2025:CGHC:44210-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 408 of 2019

Judgment Reserved on 18.08.2025

Judgment Delivered on 01.09.2025

1 - Mukhlal Sao, S/o Late Mahavir Sao, aged about 76 Years, R/o Village Gadgodhi, Police Station Trikunda District Balrampur, Ramanujganj, Chhattisgarh.

--- **Appellant**

versus

1 - State of Chhattisgarh, Through the Station House Officer, Police Station Trikunda District Balrampur, Ramanujganj, Chhattisgarh.

--- **Respondent**

CRA No. 594 of 2019

1 - Shrwan Kumar, S/o Rajendra Ram, aged about 24 Years, Occupation Laouber, R/o Ramanujganj Ward No. 6, Shubhas Chandra Bosh Nagar, P. S. Ramanujganj, District Balrampur Ramanujganj Chhattisgarh.

---**Appellant**

Versus

1 - State of Chhattisgarh, Through Police Station Trikunda, District Balrampur Ramanujganj, Chhattisgarh.

--- **Respondent**

CRA No. 654 of 2019

1 - Ashok Paal, S/o Shri Bhola Paal, aged about 53 Years, Permanent R/o Village Madhyahoor, Police Station Gadhwa, District Jharkhand, Present R/o Village Gadhgodhi, Police Station Trikunda, District Balrampur- Ramanujganj, Chhattisgarh.

---**Appellant**

Versus

1 - State of Chhattisgarh, Through The Police Station Trikunda, District Balrampur- Ramanujganj, Chhattisgarh.

--- **Respondent**

CRA No. 853 of 2019

1 - Sudama Bhuiya, S/o Late Pahal Ram, aged about 35 Years, Occupation, Viadya, Caste Bhuiya, R/o Ramanujganj, District-Balrampur Ramanujganj, Chhattisgarh.

--**Appellant**

Versus

1 - State of Chhattisgarh, Through Station House Officer Trikunda, District-Balrampur Ramanujganj, Chhattisgarh.

--- **Respondent**

CRA No. 1418 of 2019

1 - Sunil Paswan, S/o Mahendra Paswan, aged about 35 Years, R/o Ramanujganj Ward No. 03, Ramanujganj District Balrampur Ramanujganj, Chhattisgarh.

---**Appellant**

Versus

1 - State of Chhattisgarh, Through Police Station Trikunda District Balrampur Ramanujganj, Chhattisgarh.

... Respondent

For Appellants	:	Mr. Shakti Raj Sinha, Mr. Navneet Yadav, Mr. V.K. Pandey & Mr. Sandeep Yadav, Advocates for respective appellants.
For Respondent/State	:	Mr. Ajay Pandey, Govt. Advocate

Division Bench

Hon'ble Smt. Justice Rajani Dubey, J. &
Hon'ble Shri Justice Amitendra Kishore Prasad, J.

CAV Judgment

Per, Amitendra Kishore Prasad, J.

1. Since all the above-captioned appeals arise out of the same impugned judgment of conviction and order of sentence, they are being heard together and are disposed of by this common judgment.

2. In these appeals filed under Section 374(2) Cr.P.C., the appellants have challenged the legality, validity and propriety of the judgment of conviction and order of sentence dated 22.02.2019 passed by the Additional Sessions Judge, Ramanujganj, District Balrampur place at Ramanujganj, C.G. in Sessions Case No.83/2017, whereby and whereunder, the appellants stand convicted and sentenced as under:-

Conviction of Appellants namely Mukhlal Sao, Ashok Paal and Sudama Bhuiya	**Sentence**
Under Section 302 read with	Imprisonment for life and fine

Section 34 of Indian Penal Code (for short, 'IPC')	of Rs.2,000/- each, in default of payment of fine amount to undergo additional rigorous imprisonment for two months to each appellants
Under Section 120-B of IPC	Imprisonment for life and fine of Rs.2,000/- each, in default of payment of fine amount to undergo additional rigorous imprisonment for two months to each appellants

(Both sentences were directed to run concurrently)

Conviction of appellants namely Shrwan Kumar & Sunil Paswan	**Sentence**
Under Section 302 read with Section 34 of IPC	Imprisonment for life and fine of Rs.2,000/- each, in default of payment of fine amount to undergo additional rigorous imprisonment for two months to each appellants
Under Section 120-B of IPC	Imprisonment for life and fine of Rs.2,000/- each, in default of payment of fine amount to undergo additional rigorous imprisonment for two months to each appellants
Under Section 25 & 27 of the Arms Act	Rigorous Imprisonment for seven years and fine of Rs.2,000/- each, in default of payment of

	fine amount to undergo additional rigorous imprisonment for two months

(All sentences were directed to run concurrently)

3. Case of the prosecution, in brief, is that PW-1 Anand Gupta lodged information at Police Station Trikunda stating that on the morning of 21.07.2017, while he was in his shop at village Bagra, his father-Krishna Gupta (hereinafter called as 'deceased') had gone to plough the field situated at Bankheta. At about 02:00 p.m., his mother (PW-2 Lalti Devi, wife of the deceased) telephonically informed him that when she went to the field, she saw some unknown person assaulting his father/deceased and that person killed him and buried his head in the soil. On receiving the aforesaid information, PW-1 Anand Gupta immediately rushed to the spot and found his father/deceased lying face down in the field, his head buried in the ground, and blood oozing out. On touching, he found his father/deceased already dead, having sustained stab injuries on the face, nose and back. On raising alarm, villagers gathered at the spot. On the basis of this information, PW-8 Vivek Kumar Lakda, Sub-Inspector, registered Merg Intimation No. 17/2017 (Ex. P/1) and informed the Sub-Divisional Magistrate. Thereafter, FIR Ex. P/2 was registered under Crime No. 19/2017 for the offence under Section 302 of the IPC against unknown persons.

4. During investigation, spot map (Ex. P/3) was prepared. Notice (Ex. P/5) was issued to witnesses for conducting *Panchnama* of the dead body and *Panchnama* (Ex. P/6) was prepared in the presence of witnesses. Acting on the advice of the *Panchas*, Sub-Inspector Vivek Kumar Lakda (PW-8) sent a requisition (Ex. P/27) to CHC Ramanujganj for postmortem examination. PW-7 Dr. Vijay Rathore, thereafter, conducted the postmortem and opined (Ex.P/25) that cause of death of deceased was internal haemorrhage and mode of death was homicidal in nature. After the postmortem, the body was handed over to the relatives for cremation. From the place of occurrence, the Investigating Officer seized a one iron rod (sharp-edged weapon) about 16 inches long, a broken umbrella, a blue-coloured hawai chappal, a blood-stained gamchha, a torn piece of surgical glove, two samples of blood-stained and plain soil, and blood-stained and plain cotton vide Seizure Memo Ex. P/10. After that, statements of witnesses and spot map was prepared vide Ex.P-23. Thereafter, on the basis of information received from informers, it was revealed that the deceased- Krishna Gupta had a land dispute with accused- Mukhlal Sao and he was also suspected of practising witchcraft. On this suspicion, accused-Mukhlal Sao, Shrwan Kumar, Ashok Paal, Sunil Paswan and Sudama Bhuiya were taken into custody and their memorandum statements (Ex. P/7, P/8 & P/9 respectively) were recorded in the presence of witnesses. Pursuant thereto, one piece of surgical

glove was recovered from accused- Shrwan Kumar vide Ex.P/12 and a black Hero Passion Pro motorcycle with documents was seized under Ex. P/13. From accused- Sunil Paswan, a knife bearing the inscription “Rampur” (copper coloured, 15½ inches in length) was seized vide Ex. P/14, along with a jeans pant and T-shirt stained with blood vide Ex. P/15. From accused- Sudama Bhuinya, one Hero Splendor Pro motorcycle with documents, a Micromax mobile phone, a blood-stained blue and white check shirt, and a pair of black floral-lined pants were seized vide Ex.P/16. From accused- Ashok Pal, a Lava mobile phone was seized in the presence of witnesses vide Ex. P/11. Thereafter, the accused persons were arrested vide Exs. P/17 to Ex. P/21. Seized gloves from the spot and accused-Shrwan Kumar were sent to FSL for chemical examination, but the FSL report (Ex.P-39) is inconclusive

5. After due investigation, appellants were charge-sheeted before the jurisdictional criminal Court and the case was committed to the trial Court for hearing and disposal in accordance with law, in which appellants abjured their guilt and entered into defence by stating that they have not committed the offences.

6. The prosecution in order to bring home the offence, examined as many as 9 witnesses in support of its case and exhibited 40 documents Exs.P-1 to P-40. However, the appellants in support of their defence have examined none, but exhibited three documents i.e. Exs.D-1 to D-3.

7. The trial Court, after completion of trial and upon appreciation of oral and documentary evidence, by its impugned judgment, convicted and sentenced the appellants as mentioned in paragraph-2 of this judgment, against which, they have preferred the instant appeals under Section 374(2) of the CrPC.

8. Learned counsel for the appellants would submit that the conviction of appellants recorded by the trial Court is wholly unsustainable in law, inasmuch as the entire case of the prosecution rests on weak and unreliable circumstantial evidence. They would further submit that PW-2 Lalti Devi, who has been projected as an eyewitness, is not worthy of credence as her testimony suffers from material improvements and she identified the accused persons belatedly, that too only after they were shown to her while in police custody, thereby rendering her evidence wholly doubtful. They would also submit that the alleged recoveries are unreliable, inasmuch as the independent seizure witnesses have not supported the prosecution case and the FSL report is inconclusive, the blood group and DNA not having been established, nor were any fingerprints lifted from the recovered articles to connect the appellants with the crime in question. They would further contend that the prosecution has also failed to prove motive and conspiracy, which are vital ingredients when the case is based on circumstantial evidence. They would also contend that the trial Court committed grave error in ignoring material contradictions and omissions in the

depositions of the prosecution witnesses, and in such circumstances, the conviction and sentence imposed upon the appellants cannot be sustained. Therefore, it is prayed that the appellants be acquitted of the charges leveled against them.

9. Learned counsel for the State would support the impugned judgment and submit that the prosecution has brought home the offence against the appellants and has proved the case beyond reasonable doubt and thus, the appellants have rightly been convicted and sentenced for the aforesaid offences.

10. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

11. The first question, is as to whether the death of the deceased was homicidal in nature, has been answered by the trial Court in affirmative relying upon the postmortem report (Ex.P-25) proved by Dr. Vijay Kumar Rathore (PW-7) who has conducted postmortem and has clearly opined that the cause of death of deceased was internal haemorrhage and the nature of death was homicidal. Thus, we are of the considered opinion that learned trial Court has rightly held the death of deceased to be homicidal in nature which is a correct finding of the fact and we hereby affirm the finding recorded by the trial Court.

12. Now, the question would be whether the appellants are the authors of the crime in question?

13. Now, we will examine the evidence presented by the prosecution one by one. PW-2 Lalti Devi, the widow of the deceased-Krishna Gupta, has been projected by the prosecution as an eyewitness to the occurrence. In her examination-in-chief, she has deposed that on the date and time of the incident, she witnessed three unknown persons stabbing her husband. She has further stated that present accused persons were present at the scene and were standing by during the act of assault. According to her, a total of nine persons were involved in the commission of the crime. She has also deposed that she raised hue and cry at the time of the incident, but allegedly no one came to her aid. She has also stated that fearing for her own safety, she fled the scene and subsequently informed her son Anand (PW-1), over the phone, following which he arrived at the spot. However, on the contrary, in cross-examination, she admitted that she did not know the three unidentified assailants at the time of the incident. She further admitted that she was able to recognize them only after they were apprehended by the police and presented before her. This delayed identification raises a serious question about the credibility of her claim that she had actually witnessed the assault. Moreover, when confronted with the inconsistencies between her deposition before the Court and her earlier police statement under Section 161 CrPC, she admitted that if certain facts are not found recorded in her police statement, she cannot explain their absence. This admission weakens the evidentiary value of her testimony and raises a presumption of

improvement or embellishment in her version before the Court. Her deposition also appears to suffer from a tendency to overstate or exaggerate the incident, particularly by naming multiple accused persons and attributing specific roles without corroborative evidence. The nature of her testimony suggests an attempt to involve as many individuals as possible, some of whom she admittedly could not even identify until after their arrest. PW-2 Lalti Devi has not provided any satisfactory explanation for such material deviations. Her tendency to implicate multiple accused persons without establishing their overt acts with clarity, and the absence of corroboration from other independent witnesses, makes her testimony unreliable and insufficient to form the sole basis for conviction.

14. PW-1 Anand, son of the deceased, has stated in his deposition that he received a phone call about the assault and found his father's mutilated body upon reaching the scene. Although he implicated his uncles and others in a conspiracy, but his testimony is based on hearsay and he admitted to not knowing the facts personally, relying on information from others, which raises questions about his credibility.

15. PW-3 Govinda Gupta, another son of the deceased Krishna Gupta, has been examined by the prosecution as a supporting witness. However, a perusal of his testimony reveals that he is not an eye-witness to the incident, and his entire statement is based

on hearsay. He further admitted that he has no personal knowledge of any conspiracy allegedly hatched by the accused persons.

16. PW-4 Birendra Singh has also been examined by the prosecution, however, it is evident from his testimony that he is a hearsay witness and not an eye-witness to the incident. His deposition does not disclose any direct knowledge of the occurrence, nor does it provide any material or corroborative evidence linking the accused persons to the crime in question.

17. Thus, from perusal of above evidence, it is quite vivid that the principal witness who purports to be an eye-witness PW-2 Lalti Devi, the widow of the deceased, is not an actual eye-witness to the incident. The other witnesses deposed that they arrived at the scene after the incident had taken place. Therefore, there is a complete absence of any direct eye-witness testimony to the commission of the offence. Further, the quality of the so-called eye-witness evidence is far from sterling and is fraught with contradictions and hearsay. The evidence suggests that there exists a land dispute between the family members, specifically between the brothers, which may have motivated the complainant and other close relatives being the widow and son of the deceased to falsely implicate the accused persons, who happen to be the uncles of the complainant’s family. It is pertinent to mention here that PW-2 Lalti Devi, despite posing as an eye-witness, is

essentially a hearsay witness and admitted that she did not directly witness the assault. This reinforces the fact that the prosecution case does not rest on reliable eye-witness testimony. The absence of any clear identification of the assailants in the FIR (Ex.P-2), the Merg (Ex.P-1) and the Inquest report (Ex.P-6) further corrodes the prosecution's case. Had there truly been an eye-witness to the incident, it is reasonable to expect that the FIR or other initial records would have named the accused persons explicitly, which is conspicuously absent in this case. In view of these factors, the case of the prosecution suffers from a lack of credible and reliable evidence linking the appellants to the commission of the offence. That apart, none of the above witnesses have stated in their statements that on the date of incident, they have seen the deceased in the company of accused persons.

18. So far as the allegation of hatching a conspiracy by the accused persons to eliminate the deceased is concerned, the prosecution has failed to produce any credible or direct evidence to substantiate such a claim. The material on record does not disclose any overt acts or concrete steps taken by the accused persons that would establish the formation of a common intention or conspiracy to commit the offence. From the evidence, it appears that the deceased and his brothers were engaged in agricultural activities on their respective portions of the ancestral land. Although the formal partition of the land has not been effected, each party was cultivating and possessing their respective shares

independently. This circumstance does not, in itself, provide a conclusive motive for the commission of the alleged crime. Thus, the prosecution has failed to satisfactorily establish any animus or motive that would have induced the accused persons to commit such a grave offence.

19. The next incriminating circumstance is the recovery of certain articles from the possession of the accused persons. Though pursuant to the memorandum statements of appellants, one piece of surgical glove, a blood-like stained knife, clothes, bike and mobile phones were seized, however, only surgical gloves were sent to FSL for chemical examination and FSL report is also inconclusive and there is no evidence on record to show that the said blood group found on the seized articles is similar to that of the deceased. Therefore, the mere recovery of above articles, without any corroboration linking them directly to the offence or the deceased, is insufficient to establish guilt. That apart, witness to seizure and memorandum of appellants namely Naresh Ram has also not been examined by the prosecution for the reasons best known to it. Furthermore, PW-6 Satish Kumar has been cited as a witness to the seizure memo (Ex.P-10). However, upon examination of his evidence, it is evident that he is a hearsay witness and not an eye-witness to the incident. During the course of the trial, PW-6 did not support the case of the prosecution and was declared hostile. His testimony fails to establish any incriminating circumstance against the accused persons.

Additionally, the FSL report does not support the prosecution's claim. There is no conclusive forensic evidence linking the appellants to the crime scene or to the deceased through these recoveries.

20. The Hon'ble Supreme Court in the matter of ***Raja Naykar vs. State of Chhattisgarh*** reported in ***(2024) 3 SCC 481*** has held as under:-

> *"It can thus be seen that, the only circumstance that may be of some assistance to the prosecution case is the recovery of dagger at the instance of the present appellant. However, as already stated hereinabove, the said recovery is also from an open place accessible to one and all. In any case, the blood found on the dagger does not match with the blood group of the deceased. In Mustkeem v. State of Rajasthans, this Court held that sole circumstance of recovery of bloodstained weapon cannot form the basis of conviction unless the same was connected with the murder of the deceased by the accused. Thus, we find that only on the basis of sole circumstance of recovery of bloodstained weapon, it cannot be said that the prosecution has discharged its burden of proving the case beyond reasonable doubt."*

21. Also, the Hon'ble Supreme Court in the matter of ***Thakore Umedsing Nathusing vs. State of Gujarat*** reported in ***2024 SCC OnLine SC 320*** has dealt with the recovery and blood stains

not found to be that of the deceased and the relevant para reads as under:-

> *"35. We have gone through the evidence of the concerned police officials associated with the recoveries and find their testimonies to be highly doubtful. The knife which was recovered at the instance of A3 was found from a nala which is a place open and accessible to all. The knife attributed to A4 was presented by one Shobhnaben wife of Kanji Chhara and thus it cannot be linked to A4. Thus, these recoveries in no manner can be treated to be incriminating in nature. In the case of Mustkeem alias Sirajudeen v. State of Rajasthan, reported in (2011) 11 SCC 724, this Court held that the solitary circumstance of recovery of blood-stained weapons cannot constitute such evidence which can be considered sufficient to convict an accused for the charge of murder. We thus find the recoveries to be highly doubtful and tainted. Even if it is assumed for a moment that such recoveries were effected, the same did not lead to any conclusive circumstance in form of Serological report establishing the presence of the same blood group as that of the deceased and hence they do not further the cause of prosecution. In addition thereto, we find that the prosecution failed to lead the link evidence mandatorily required to establish the factum of safe keeping of the muddamal articles and hence, the recoveries became irrelevant."*

22. In the matter of ***Debapriya Pal vs. State of West Bengal*** reported in ***(2017) 11 SCC 31,*** the Hon'ble Supreme Court has held with the issue that even if blood stain was found, the blood group of accused or deceased was not ascertained. The relevant para reads as under:-

> *"For the sake of argument, we are presuming that they were present at the time when the appellant brought bloodstained clothes from his house and gave the same to the police. What is material is the reliance on these bloodstained clothes for the culpability of the appellant herein. As per the prosecution, the blood group on these bloodstained clothes matched with the blood on the bedsheet on which the body of one of the deceased persons was found. The record reveals that though blood of both the deceased persons was drawn and sent for examination, it is not known as to what was the report thereupon and what was the blood group of the deceased persons. No such blood report has been produced. So much so, blood group of the accused persons was also not ascertained. Even if we presume that the blood on the bedsheet was that of the deceased, the possibility cannot be ruled out that the same blood group as of the appellant-accused thereof. Therefore, mere matching of the blood group on the bloodstained clothes, which was even on the bedsheet, would not lead to the conclusion that it is the appellant who had committed the crime."*

23. In the matter of ***Shantabai and others vs. State of Maharashtra*** reported in ***(2008) 16 SCC 354,*** the Hon'ble Supreme Court has held as under:-

> *"25. In support of the fifth circumstance, the prosecution has examined Dr. Hanumant, who performed post-mortem on the dead body of the deceased Gunwant on 15-8-1993. The doctor noticed as many as thirteen injuries on the body of the deceased as described in the post-mortem report (Ext. 41). According to the opinion of the doctor, the cause of death was because of shock due to cardio-respiratory failure caused by injury to brain and brain haemorrhage. The chemical analyser's report would reveal that ethyl alcohol was found in the viscera contents of the deceased.*
>
> *26. We may point out that the investigating officer has not cared to collect the fingerprints appeared on the stones and axe, the alleged weapons of offence, at the time of seizure of the articles nor had he taken the fingerprints of the appellants for comparison with the fingerprints, if any, detected on the alleged weapons of offence. The articles collected by the investigating officer from the spot were found lying in the open place which was accessible to all and sundry. The prosecution has not led any evidence to prove that axe, which was the alleged weapon of offence, found on spot in the open place belonged to A-1, A-2 and A-3. Thus, the prosecution has not established beyond reasonable doubt that A-1, A-2 and A-3*

had used the recovered weapons of offence in the commission of the crime.

28. The chemical analyser's report (Ext. 72) reveals that human blood of Group 'B' was detected on the clothes, which were seized by the police, allegedly belonging to the appellants. The blood group on those clothes did not tally with the blood of Group 'O', which was found on the clothes of the deceased and on the sample of soil, axe, stones, handles, etc, which were taken from the spot by the investigating officer. The investigating officer has categorically stated that when he along with A-1 and panch witnesses had gone in search of the clothes of the appellants, the lock to the door of the house of the appellants was kept with the Police Patil which was opened by them later on. In this view of the matter, the prosecution has not proved that d the clothes, which were allegedly seized by the police at the instance of A-1 and lying in the open place, were stained with Blood Group 'O' of the deceased found on the deceased's clothes and on the articles which were seized by the investigating officer from the place of occurrence. These circumstances are not proved by the prosecution by lending cogent, satisfactory and convincing evidence to hold A-1, A-2 and A-3 guilty of the offence."

24. Also, the Hon'ble Supreme Court in the matter of ***Dhananjay Shanker Shetty vs. State of Maharashtra*** reported in ***(2002) 6 SCC 596*** has held as under:-

> *"9. Another circumstance which was alleged against the appellant was that bloodstained clothes and weapon were recovered from his house, but the trial court as well as the High Court did not place any reliance upon this circumstance in view of the fact that according to the report of the chemical examiner, the blood group found thereon did not tally with that of the deceased."*

25. Similarly, in the matter of ***Ganesh v. State of Maharashtra***, reported in ***(2023) 7 SCC 145,*** the Hon'ble Supreme Court has held that the conviction cannot be sustained if forensic evidence (like FSL report) is inconclusive and the chain of circumstances is broken or doubtful.

26. Upon perusal of the record in the light of aforesaid decisions of Hon'ble Supreme Court, it is evident that although the prosecution has produced blood-stained articles allegedly recovered at the instance of the appellants, but there is a complete absence of forensic evidence to establish that the blood found on these articles matches the blood group of the deceased. No serological or DNA report has been brought on record to establish such a linkage. The mere presence of blood stains, without proof that it is human blood belonging to the deceased, renders the recovery inconsequential.

27. The Hon'ble Supreme Court in the matter of ***Hanuman*** (supra) relying, on its own judgment, passed in the matter of ***Raja Naykar***

(supra) held that mere recovery of a blood-stained weapon even bearing the same blood group of the victim would not be sufficient to prove the charge of murder.

28. Likewise, the Hon'ble Supreme Court has consistently held that such failure materially affects the evidentiary value of the alleged recoveries. In ***Kansa Behera v. State of Orissa,*** reported in ***(1987) 3 SCC 480,*** the Court held:

> *"Unless the blood stains found on the clothes or weapons are proved to be that of the deceased, the discovery cannot be said to incriminate the accused beyond doubt."*

29. Similarly, in ***Sattatiya @ Satish Rajanna Kartalla v. State of Maharashtra,*** reported in ***(2008) 3 SCC 210***, it was observed:

> *"In the absence of a serological report confirming that the blood on the clothes or weapon belonged to the deceased, the recovery is of no substantial help to the prosecution."*

30. Again, in ***Vijay Shankar v. State of Chhattisgarh,*** reported in ***(2022) 10 SCC 353,*** the Apex Court reiterated:

> *"The prosecution's failure to establish, through scientific evidence, that the blood found on the weapon or clothes matched that of the deceased creates a serious doubt about the veracity of the recovery and the guilt of the accused."*

31. These authoritative pronouncements make it abundantly clear that mere recovery of blood-stained articles, without scientific

corroboration, is insufficient to sustain a conviction, especially when the case is otherwise based on circumstantial evidence. It is a settled principle of criminal jurisprudence that the prosecution must establish the chain of circumstances with cogent and reliable evidence, particularly in cases based on circumstantial evidence.

32. It is profitable here to note following five golden principles laid down by their Lordships of the Supreme Court in the matter of ***Sharad Birdhichand Sarda vs. State of Maharashtra*** reported in ***(1984) 4 SCC 116*** which constitute the 'panchsheel' of proof of a case based on circumstantial evidence and same read as under:

> *"153….. (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, (1973) 2 SCC 793 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."

33. In the present case, though certain articles were seized, pursuant to the memorandum statements of appellants, but there is no cogent evidence to establish that these articles were either used in the commission of the offence or were last seen in the possession of the deceased or appellants in such a manner that would link the appellants directly to the crime and that no credible forensic evidence has been produced to establish that the blood on the seized articles belonged to the deceased. It is also pertinent to mention here that no member of the deceased's family has attributed any act, omission, or involvement to the appellant-Mukhlal Sao in connection with the incident. Neither the

complainant nor any of the prosecution witnesses have stated anything implicating accused- Mukhlal Sao in the commission of the alleged offence. The absence of any direct or circumstantial evidence against him creates a significant doubt regarding his complicity. The prosecution has failed to establish a chain of circumstances to prove the relevance or connection of the seized items to the alleged offence.

34. It is also a settled principle of criminal law that suspicion, however grave it may be, cannot substitute for proof. The entire case of the prosecution is based on weak circumstantial evidence, and the chain of circumstances necessary to bring home the guilt of the accused has also not been established.

35. It is further held by the Hon'ble Supreme Court in ***Sujit Biswas vs. State of Assam (1984)*** reported in ***AIR 2013 SC 3817*** that the suspicion, howsoever strong, cannot substitute the proof and conviction is not permissible only on the basis of the suspicion. It is held thus in para 6:-

> *"6. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large and*

divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be" true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide Hanumant Govind Nargundkar v. State of M.P., (1952) 2 SCC 71, State v. Mahender Singh Dahiya (2011) 3 SCC 109 and Ramesh Harijan v. State of U.P. (2012) 5 SCC 777."

36. Furthermore, in the matter of ***Kanhaiya Lal v. State of Rajasthan***, reported in ***(2019) 5 SCC 639,*** the Hon'ble Supreme Court has opined that mere recovery of articles like weapons or clothes, without linking them to the crime via DNA, fingerprints or conclusive FSL, is not enough to convict.

37. Likewise, in the matter of ***State of Rajasthan v. Kashi Ram***, reported in ***(2006) 12 SCC 254***, the Hon'ble Supreme Court has held that where the case is based on circumstantial evidence, motive assumes great significance and absence of motive is a strong circumstance in favour of the accused. In the present case, the alleged motive (land dispute) was not proven or linked to any overt act of the accused.

38. Similarly, in the matter of ***Selvaraj v. State of Karnataka***, reported in ***(2015) 10 SCC 230***, the Hon'ble Supreme Court has opined that where identification of the accused is based on belated identification after seeing them in police custody, such identification is not reliable unless held through a proper Test Identification Parade (TIP). In the present case, PW-2 Lalti Devi identified the accused only after they were shown to her in custody, with no TIP conducted. This makes the identification inadmissible.

39. Furthermore, this Court has dealt in the matter of ***Ramkeshra @ Rameshwar and others vs. State of Chhattisgarh*** reported in ***2008(3) C.G.L.J. 86 (DB)*** wherein it was opined that the statement of the sole eye witness was full of contradictions and omission and

version of the witnesses regarding oral dying declaration of the deceased was also contradictory, hence not relied. In the said case, the reliance was placed in the matter of ***State of Rajasthan vs. Magni Ram (2001) 9 SCC 589*** and ***Raj Pal & Anr. vs. State of Haryana 2007 Cri.L.J.2926***, wherein the Apex Court has held that testimony of eyewitnesses inconsistent with medical evidence and their conduct also found to be unnatural throws reasonable doubt on prosecution case. Also, the reliance was placed upon the matter of ***Namdeo vs. State of Maharashtra 2007 AIR SCW 1835***, wherein, the Apex Court held that a witness who is a relative of deceased or victim of the crime cannot be characterized as 'interested'. The term 'interested' postulates that the witness has some direct or indirect 'interest' in having the accused somehow or other convicted due to animus or for some other oblique motive. The Apex Court also observed that a close relative cannot be characterized as an 'interested' witness. He is a 'natural' witness. His evidence, however, must be scrutinized carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the 'sole' testimony of such witness. evidence. On the contrary close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one. The Apex Court also referred to the decisions rendered in the matter of ***Harbans Kaur and another Vs. State of Haryana 2005 AIR SCW 2074***, in which, it was held that there is no proposition in law that

relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield the actual culprit and falsely implicate the accused.

40. In view of the above precedents, laws laid down by the Hon'ble Supreme Court and the facts of the case, the failure to establish a forensic link between the recovered articles and the deceased fatally weakens the prosecution's case. The conviction cannot be sustained solely on the basis of uncorroborated recovery and that there is no cogent and clinching evidence available on record to show the complicity of the appellants in the crime in question. The prosecution has failed to prove the appellants' guilt beyond reasonable doubt. Thus, in the considered opinion of this Court, the trial Court erred in convicting the appellants without credible and trustworthy evidence. The chain of circumstances is broken and incomplete, thus the benefit of doubt must be given to the appellants.

41. Accordingly, the appeals filed by the respective appellants are **allowed** and the impugned judgment of conviction and order of sentence is hereby set- aside. The appellants are acquitted of the aforesaid charges leveled against them.

42. The appellants are reported to be on bail. Keeping in view the provision of Section 437-A of CR.P.C., the appellants are directed to forthwith furnish personal bond in terms of Form No.45

prescribed in the Cr.P.C. of sum of Rs.25,000/- each with one surety each in the like amount before the trial 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.

43. Registry is directed to transmit the lower Court record along with a copy of this judgment to the concerned trial Court forthwith for information and necessary compliance.

Sd/-	**Sd/-**
(Rajani Dubey)	**(Amitendra Kishore Prasad)**
Judge	**Judge**

Vishakha

HEAD-NOTE

"The credibility of an interested witness, such as a family member, cannot be discarded merely on account of their relationship. However, their testimony must be scrutinized with great care and caution. If found to be untrustworthy, it cannot be relied upon."