evidence oral as well as documentary adduced on behalf of the parties on record, which are reproduced hereinbelow:

10.1 P.W.-1, Vishwanath Mehta, in his examination-in-chief says that the occurrence was of 29.09.2009 at 08:00 O'clock in night. That day was Dussehra festival. Narayan Mehta was taken by Upendra Mehta to watch T.V. to Barwadih School. More so, he was taken to Buniyad Bigha School to watch T.V. while returning from there Narayan Mehta was murdered by Upendra Mehta after throttling him. He had also established carnal intercourse with him against the order of nature and the dead body was thrown in the agricultural field of Shiv Mehta wherein the crop was of nenua. Overnight, the search was made but nothing was known. In the morning, near the nenua crop of agricultural field, the crowd was seen by him. The dead body was also found. The pant of deceased was opened. There was black mark on the throat and some wound on the stomach. Whole of the villagers had seen the dead body of Narayan Mehta. Narayan Mehta was his nephew. He was ten years old. The police was informed and police came there on the place of occurrence. A spectacle of maroon colour was recovered. The same was of Upendra Mehta. Upendra Mehta confessed his guilt before the people of the villagers that the spectacle was to be of him. The recovered spectacle was seized. On the seizure memo, he put his signature marked Exhibit-1. In cross-examination, this witness says that he did not see the murder of Narayan Mehta from his own eyes. The spectacle, which was of Upendra Mehta, no one of the villager has used the same spectacle. He did not see the accused taking Narayan Mehta with him. The accused confessed his guilt before the persons of the village and the police

without any pressure.

10.2 P.W.-2, Sunil Kumar Mehta, in his examination-in-chief says that on 28.09.2009 at 08:00 O'clock in the night, Upendra Mehta came to the house of Narayan Mehta and took him to the school to watch T.V. Narayan Mehta was 10 years old. He was also present there. From Barwadih School, he was taken to Sonepurwa. **He saw him taking Narayan Mehta. Both did not come back in night. In the morning search was made and in the agriculture field of Shiv Mehta where the crop was of nenua, the dead body was found. The pant was opened and a red colour spectacle was found nearby the dead body. The persons of the village identified the spectacle to be of Upendra Mehta.** At that time, Vijay Mehta, Sunil Mehta, Ram Krit Ram, Vishwanath Mehta and other villagers were present there. **The spectacle was also taken by all the villagers to the house of Upendra Mehta, who confessed his guilt and also admitted that the spectacle to be of him and he told that the cause of murder was that he had evil eyes on the sister of the deceased and his torch was left at his house and the same was not given back. A panchayat was also held but he did not comply the verdict of panchayat. He also confessed that he had established carnal intercourse against the order of nature with him. Before the police, he also confessed his guilt.** In cross-examination, this witness says that the distance between the School wherein T.V. was being watched and the house of Narayan Mehta was of 50 houses. He did not see Upendra Mehta committing murder of Narayan. **He had seen Narayan to be taken by the accused but he did not resist or oppose.** He also told that he did not see Vijay Mehta that deceased was taken by the accused. He reached to Barwadih at 08:30 O'clock. The Ramayan was being displayed. **He had**

seen Narayan and Upendra watching T.V. in Barwadih School. He had seen that till 10:00 O'clock of night the T.V. was watched. He returned from Barwadih School at 10:00 O'clock. The brother of deceased Vijay Mehta remained there. Further says that the deceased was taken to Sonapurwa School by Upendra forcibly at 09:45, he did not resist or oppose. The dead body was found at the distance of one kilometer from Barwadih School. The dead body was recovered from Bigha in between Sonapura and Barwadih. The bleeding was on the anus of deceased. The extra judicial confession of accused was not reduced in writing. They only caught hold of accused. He confessed his guilt on being asked with love. In the night, he did not tell to the father of Narayan Mehta that the deceased was taken from Barwadih to Sonapura. In the morning, he told him while Upendra Mehta had taken to the deceased and no one resisted him.

10.3 P.W.-3, Ramkrit Ram, in his examination-in-chief supported the prosecution story and also stated that on the seizure memo of the spectacle he put his signature and identifies the same. The accused also confessed that he had eve teased the sister of the deceased. A panchayat was also held for the same wherein he was punished. With this reason, he had committed this occurrence. In cross-examination, this witness says that **prior night from the day of recovery of dead body of Narayan Mehta, he did not see Narayan Mehta**. The blood was on the anus of deceased. He denied the suggestion that no such spectacle was recovered and the accused did not confess his guilt.

10.4 P.W.-4, Janeshwar Mahto, in his examination-in-chief, corroborated the prosecution story and also stated that the accused had confessed his guilt and admitted that the spectacle to be of him and also stated that on account

of evil eyes upon the sister of the deceased, he committed murder of Narayan Mehta. **In cross-examination, this witness says that the spectacle, which was recovered, the frame of the same was of blue colour and the glass of the same was black.** His son left the house without asking him to watch T.V. in the night while he was going. A panchayat was also held in regard to eve-tease the daughter by Upendra Mehta since then there was enmity between Upendra Mehta and him.

10.5 P.W.-5, Ram Chandra Mehta, in his examination-in-chief, corroborated the prosecution story and in cross-examination, this witness says that **the police did not interrogate him.** He had seen his nephew accompanying Upendra Mehta. He asked him where he was going about 08:00-09:00 O'clock in the night.

10.6 P.W.-6, Gorakh Mehta, in his examination-in-chief, corroborates the prosecution story and the statement of other prosecution witnesses and also says that **he had seen Upendra Mehta taking deceased with him near his house.** In cross-examination, this witness says that **he had seen the spectacle which was of sky colour and the frame was of blue colour.** Upendra Mehta was nabbed and brought to the house of Baijnath Saw where he was tied and after threatening and frightening him, he gave the confessional statement in regard to the offence.

10.7 P.W.-7, Nand Lal Mehta, in his examination-in-chief corroborates the prosecution story and in cross-examination, this witness says that he did not go to watch T.V. In the morning, he came to know in regard to the occurrence.

10.8 P.W.-8, Suresh Mehta, in his examination-in-chief, corroborates the prosecution story and in cross-examination, this witness says that **he saw**

Upendra Mehta and Narayan Mehta both going to watch T.V. He asked from Narayan Mehta where he was going, he told that he was accompanying Upendra Mehta to watch T.V. This witness further says that **the spectacle was of sun-glass and there was no measurement of the sun-glass.**

10.9 P.W.-9, Asha Kumari, in her examination-in-chief says that the deceased was her brother. **Upendra Mehta took his brother to watch T.V. to Barwadih School, from there, he took to Sonapura. It was 08:00 O'clock of night.** Overnight, her brother did not come. In the morning, dead body was found in nenua agriculture field. A spectacle was also found near the dead body, which was of Upendra Mehta. **Before the people of the village, he confessed his guilt and also admitted that the spectacle to be of him.** In cross-examination, this witness says that he had seen Upendra Mehta taking her brother with him to watch T.V.

10.10 P.W.-10, Kiran Kumari, in her examination-in-chief, says that **Upendra Mehta took her brother to watch T.V. from there, he had taken to Sonapura School. Upendra Mehta confessed his guilt in presence of the people of village.** In cross-examination, this witness says that at the time of confession made by Upendra Mehta, Janeshwar Mehta, Gorakh Mehta, Nandlal Mehta, Ram Chandra Mehta, Vishwanath Mehta and others were present there.

10.11 P.W.-11, Dr. Mohan Prasad, in his examination-in-chief says that on 29.09.2009, he was posted as Medical Officer, Sadar Hospital, Garhwa and on that day at 04:00 PM, he conducted the postmortem of deceased Narayan Mehta and found *“abrasion and bruise over anterior aspect of neck in the middle, Subcutaneous tissues of neck-bruise and echymose trachea ring fractured and congested trachea. Abrasion and bruise over anterior aspect of*

*chest. Abrasion over both calf., Anus was gapping open. No evidence of anal injury or rectle was taken. The doctor has opined that **the cause of death of Narayan Mehta as to asphyxia due to manual throttling. Sodomy cannot be ruled out.** This witness has also identified postmortem report in his handwriting and signature marked Exhibit-2. In cross-examination, this witness has deposed that pressure by rope on neck can cause trachea. No finger print was found on the neck.”*

10.12 P.W.-12, Vijay Mehta, who is the informant, in his examination-in-chief, **corroborates the prosecution story and the contents of the FIR. He identifies his signature on the fardbeyan marked Exhibit-3.** In cross-examination, this witness says that till 10:00 O’clock in night when Narayan Mehta did not come, they thought that he might be watching T.V. He did not go to the house of Upendra Mehta in night. **The people of the village had threatened and frightened Upendra, thereafter, he confessed that the spectacle to be of him and confessed his guilt.**

10.13 P.W.-13, Radhika Raman Minz, who is the Investigating Officer of this case, in his examination-in-chief, says that the investigation of this case was handed over to him on 29.09.2009. At 11:30 O’clock, he received the information in regard to the murder of ten years old Narayan Mehta. He went to the place of occurrence. The crowd of the persons of the village was there. The fardbeyan of Vijay Mehta was recorded by him. He identifies his signature thereon and also his handwriting marked Exhibit-3/1. It was told by Vijay Mehta that on 28.09.2009, Upendra Mehta had taken Narayan Mehta with him to Sonapura School to watch T.V. After watching T.V. at 11:00 O’clock they were coming back and near the Buniyad Bigha, Upendra had established carnal intercourse with Narayan Mehta against the order of

nature and committed his murder. The formal FIR was also prepared on the basis of fardbeyan, which is in his handwriting and signature marked Exhibit-5. He prepared the inquest report of the deceased and took signature of Sunil Mehta and Vijay Mehta thereon. The spectacle was also recovered. The seizure memo of the same was prepared, on which, Ramkrit Ram, Vishwanath Mehta put their signature marked Exhibit-1/2. During investigation, it transpired that the spectacle was of accused, which was found from the place of occurrence. He recorded the statement of witnesses. **The accused was also produced by the villagers before him. He identified the spectacle to be of him and he also confessed his guilt.** After receiving the postmortem report and concluding the investigation, he filed the charge-sheet. In cross-examination, this witness says that the fardbeyan was in his handwriting and signature. **No eyewitness of the occurrence was found during investigation.** There was no blood nearby the dead body of the deceased. **When he inspected the place of occurrence, the spectacle was not there. The spectacle was handed over to him by Vijay Mehta, it was of maroon colour and the frame was also of maroon colour, it was not of sky colour.** All the villagers had told him that the spectacle was recovered nearby the dead body of the deceased. No other incriminating article like rope or gamcha was recovered from the place of occurrence. Asha Kumari has told him that the accused had intruded in her house in order to outrage her modesty.

10.14 P.W.-14, Diwakar Mandal, in his examination-in-chief, says that on 30.04.2014 by the order of the Court in Case Crime No.03 of 2009 the material exhibit **spectacle was produced by him.** The frame of the same was broken. It was of maroon colour. The challan of this material exhibit was

prepared by him, which is in his pen and handwriting **marked material Exhibit-1**. In cross-examination, this witness says that **the spectacle, which was received by him from malkhana, was not sealed.**

11. The prosecution case is based on circumstantial evidence though the motive of the occurrence is not disclosed in the fardbeyan of the informant; yet it came in the testimony of all the prosecution witnesses that the **appellant-convict was having evil eyes upon the sister of the deceased Narayan Mehta and on account of this very reason, he had committed murder of Narayan Mehta.** It also came in the testimony of all the prosecution witnesses that a panchayat was held but no one witness has stated that the proceeding of panchayat was reduced in writing, everything was done only in oral and the appellant-convict was also punished by the panchayat. As such, **the motive of occurrence is proved from the testimony of all the prosecution witnesses but the same alone cannot be basis of conviction. The chain of circumstances should be complete.**

11.1 The Hon'ble Supreme Court in the case of *N. J. Suraj vs. State represented by Inspector of Police* reported in *AIR Online 2004 SC 141* held that in case of a circumstantial evidence motive for commission of offence is not sufficient to prove the guilt of accused, circumstances should lead only in resistible conclusion of guilt. **Paragraph No.4** reads as under:

"4.Now, the only circumstance which remains is that the accused has a motive for the commission of the offence which alone cannot form the basis for conviction as it is well settled that in a case of circumstantial evidence, the circumstances should be such so as to lead to only one irresistible conclusion, which is incompatible with the innocence of the accused. This being the position, we are of the view that the prosecution has failed to prove its case beyond reasonable doubt and the High Court was not justified in upholding the convictions of the appellant."

11.2 The Hon'ble Supreme Court in the case of *Sunil Rai @ Pauna & Ors. Vs. Union Territory, Chandigarh* reported in *AIR 2011 Supreme Court*

2545 held that the motive alone hardly can be ground for conviction.

Paragraph No.31 reads as under:

“31.Likewise, the fact that Sunil Rai had got his money and clothes stolen and he believed that Dile Ram had committed the theft, normally, cannot be said to make out sufficient motive for him to kill Dile Ram. In any event, motive alone can hardly be a ground for conviction.

12. The next link in chain of circumstantial evidence **is the last seen of the deceased with the appellant-convict.** The last seen witnesses are **P.W.-2, Sunil Kumar Mehta; P.W.-6, Gorakh Mehta; P.W.-8, Suresh Mehta; P.W.-9, Asha Kumari and; P.W.-10, Kiran Kumari** all these witnesses have stated that they had seen Upendra Mehta taking Narayan Mehta with him at 08:00 O'clock in the night of 28.09.2009 to watch T.V. to Barwadih School and **P.W.-2, Sunil Kumar Mehta** also says that he had seen the deceased and the appellant-convict watching T.V. in Barwadih School till 10:00 O'clock and, thereafter, he came back to his house. This witness also stated that from Barwadih, the deceased was taken to Sonepura School, which was one and a half kilometer from there; but he came left Barwadih School at 10:00 O'clock while deceased was watching T.V. with appellant. The other last seen witnesses have deposed that they had seen the deceased accompanying Upendra Mehta from his house at 08:00 O'clock in night. None of these witness has seen the deceased accompanying the appellant-convict from Barwadih to Sonepura School. **The last seen theory is found proved only accompanying the deceased to the appellant-convict from Barwadih School. No one witness of last seen has deposed that he had seen the appellant-convict taking the deceased with him to Sonepura School. All the witnesses of last seen had seen him at 08:00 O'clock with the appellant-convict; while only P.W.-2, Sunil Kumar Mehta had seen**

the deceased watching T.V. in Barwadih School along with the appellant till 10:00 O'clock and thereafter, he went back to his house.

12.1 The dead body of deceased seen by the villagers in the agricultural field of Shiv Mehta in village Buniyad Bigha. The time gap between the last seen of deceased with the appellant-convict and recovery of the dead body is more than 12 hours. **From the prosecution evidence, the last seen theory is only proved up to the extent that the deceased was seen along with the appellant-convict till 10:00 O'clock of night watching T.V. in Barwadih School.**

12.2 The last seen theory is not corroborated with the medical evidence. Although **P.W.-11, Dr. Mohan Prasad** has opined the cause of death of Narayan Mehta due to asphyxia due to manual throttling. Sodomy cannot be ruled out; yet the time elapsed since death was opined 24 hours. The testimony of **P.W.-11, Dr. Mohan Prasad** is also relevant. He has conducted the postmortem at 04:00 pm on 29.09.2009 and time elapsed since death is opined to be 24 hours. As such, as per the medical evidence, the time of death of deceased was 04:00 O'clock of 28.09.2009; while the deceased was last seen with the accused-appellant-convict at 08:00 O'clock in night by some of the witnesses of the last seen while only one witness **P.W.-2, Sunil Kumar Mehta** has last seen the deceased at 10:00 O'clock in the night of 28.09.2009. Therefore, the time of death as opined by **P.W.-11, Dr. Mohan Prasad** belies the testimony of last seen theory.

12.3 The Hon'ble Supreme Court in the case of *R. Sreenivasa Vs. State of Karnataka* reported in *2023 LiveLaw (SC) 803* held that last seen theory can

be invoked if it stands proved beyond reasonable doubt. Paragraph No.16 reads as under:

“16. The cautionary note sounded in Nizam (supra) is important. The ‘last seen’ theory can be invoked only when the same stands proved beyond reasonable doubt. A 3-Judge Bench in Chotkau v State of Uttar Pradesh, (2023) 6 SCC 742 opined as under: ’
15. It is needless to point out that for the prosecution to successfully invoke Section 106 of the Evidence Act, they must first establish that there was “any fact especially within the knowledge of the” appellant. ...”

12.4 The Hon’ble Supreme Court in the case of *Jabir & Ors. Vs. The State of Uttarakhand* reported in *2023 LiveLaw (SC) 41* held that the last seen circumstances cannot be sole basis for conviction.

13. The next link evidence in chain of circumstances is **the recovery of spectacle by the villagers nearby the dead body of deceased**, which was identified to be of appellant-convict and the prosecution witnesses examined before the learned Trial Court. **P.W.-1, Vishwanath Mehta** is the witness of seizure-memo of spectacle, who stated that the **spectacle was of maroon colour. P.W.-3, Ramkrit Ram**, who is also the witness of seizure-memo of the spectacle, he has stated that **the spectacle, which was found near the dead body was of red colour** and it was identified to be of Upendra Mehta. **P.W.-4, Janeshwar Mehta**, who is the father of the deceased, is also the witness of the seizure memo of spectacle, he has stated that **the spectacle, which was recovered, the frame of the same was of blue colour and its glass was of black colour. P.W.-6, Gorakh Mehta** has deposed that **the spectacle was recovered nearby the dead body of the deceased and the same was of sky colour and its frame was of blue colour. P.W.-7, Suresh Mehta** has deposed that **the spectacle, which was recovered near the dead body of the deceased, was of sun-glass and no measurement of the same was taken. P.W.-13, Radhika Raman Minz.** The Investigating Officer, in

his testimony, deposed that the place of occurrence was inspected by him, **nothing incriminating article was recovered. No blood was lying near the dead body of the deceased. The spectacle, which was handed over to him by Vijay Mehta was of maroon colour and its frame was also of maroon colour.** He strictly denies that the spectacle was of sky colour. **He says that he is not aware that the spectacle was of which company. He did not take measurement of spectacle and it was told to him by the villagers that this spectacle was recovered by them nearby the dead body of the deceased. P.W.-14, Diwakar Mandal,** who has produced the spectacle material exhibit-1 before the Court has stated that **the spectacle, which was brought by him from *malkhana* by the order of the Court to produce it, was not sealed.**

13.1 The recovered spectacle being not sealed, the seizure memo of the same is also becomes doubtful. All these witnesses have stated that they have seen the appellant-convict, wearing the spectacle; **but in regard to the frame and colour of the spectacle, there is discrepancy in the statement of the witnesses and, as such, the identity of the spectacle is not found proved.**

14. The next link in chain of circumstantial evidence is **the extra judicial confession of the appellant-convict. P.W.-1, Vishwanath Mehta** has stated that the appellant-convict has confessed his guilt and admitted that the spectacle to be of him. **P.W.-2, Sunil Kumar Mehta** has stated that Upendra Mehta has confessed his guilt but the same was not reduced in writing. **P.W.-3, Ram Krit Ram** has stated that after having recovered the spectacle near the dead body of the deceased, which was of red colour, it was identified to be of accused Upendra Mehta and on being asked to him by the persons of

the village, Upendra Mehta told that he had established carnal intercourse with the deceased and, thereafter, committed murder after throttling him.

14.1 P.W.-5, Vijay Mehta has negated his statement given to the Investigating Officer. **P.W.-6, Gorakh Mehta** has deposed that the appellant-convict confessed his guilt and also admitted the spectacle to be of him. The appellant-convict was nabbed by the people of the village at 06:00 O'clock in the morning. **All the villagers brought Upendra Mehta to the house of Baijnath Sao where he was tied. After threatening and frightening him, he confessed his guilt.**

14.2 P.W.-12, Vijay Mehta, who is the informant of this case has deposed that **the villagers had threatened and frightened to Upendra Mehta then he confessed that the spectacle was of him.**

14.3 The appellant-convict in his statement recorded under Section 313 of the Code of Criminal Procedure has specifically stated that he confessed the guilt after the villagers had threatened and frightened.

14.4 Therefore, from the testimony of these witnesses, it is found that the extra judicial confession, which is alleged to have been made by the appellant-convict before these prosecution witnesses and the villagers was not voluntary. **The extra judicial confession was outcome of coercion as the appellant-convict was frightened and threatened and was also tied by the villagers.** Moreover, this extra judicial confession made by the appellant-convict was not before any such person, who was any authority or was having intimacy with the appellant-convict. **The extra judicial confession being not voluntary and was the result of coercion cannot be admissible in evidence. The extra judicial confession is a weak kind of evidence, unless and until, the same inspires the confidence of the Court**

to believe the same to be trustworthy, the same cannot be relied upon.

As such, here also the link in chain of circumstances is breaking.

14.5 Section 24 of the Indian Evidence Act, 1872 reads as under:

“24. Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.—A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or 2 promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.”

14.6 The Hon’ble Supreme Court in the case of ***Union of India & Ors. Vs. Major R. Metri No.08585N*** reported in ***2022 LiveLaw SC 343*** held that the extra judicial confession a weak piece of evidence unless such confession is found voluntarily, trustworthy and reliable, the conviction solely on the basis of the same without corroboration would not be justified. Paragraph No.44 reads as under:

*“ 44. This Court in the case of ***Sahadevan and another vs. State of Tamil Nadu, (2012) 6 SCC 403*** after surveying various judgments on the issue, has laid down the following principles:*

“The principles

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 extrajudicial 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 extrajudicial confession alleged to have been made by the accused:

(i) The extrajudicial 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 and should be truthful.

(iii) It should inspire confidence.

(iv) An extrajudicial 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 extrajudicial 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.”

14.7 The Hon'ble Supreme Court in the case of *Nikhil Chandra Mondal Vs. State of West Bengal* reported in *2023 LiveLaw SC 171* held that extra judicial confession is a weak piece of evidence, rule of caution should be followed. The Court must ensure that the same inspires confidence and corroboration by the other prosecution evidence. If it suffers same material discrepancy or inherent probabilities, cannot be made basis of conviction.

Paragraph Nos.15 and 16 read as under:

“15. 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.....”

15. In view of the critical analysis of the evidence on record, we are of the considered view that the chain of circumstantial evidence is not found complete. The chain breaks in regard to the evidence of the identity of spectacle, which is alleged to have been recovered near the dead body of deceased and is alleged to be of appellant-convict. Further, it breaks on the extra judicial confession of the deceased, which was the result of coercion was not voluntarily and the same is not admissible. Again, the chain of circumstantial evidence breaks in regard to the last seen of deceased by the witnesses and the time of death as opined by **P.W.-11, Dr. Mohan Prasad**. Therefore, from the circumstantial evidence, it is not proved that it was the appellant-convict, who is the perpetrator of the commission of alleged offence, as such, the same is not found beyond reasonable doubt.

15.1 The Hon'ble Supreme Court in the case of *Sharad Birdhichand Sarda Vs. State of Maharashtra* reported in (1984) 4 SCC 116 laid down five golden principles, which constitute the panchsheel of proof of case based on circumstantial evidence. Paragraph No. 153 reads as under:

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

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

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

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

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

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

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

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

16. Therefore, the impugned judgment of conviction and the order of sentence passed by the learned Trial Court is found based on perverse findings and the same needs interference and this Criminal Appeal deserves to be allowed.

17. Accordingly, this Criminal Appeal is **allowed** and the impugned judgment of conviction dated 25.09.2014 and the order of sentence dated 29.09.2014 passed by the learned Additional Sessions Judge-IV, Garhwa in S.T. Case No.354 of 2009/ Sessions Trial No. 28 of 2014 are **set aside**. The

appellant is **acquitted** from the charges levelled against him and he is directed to be released forthwith, if not wanted in any other case.

18. Pending Interlocutory Application(s) also stands disposed of.

19. The record of the learned Trial Court be transmitted along with a copy of this judgment.

(Subhash Chand, J.)

Per Ananda Sen, J. : I agree

(Ananda Sen, J.)

*Jharkhand High Court, Ranchi
Dated: the 24 May, 2024,
Madhav/Rashmi/- **A.F.R.***