Neutral Citation
2024:CGHC:25469-DB

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 993 of 2018

- Narendra Kumar Rathiya S/o Mohan Singh Rathiya, Aged About 21 Years R/o Nondaraha (Lalpur), Police Station Kartala, District Korba Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Kartala, District Korba Chhattisgarh.

---- Respondent

CRA No. 580 of 2024

- B (Juvenile, In Conflict With Law) Nill

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station House Officer, Police Station Kartala, District Korba Chhattisgarh.

---- Respondent

CRA No. 432 of 2024

- A (Juvenile In Conflict With Law)

---- Appellant

Versus

- State Of Chhattisgarh Through Police Station- Kartala, District : Korba, Chhattisgarh

---- Respondent

For Appellants : Mr. Vimlesh Bajpai, Mr.Samir Singh & Mr. Tarun Dadsena on behalf of Mr. Dharmesh Shrivastava, Advocates

For Respondent /State : Shri Ranbir Singh Marhas, Additional Advocate General

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Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Arvind Kumar Verma, Judge

Judgment on Board

Per Arvind Kumar Verma, J

16/07/2024

With the consent of the parties, the matter is heard finally.

2. As all the above captioned criminal appeals filed by the appellants/accused under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') are arising out of a common factual matrix and impugned judgment, this Court is disposing of these appeals by a common judgment.

3. These criminal appeals preferred under Section 374(2) of the CrPC are directed against the impugned judgment of conviction and order of sentence dated 23.06.2018 passed by the learned Sessions Judge, Korba in Sessions Trial No. 101/2017 in Cr.A. No. 993 of 2018 and since the appellants in Cr.A. No. 432/2024 and Cr.A. No. 580/2024, were juvenile at the time of commission of the offence, they, being aggrieved by the impugned judgment of conviction and order of sentence dated 09.02.2024 passed by the learned Special Juvenile Court (FTC) District Korba (CG) in Spl. Case (Children Court) No. 17/2021 and have been convicted and sentenced as under:

Conviction of the appellant in Cr.A. No. 993/2018

conviction	sentence
U/s. 302/34 IPC	Imprisonment for life with fine of Rs. 1,000/- in default of payment of fine to further undergo RI for 3 months
U/s. 201/34 IPC	RI for two years with fine of Rs. 200/- in default of payment of fine to further undergo

	RI for 3 months.
Both the sentences are ordered to run concurrently	

Conviction of the appellants/Juveniles in Conflict with law in Cr.A. Nos.432/2019 & 580/2024

conviction	sentence
U/s. 302/34 IPC	RI for 14 years with fine of Rs. 1,000/- in default of payment of fine to further undergo RI for six months
U/s. 201/34 IPC	RI for six months and fine of Rs. 100/- in default of payment of fine to further undergo RI for 10 days.
All the sentences are ordered to run concurrently.	

4. Prosecution case, in brief is that on 09.08.2017, Suleshwar Singh has lodged merg intimation at police station Kartala alleging that on 08.08.2017, deceased Mohit Ram went towards the field in a tractor and came home in the evening at 6.30 p.m. At about 8.00 pm. Deendayal came to his house and asked about him and when he did not find him, left from there and after 20-25 minutes, again when he came, his daughter-in-law informed that he is sleeping in the room. Deen dayal went inside and after awaking Mohit Ram, went out and thereafter he did not return. Search was made by father of the deceased in the village and the dead body was found near Davan naala. On feeling suspicion, Gulab Singh removed the sand and found dead body of Mohit Ram buried in the sand. It is alleged that 15 days prior to the incident, there was some dispute with Amritlal Rathia and Deen Dayal Rathia and they might have committed the murder and buried in the sand. On the basis of the above, merg intimation and FIR were registered and the appellants Deen Dayal Rathia and Amrit Lal Rathia were arrested for the offence under Sections 302 and 201 of IPC. The case was taken up for investigation and

memorandum statements of Deen Dayal Rathia, accused Narendra Kumar Rathia and Anita Rathia were recorded. One *gamchha* was recovered from the house of Juvenile Anita Rathia and accused Narendra Kumar Rathia was arrested. Since the appellants Anita Rathia and Deen Dayal Rathia were juvenile at the time of commission of the offence, they were admitted to Child Observation Home.

5. During investigation, for exhuming of the dead body, the panchnama was prepared and after giving notice, the body was sent for post mortem examination to Community Health Centre, Kartala and report was received. Spot map was prepared, plain soil and blood stained soil, T-shirt of the deceased were seized. Statements of the witnesses were recorded. Spot map was prepared by the Patwari and after finding that Amritlal Rathia is not involved in the commission of the offence, he has been released. The juveniles in conflict with law were produced before the Juvenile Court whereas accused Narendra Kumar Rathia has been produced in the court of Judicial Magistrate First Class, Kartala from where the case was committed to the trial Court for hearing and disposal in accordance with law, in which appellants/accused abjured their guilt and entered into defence by stating that they have not committed the offence.

6. In order to bring home the ofence, the prosecution has examined as many as 9 witnesses. Prosecution has examined Suleshwar Rathisa (PW-1) Gulab Singh Rathia (PW-2), Chameli Bai Rathiya (PW-3), Vijay Kumar Singh Tanvar (PW-4), Sunil Kumar Rathiya (PW-5) Pushpendra Kumar (P-6) Anant singh Rathia (PW-7) Indra Bhushan Singh (PW-8) and Dr. Virendra Kumar Singh (PW-9) in Cr.A. No. 993/2018 whereas in

Cr.A. Nos. 432/2024 and 580/2024, Suleshwar Rathia (PW-1) Gulab Singh Rathia (PW-2), Sunil Kumar Rathiya (PW-3), Pushpendra (PW-4) Nageshwar Singh Rathore (PW-5), Vijay Kumar Singh Tanwar (PW-6), Anant Rathiya (PW-7), Dr. Virendra Kumar Singh (PW-8) and Indra Bhushan Singh (PW-9) were examined. Statements of the accused/appellants were recorded under Section 313 of the CrPC in which they denied the charges levelled against them and pleaded that they have been falsely implicated in the case.

7. After appreciation of evidence available on record, learned trial Court has convicted the appellants and sentenced them as mentioned above. Hence these appeals by the appellants.

8. Mr. Vimlesh Bajpai, learned counsel for the appellants submits that the judgment passed by the learned trial court is bad in law and also not sustainable in the eyes of law. He further submits that the offence against the appellants has not been proved for the reason that the appellants were neither armed with any weapon nor the cause of the death of the deceased has been proved for causing injuries to the deceased. He further submits that the learned trial Court gravely erred in convicting the appellants only on the basis of material available on record, whereas there is no evidence available to show that the appellants had committed the offence and the prosecution has failed to prove its case beyond reasonable doubt. As such, the appeals deserve to be allowed and the impugned judgment deserves to be set aside.

9. Mr. Samir Singh and Mr. Tarun Dadsena, learned counsel appearing for the Juveniles in Conflict with law submits that the learned trial judge has failed to consider the evidence available on record and

convicted the appellants. It is submitted that at the time of commission of the offence, they were juvenile and only on suspicion, they have been convicted. It is submitted that there is no direct evidence against the appellants and the case of the prosecution is based on circumstantial evidence. It is further submitted that there is no eyewitness to the incident and is based on the circumstantial evidence and the chain of circumstance is not complete to implicate the appellants in the said offence. The prosecution has failed to establish the chain of circumstantial evidence and the independent prosecution witnesses have also not been examined in support of the prosecution story. He would lastly submit that the conviction of the accused/appellant is solely based upon the last seen theory which is not immediately soon before the incident and the learned trial Court erred in ignoring that the Hon'ble Supreme Court and this Hon'ble Court has repeatedly held that in the cases of circumstantial evidence, the conviction cannot be based solely on the last seen theory. As such, conviction without any evidence is not sustainable and liable to be set aside.

10. On the other hand, Mr.R.S. Marhas, learned Additional Advocate General appearing for the respondent/State supports the impugned judgment and submits that the prosecution has proved its case beyond reasonable doubt there is sufficient and credible evidence for proving the commission of offence by the accused/appellants. The learned trial Court has appreciated the evidence in its correct perspective and has recorded the finding of the guilt of accused as such, the trial Court has rightly convicted the appellants for offence under Section 302/34 and 201/34 of the IPC and the appeals deserve to be dismissed.

11. We have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also perused the records with utmost circumspection.

12. Suleshvar Rathia (PW-1) father of the deceased has deposed that on 08.08.2017 at about 8.00 pm, accused Deen Dayal asked about his son and when he did not find him, he again came after 15 minutes, awaken the deceased and they went outside. In the mid night when his daughter-in-law asked about Mohitram, they made a search and when he was not found, in the morning he along with Gulab and other villagers went towards the field where they saw the bangles were lying broken, slippers of the deceased and blood stains. Since it was raining at night and there were traces of dragging some object towards the *naala* and that something was buried in the sand. Thereafter the information was sent to the Sarpanch of the village. Intimation was given to the police station Kartala about the death of his son and the report Ex.P-2 was lodged by him. After giving notice (Ex.P-3) the panchanama was prepared vide Ex.P-4. Spot map was prepared vide Ex.P-5. He has deposed that the police had brought the sniffer dog for detection and the accused/appellants Deendayal and Anita were identified. Patwari prepared spot Map vide Ex.P-7.

In cross examination, he has deposed that in the merg intimation, FIR and in the statement he has not named the appellant Narendra Rathia. He has stated that at the time of recording his statement before the police he has not named appellant Narendra Rathia in the merg intimation as well as in the FIR. He has also stated that he has not seen the *maar peeth* and on suspicion, he has mentioned the name of Amrit

Lal and Deendayal on account of some land dispute between them and the deceased.

13. Gulab Singh Rathia (PW-2) is the uncle of the deceased Mohit Ram. He has deposed that on the date of incident, at about 8.00 pm. he was standing on the door of his house, Deen Dayal came to the house of Mohit Ram and when he did not meet him, he asked Suleshwar as to whether Mohit ram is willing to sell his mobile. After 15-20 minutes later, again he came and at that time Mohit Ram was sleeping inside, he was awaken and they both went out. When he did not return in the night, mother of the deceased went to the house of Deen Dayal and he stated that he is not aware. Thereafter he went along with Suleshwar towards Davan naala and on suspicion, when they exhumed the sand, the dead body was found buried there and merg intimation was given by Suleshwar.

14. Chameli Bai Rathia (PW-3) wife of the deceased has stated that on the date of incident, Deen Dayal came to meet her husband Mohitram and took along with him and thereafter he did not return. In the morning, when they searched for him, they found the blood stains, his slippers and traces of dragging near the Davan naala where the dead body of the deceased was found buried.

Sunil Kumr Rathia (PW-5) and Anant singh Rathia (PW-7) are the witnesses to memorandum Ex.P-8, seizure memo Ex.P-9 and arrest memo Ex.P-10. They have stated that in their presence the police had recorded the statement of the accused/appellants who have deposed that Mohit Ram was harassing his wife Anita in her mobile and therefore

appellant Narendra Kumar Rathia, his wife and brother in law had cooked up a plan to eliminate him and on the date of incident, Deen Dayal went to the house of Mohitram and took along with him, scuffle took place and they committed his murder by throttling with *gamchha*. Thereafter, Anita came home and appellant Narendra Rathia along with Deen Dayal buried the dead body in the sand. Appellant Narendra Rathia has also informed him that the *gamchha* is kept with Anita. Anant Singh Rathia (PW-7) has stated that at about 7-8.00 pm. Deen dayal took Mohit Ram along with him and Narendra Rathia and Anita Rathia were hiding behind the bushes and they had committed the murder by throttling with *gamchha* and after dragging the dead body to the bank of the river, buried in the sand. He has stated that the said *gamchha* was seized by the police from the custody of accused Anita from her house which was kept in a tin box.

15. Indrabhushan Singh (PW-8) is the Investigating Officer. He has deposed that Suleshwar Singh has given merg intimation at police station Kartala about the death of his son Mohit Ram. On the basis of the said intimation, on being suspicious Crime No. 64/17 was registered against Deen Dayal Rathia and Amrit Lal Rathia under Sections 302 and 201/34 IPC. After sending information to the Sub Divisional Magistrate, panchnama was prepared vide Ex.P-11 and the dead body was sent for post mortem examination to Community Health Centre, Kartala. Spot map was prepared and thereafter blood stained soil and plain soil, T-shirt of the deceased were seized vide Ex.P-9. Statements of the witnesses Suleswar Singh, Gulab Singh, Anant Singh, Nageshwar Singh, Vishnu Rathia, Pushpendra Kumar, Devmati and Chameli Bai

were recorded. During investigation, on 10.08.2017, the memorandum statements of juvenile in conflict with law- Deen Dayal Rathia and Anita Rathia were recorded before Sunil Kumar and Anant Singh vide Ex.P-14C and 13C. Memorandum statement of appellant Narendra Kumar Rathia was recorded vide Ex.P-8. On the basis of memorandum statement of juvenile in conflict with law Anita, *gamchha* stained with blood was seized from the tin box vide seizure memo Ex.P-15. He arrested the appellant Narendra Kumar Rathia after preparing arrest memo Ex.P-18. He has sent the seized articles to the Forensic Science Laboratory on 2.11.2017 vide Ex.P-20 and the FSL report is Ex.P-21. According to the FSL report, the blood stains found on the Articles B,C and D (sand, t-shirt and *gamchha)* were disintegrated and that the origin of human blood was found negative.

16. Dr. Virendra Kumar Singh (PW-9) is the Medical officer at Community Health Centre, Kartala who had conducted the postmortem examination on the body of deceased vide Ex.P-22 and opined that the cause of death was shock due to asphyxia due to strangulation by garotte. The death was homicidal in nature and the time of death is 18-36 hours before the postmortem examination. He has opined that there was compressed fracture filled with blood in the trachea.

So far as in Cr.A. Nos. 432/2024 and 580/2024, almost similar statement has been given by the witnesses.

17. Conviction of the accused/appellants is mainly based on the circumstantial evidence, the recovery of blood stained *gamchha* from the appellant-juvenile in conflict with law and that the deceased was last

seen along with the appellant Deen Dayal as has been stated by the father and uncle of the deceased and the motive to cause death.

18. **The first question for consideration would be, whether the trial Court is justified in convicting the appellants on the basis of theory of 'last seen together' as stated by Suleshwar Singh (PW-1) father of the deceased and Gulab Singh Rathia (PW-2) uncle of the deceased whereby they have stated that the deceased and appellant Deen Dayal were seen together on the date of alleged incident, finding it to be duly established?**

19. The prosecution has sought to rely upon is the theory of last seen of the deceased and the appellant/juvenile in conflict with law Deen Dayal who came to the house of the deceased and took along with him and thereafter he was not found. Father of deceased Suleshwar Rathia who is the witness of last seen had deposed that in the evening at 8.00 p.m. went along with Deen Datyal (Juvenile in conflict with law) and did not return and on the next day, his dead body was found buried in the sand near *Daavan Naala* but it was recovered from the open place and there is nothing incriminating against the appellants to connect with the offence.

20. In the matter of **Arjun Marik v. State of Bihar**, **1994 Supp (2) SCC 372,** it has been held by their Lordships of the Supreme Court that conviction cannot be made solely on the basis of theory of 'last seen together' and observed in paragraph 31 as under :-

> “31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of

deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount tothough a number of witnesses have been examined be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded."

21. Likewise, in the matter of **State of Goa v. Sanjay Thakran, (2007) 3 SCC 755** the Supreme Court has held that the circumstance of last seen together would be a relevant circumstance in a case where there was no possibility of any other persons meeting or approaching the deceased at the place of incident or before the commission of crime in the intervening period. It was observed in paragraph 34 as under :-

"34. From the principle laid down by this Court, the circumstance of last-seen together would normally be taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that the time gap between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out. The time gap between the accused persons seen in the company of the deceased and the detection of the crime would be a material consideration for

appreciation of the evidence and placing reliance on it as a circumstance against the accused. But, in all cases, it cannot be said that the evidence of last seen together is to be rejected merely because the time gap between the accused persons and the deceased last seen together and the crime coming to light is after a considerable long duration. There can be no fixed or straight jacket formula for the duration of time gap in this regard and it would depend upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period, that is to say, if the prosecution is able to lead such an evidence that likelihood of any person other than the accused, being the author the crime, becomes impossible,then the evidence of circumstance of last seen together, although there is long duration of time, can be considered as one of the circumstances in the chain of circumstances to prove the guilt against such accused persons. Hence, if the prosecution proves that in the light of the facts and circumstances of the case, there was no possibility of any other person meeting or approaching the deceased at the place of incident or before the commission of the crime, in the intervening period, the proof of last seen together would be relevant evidence. For instance, if it can be demonstrated by showing that the accused persons were in exclusive possession of the place where the incident occurred or where they were last seen together with the deceased, and there was no possibility of any intrusion to that place by any third party, then a relatively wider time gap would not affect the prosecution case. ”

22. Similarly in the matter of **Kanhaiya Lal v. State of Rajasthan, (2014) 4 SCC 715** their Lordships of the Supreme Court have clearly held that the circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime and there must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant in our considered opinion, by itself cannot lead to proof of guilt against the appellant. It has been held in paragraphs 15 and 16 as under :-

> "15. The theory of last seen – the appellant having gone with the deceased in the manner noticed hereinbefore, is the singular piece of circumstantial evidence available against him. The conviction of the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial relationship between the accused and the deceased for a long time. The fact situation bears great similarity to that in Madho Singh v. State of Rajasthan (2010) 15 SCC 588.
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> 16. In view of the aforesaid circumstances, it is not possible to sustain the impugned judgment and sentence. This appeal is allowed and the conviction and sentence imposed on the appellant-accused Kanhaiya Lal are set aside and he is acquitted of the charge by giving benefit of doubt. He is directed to be released from the custody forthwith unless required otherwise."

23. In the matter of **Anjan Kumar Sarma v. State of Assam, (2017)**

14 SCC 359, their Lordships of the Supreme Court have clearly held that in a case where other links have been satisfactorily made out and circumstances point to guilt of accused, circumstance of last seen together and absence of explanation would provide an additional link which completes the chain. In absence of proof of other circumstances the only circumstance of last seen together and absence of satisfactory explanation, cannot be made basis of conviction.

24. In the matter of **Navaneethakrishnan v. State by Inspector of Police (2018) 16 SCC 161**, the Supreme Court has held that though the evidence of last seen together could point to the guilt of the accused, but this evidence alone cannot discharge the burden of establishing the guilt of the accused beyond reasonable doubt and requires corroboration, and observed in paragraph 22 as under: -

> "22. PW-11 was able to identify all the three accused in the court itself by recapitulating his memory as those persons who came at the time when he was washing his car along with John Bosco and further that he had last seen all of them sitting in the Omni van on that day and his testimony to that effect remains intact even during the cross-examination in the light of the fact that the said witness has no enmity whatsoever against the appellants herein and he is an independent witness. Once the testimony of PW 11 is established and inspires full confidence, it is well established that it is the accused who were last seen with the deceased specially in the circumstances when there is nothing on record to show that they parted from the accused and since then no activity of the

> deceased can be traced and their dead bodies were recovered later on. It is a settled legal position that the law presumes that it is the person, who was last seen with the deceased, would have killed the deceased and the burden to rebut the same lies on the accused to prove that they had departed. Undoubtedly, the last seen theory is an important event in the chain of circumstances that would completely establish and/or could point to the guilt of the accused with some certainty. However, this evidence alone cannot discharge the burden of establishing the guilt of accused beyond reasonable doubt and requires corroboration."

25. **The next question for consideration would be, whether recovery of *gamchha from which the deceased was strangulated/throttled,* made from the accused Anita contains human blood?**

26. In the present case, in light of the aforesaid principles of law, it is quite vivid that in the instant case, pursuant to the memorandum of the accused/appellants, one *gamchha* was recovered from appellant Anita Rathia however, nothing has been recovered from the other accused/appellants and the articles ie. blood stained t-shirt, sand and *gamchha* were sent for chemical analysis to the FSL, Raipur, vide Ex.P-22 wherein the articles B,C and D (sand, t-shirt and *gamchha*) it has been state and that the stains were found disintegrated and negative.

27. In the matter of **Balwan Singh v. State of Chhattisgarh and Another**, **(2019) 7 SCC 781**, it has been held by the Supreme Court that

if the recovery of bloodstained articles is proved beyond reasonable doubt by the prosecution, and if the investigation was not found to be tainted, then it may be sufficient if the prosecution shows that the blood found on the articles is of human origin though, even though the blood group is not proved because of disintegration of blood. It was further held that the court will have to come to the conclusion based on the facts and circumstances of each case, and there cannot be any fixed formula that the prosecution has to prove, or need not prove, that the blood groups match. In that case, their Lordships observed in paragraph 24 as under: -

> "24. In the instant case, then, we could have placed some reliance on the recovery, had the prosecution at least proved that the blood was of human origin. As observed supra, while discussing the evidence of PWs 9 and 16, the prosecution has tried to concoct the case from stage to stage. Hence, in the absence of positive material indicating that the stained blood was of human origin and of the same blood group as that of the accused, it would be difficult for the Court to rely upon the aspect of recovery of the weapons and tabbal, and such recovery does not help the case of the prosecution."

28. **The next question that has been pointed out by the prosecution is whether the conviction of the appellants is based on the circumstantial evidence?**

29. On the basis of memorandum statements of the appellants which has been proved by the Investigating Officer Indra Bhushan Singh (PW-8), the appellants have been convicted.

30. From the perusal of memorandum statement of the appellants which has been recorded by Investigating Officer Indra Bhushan Singh (PW-8) and after detection by the sniper dog, the appellants were identified and on the basis of their statements, they have been arrested and the *gamchha* was recovered. At this stage, it would be appropriate to notice Section 27 of the Indian Evidence Act, 1872. Under Section 27 of the Evidence Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material object and is use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution.

31. As has been held in the case of **Mani Vs. State of Tamil Nadu** reported in **(2009) 17 SCC 2783** which has been reiterated in the case of **Sangili @**Under Section 27 of the Evidence Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material object and is use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution. As has been held in the case of **Mani Vs. State of Tamil Nadu** reported in **(2009) 17 SCC 2783** which has been reiterated in the case of **Sangili @**

Sanganathan Vs. State of Tamil Nadu represented by Inspector General of Police reported in **(2014) 10 SCC 264,** that the recovery is a weak kind of evidence and cannot be wholly relied upon and conviction in such a serious matter cannot be based upon the discovery. Once the discovery fails, there would be literally nothing which would support the prosecution case. The judgment further reiterate the view of **Manthuri Laxmi Narsaiah Vs. State of AP** reported in **(2011) 14 SCC 117** wherein it has been observed as under:

> " it is by now well settled that in a case relating to circumstantial evidence, the chain of circumstances has to be spelt out by the prosecution and if even one link in the chain is broken, the accused must get the benefit thereof. We are of the opinion that the present is in fact a case of no evidence."

32. It has been well established by leading judicial precedents that where the prosecution's case is based on circumstantial evidence, only the circumstantial evidence of the highest order can satisfy the test of proof in a criminal prosecution. In order to base conviction on circumstantial evidence, the circumstantial evidence put forth by the prosecution should establish a complete unbroken chain of events so that only one inference is drawn out from the same.

33. The Supreme Court in the matter of **Asar Mohammad and others v. State of U.P. AIR 2018 SC 5264** with reference to the word "fact" employed in Section 27 of the Evidence Act has held that the facts need not be self-probatory and the word "fact" as contemplated in Section 27 of the Evidence Act is not limited to "actual physical material object". It has been further held that the discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge

or the mental awareness of the informant as to its existence at a particular place and it includes a discovery of an object, the place from which it is produced and the knowledge of the accused as to its existence. Their Lordships relying upon the decision of the Privy Council in the matter of **Pulukuri Kotayya v. King Emperor, AIR 1947 PC 67** observed as under: -

> "13. It is a settled legal position that the facts need not be self-probatory and the word "fact" as contemplated in Section 27 of the Evidence Act is not limited to "actual physical material object". The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place. It includes a discovery of an object, the place from which it is produced and the knowledge of the accused as to its existence. It will be useful to advert to the exposition in the case of Vasanta Sampat Dupare v. State of Maharashtra reported in (2015) 1 SCC 253, in particular, paragraph 23 thereof. The same read thus:
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> "23. While accepting or rejecting the factors of discovery, certain principles are to be kept in mind. The Privy Council in Pulukuri Kotayya v.King Emperor (supra) has held thus: (IA p. 77)"... it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this

> fact. Information as to past user, or the 2 AIR 1947 PC 67past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A', these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.
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34. Reverting to the facts of the case in light of the principles of law laid down by their Lordships of the Supreme Court in **Asar Mohammad (supra)**, only discovery of an object, the place from which it is produced and knowledge of the accused as to this extent would be admissible and incriminating part of the accused statement that appellant along with the co-accused had committed the death of the deceased would not be admissible under Section 27 of the Evidence Act.

35. In the present case, no incriminating article has been seized pursuant to the memorandum statement of the appellants except the

gamchha which was stained with blood but as per the chemical analysis report, the blood stains were found to be disintegrated and it was not of human origin. As such, that part of evidence would not be admissible.

36. The Supreme Court in the matter of **Sharad Birdhichand Sarda v. State of Maharashtra [(1984) 4 SCC 116]** while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity or lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent before conviction could be based on circumstantial evidence, must be fully established. They are :

> (i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned “must” or “should” and not “may be” established;
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> (ii) 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;
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> (iii) the circumstances should be of a conclusive nature and tendency;
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> (iv) they should exclude every possible hypothesis except the one to be proved; and
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> (v) 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.
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> A similar view has been reiterated by this Court in State of U.P. v. Satish [(2005) 3 SCC 114] and Pawan v. State of Uttaranchal [(2009) 15 SCC 259].

37. The Supreme Court in the matter of **Baiju Kumar Soni & Anr. Vs. State of Jharkhand reported in (2019) 7 SCC 773** has laid down the

principle to be followed in cases of circumstantial evidence to say that every circumstance must be fully proved and all the circumstances must form a chain of evidence so complete to exclude every hypothesis other than the guilt of the accused. The Court in para 15 and 16 has held as under:-

> “15. The law on the point is very well settled that in a case based on circumstantial evidence, every circumstance must be fully proved and all the circumstances must form a chain of evidence so complete as to exclude every hypothesis other than the guilt of the accused. It was stated by this Court in Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116 (SCC p. 185, para 153)
>
> “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:15(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 'may12 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, where the following observations were made: (SCC p.807, para 19)'19....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. In Nizam v. State of Rajasthan (2016) 1 SCC 550, the law on the point was reiterated while acquitting the accused of the charges under Section 302 read with 201 IPC. Paras 9 and 10 of the decision were:- (SCC pp. 555-56)"9. The principle of circumstantial evidence has been reiterated by this Court in a plethora of cases. In Bodhraj v. State of J&K (2002) 8 SCC 45, wherein this Court quoted (2016) 1 SCC 550 a number of judgments and held as under: (SCC pp. 55-56, paras 10-11)16

10. It has been consistently laid down by this Court that where a case rests squarely 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 or the guilt of any other person. (See Hukam Singh v. State of Rajasthan (1977) 2 SCC99, Eradu v. State of Hyderabad AIR 1956 SC 316,13Earabhadrappa v. State of Karnataka (1983) 2 SCC 330, State of U.P. v. Sukhbasi (1985) Supp. SCC 79, Balwinder Singh v. State of Punjab (1987) 1 SCC 1 and Ashok Kumar Chatterjee v. State of

M.P. (1989) Supp (1) SCC 560. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram v. State of Punjab AIR (1954) SC 621, it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.

11. We may also make a reference to a decision of this Court in C. Chenga Reddy v. State of A.P. (1996) 10 SCC 193, wherein it has been observed thus: (SCC pp. 206-07, para 21) '21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature.

Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.'"

10. In Trimukh Maroti Kirkan v. State of Maharashtra (2006) 10 SCC 681, this Court held as under: (SCC p. 689, para 12)

'12. In the case in hand there is no eyewitness of the occurrence and the case of the prosecution rests on circumstantial evidence.

The normal principle in a case based on circumstantial evidence is that the circumstances

from which an inference of guilt is sought to be drawn must be cogently and firmly established;
that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that 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 they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence.'
The same principles were reiterated in SunilClifford Daniel v. State of Punjab (2012) 11 SCC205, Sampath Kumar v. Inspector of Police (2012)4 SCC 124 and Mohd. Arif v. State (NCT of Delhi)(2011) 13 SCC 621 and a number of other decisions"

38. Further it has been held by the Supreme Court in the case of **Vijay Shankar Vs. State of Haryana, reported in (2015) 12 SCC 644**, when the chain of circumstances of the circumstantial evidence are absent and it is proved within all human probability, the crime was committed and is incapable of explanation of any hypothesis other than that of the guilt of the accused, conviction cannot be sustained.

39. **Another question for consideration is what was the cause of death and whether there is any motive behind causing the death of deceased Mohit Ram?**

40. According to the prosecution, the appellant Anita Rathia was having affair with the deceased and therefore the deceased used to harass her in mobile. It is alleged that this might be the reason for committing the murder by the appellants. However, the above reason for

the alleged offence was not found proved and not much evidence was laid to substantiate the same. The prosecution has failed to prove the recovery of mobile phone and the call details and the enmity between them. Thus, in our view, the prosecution has failed to prove the motive set out by it. In the present case, even assuming that there was some motive for the appellants to commit murder of the deceased merely on that basis they could not have been convicted. There might be a chance of any third person involved in committing the murder of the deceased. Though assuming that there was any motive on the part of accused/appellants for committing the murder of the deceased but that itself is not sufficient to uphold the conviction of the accused persons. The motive has also not been proved by the prosecution as required under the law. It is settled proposition that often motive is indicated to heighten the probability of offence that accused were exhorted by that motive to commit the offence. It is pertinent to mention here that the FIR was lodged against Amritlal and Deen Dayal but Amrit Lal is not an accused and there was some land dispute between Amrit Lal and deceased Mohitram.

41. Now, if we revert to the facts of the present case, finally, it is quite vivid that though articles have been seized and sent for chemical analysis to the FSL, but no FSL report has been brought on record to connect the appellants with the offence. As such, there is nothing corroborating to connect the appellants with the offence in question and only on the basis of alleged recovery of some articles, wherein the origin of human blood has not been proved, it would be unsafe to convict the appellants for the offences punishable under Sections 302/34 & 201/34

of the IPC.

42. 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, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court."

43. Taking the cumulative facts of the present case, in light of the aforesaid decisions rendered by the Supreme Court, it is established that the prosecution has only proved that death of the deceased was homicidal in nature. Neither there is any eyewitness to the incident nor there is any extra judicial confession made by the appellants and that it is a concocted story. In the present case, in the first instance, the appellants were roped in with suspicion mainly because the deceased on the date of incident, had gone with the appellant Deen Dayal and thereafter he was found missing. However, the evidence of last seen is also not established.

44. If all these facts are seen in its entirety, in the aforesaid context, we find that not only the chain of events is incomplete, it becomes somewhat difficult to convict the appellants only on the basis of the recovery of said article. It is by now well settled that in a case relating to circumstantial evidence the chain of circumstances has to be spelt out by the prosecution and if even one link in the chain is broken, the accused must get the benefit thereof.

45. We have gone through the judgments and order passed by the learned Trial Court as well as the impugned judgment and order passed by the Special Juvenile Court. We have also re-appreciated the entire evidence on record. At the outset, it is required to be noted that the case rests on the circumstantial evidence. There is no direct evidence by which it can be said that the appellants killed or committed the murder of the deceased. There is no direct evidence recorded by the prosecution indicating involvement of the appellants in the crime and as observed hereinabove, the case of the prosecution is based on the circumstantial evidence. As held by this Court in a catena of decisions, in case of a circumstantial evidence, 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 the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the 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.

46. Thus, we are of the opinion that the present is in fact a case of no evidence. It is settled position of law that suspicion however strong cannot be a substitute for proof. In a case resting completely on the circumstantial evidence the chain of circumstances must be so complete that they lead only at one conclusion, that is, the guilt of the accused. In our opinion, it is not safe to record a finding of guilt of the appellant in the present case on the basis of circumstantial evidence. The prosecution has failed to establish the accusation and therefore we allow the appeals

and set aside the conviction and sentence of the appellants under Sections 302/34 and 201/34 IPC. It is hereby set aside and they are acquitted of the said charges. Accordingly, the appeals are allowed. Appellant Narendra Kumar Rathiya in Cr.A. No. 993/2018 is reported to be on bail. His bail bonds will remain in force for six months in view of Section 437-A Cr.P.C.

Appellants in Cr.A. No. 432/2024 and 580/2024 are in jail. They shall be set at liberty forthwith if no longer required in any other criminal case.

47. Keeping in view the provisions of Section 437-A Cr.P.C. the appellants are directed to furnish a personal bond in terms of Form No.45 prescribed in the Code of Criminal Procedure for a sum of Rs. 25,000/- each with two reliable sureties in the like amount before the Court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid appellants on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

48. The trial court record along with a copy of this judgment be sent back immediately to the trial court concerned for compliance and necessary action.

49. Accordingly, the appeals stand **allowed**.

Sd/-

(Arvind Kumar Verma)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice

suguna

CRA.NOS. 993 OF 2018, 580 OF 2024 & 432 OF 2024

Head Note

In cases depending on circumstantial evidence, the chain of events must be proved by the prosecution to show that within all human probability, the offence has been committed by the accused/appellants and should also be consistent with the hypothesis of the guilt of the accused.