# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Criminal Appeal (DB) No.36 of 1994**

(Against the judgment of conviction dated 31.01.1994 and order of sentence dated 02.02.1994 passed by Shri Deo Narayan Barai, learned Additional Sessions Judge-VII, Patna in Sessions Trial No. 741 of 1986, arising out of Dhanarua P.S. Case No. 123 of 1985)

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1. Kishori Yadav, son of Bhagwan Yadav
2. Siyabar Yadav, son of Bhondu Yadav
3. Awadesh Yadav, son of Ramjatan Yadav
4. Baleshwar Yadav, son of late Jwala Yadav
5. Phonu Yadav, son of Bhagwan Yadav

All residents of Village- Pathrahat, P.S.- Dhanarua, District- Patna.

.... .... Appellant/s

Versus

The State of Bihar

.... .... Respondent/s

With

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**Criminal Appeal (DB) No. 45 of 1994**

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Rohan Yadav, son of Madari Yadav, resident of Village- Pathrahat, P.S.- Dhanarua, District- Patna.

.... .... Appellant/s

Versus

The State of Bihar

.... .... Respondent/s

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**Appearance :**
(In CR. APP (DB) No.36 of 1994)
For the Appellant/s : Mr. Rajesh Kumar Sharma, Amicus Curiae
For the Respondent/s : Mr. S.C. Mishra, APP
(In CR. APP (DB) No.45 of 1994)
For the Appellant/s : Mr. Rajesh Kumar Sharma, Amicus Curiae
For the Respondent/s : Mr. S. C. Mishra, APP

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**CORAM: HONOURABLE THE CHIEF JUSTICE**
**And**
**HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY**

ORAL JUDGMENT
**(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)**
**Date: 14-10-2017**

Both the appeals arises out of the common judgment of conviction dated 31.01.1994 and order of sentence dated

02.02.1994 passed by learned Additional Sessions Judge-VII, Patna in Sessions Trial No. 741 of 1986, arising out of Dhanarua P.S. Case No. 123 of 1985, whereby all the appellants have been convicted under Sections 364, 302 and 201 read with Section 34 of the Indian Penal Code and they have been sentenced to undergo imprisonment for life under Section 302 read with section 34 of the Indian Penal Code. However, no separate sentence was passed under Sections 364 and 201 of the Indian Penal Code.

2. The prosecution case as appears from the written report of the informant is as follows:

The informant in the written report stated that his son Ratnesh Kumar went to the house of his maternal uncle at village Mustafapur on 21.11.1985 in the morning hour and thereafter he did not return back to his house at Nadwa. In the morning of 22.11.1985, the informant received information from Mustafapur that Ratnesh Kuamr had returned back from Mustafapur at 4.00 P.M. on 21.11.1985 itself. It has thereafter been said that the informant started searching his son then he learnt from Baleshwar Singh and Ram Sagar Singh that on 21.11.1985, at about 5.00 P.M. while they were returning from Rupaspur to Nadwa, they had seen Rohan Yadav, Baleshwar Yadav, Sheo Ratan Sao, Siyabar Yadav, Awadhesh Yadav, Phonu Yadav and Kishori Yadav armed with gun going

towards south of the village Patharhat. The informant suspected that the aforesaid persons might have killed his son.

3. On the basis of the written report, formal F.I.R., bearing Dhanarua P.S. Case No. 123 of 1985 dated 22.11.1985 was registered for the under Sections 364 of the Indian Penal Code.

4. The police after investigation submitted charge-sheet against six accused persons. Thereafter the learned Magistrate took cognizance of the offence and the case was committed to the Court of Sessions. Thereafter charges were framed to which the appellants pleaded not guilty and claimed to be tried.

5. On behalf of the prosecution, altogether 07 witnesses were examined. P.W. 1 is Baleshwar Singh, P.W.2 is Ram Sagar Singh, P.W. 3 is Nagendra Singh, P.W. 4 is Ramanuj Singh. P.W.5 is Ram Pravesh Sharma, P.W.6 is Chandra Mohan Prasad and P.W. 7 is Dr. Ram Prasad Singh, who performed the post-mortem of the deceased.

6. The trial court on the basis of the materials and scrutiny of the prosecution witnesses held out that the prosecution has been able to prove the charges against the appellants beyond all reasonable doubt and accordingly, the trial court convicted the appellants for offence under Sections 364, 302 and 201 read with Section 34 of the Indian Penal Code.

7. Cr. Appeal (DB) No. 36 of 1994 was filed by appellants, namely, (i) Kishori Yadav, (ii) Siyabar Yadav, (iii) Awadhesh Yadav, (iv) Baleshwar Yadav, and (v) Phonu Yadav, whereas Cr. Appeal (DB) No. 45 of 1994 was filed by appellant, namely, Rohan Yadav.

8. Mr. Rajesh Kumar Sharma, appearing as Amicus Curiae in both the appeals submitted that the instant case is based on circumstantial evidence, however, there is no complete chain of events, which lead to only one conclusion that the appellants have committed the crime and the trial has committed error in convicting the appellants. He has drawn our attention to paragraph 32 of the judgment of the trial court where the trial court has noted that there is no eye witness to the occurrence, therefore, it is to be seen whether the attending facts and circumstances of the case leads to only one irresistible conclusion that the appellants have committed the crime or not. He submitted that in this case 07 witnesses have been examined and out of 07 witnesses examined on behalf of the prosecution P.W. 4 Ramanuj Singh is the informant, P.W.7 is the doctor, who conducted the post-mortem on the dead body of the deceased, P.W.1 Baleshwar Singh and P.W.2 Ram Sagar Singh, who claimed that they have seen the accused persons standing in the south of village Patharhat on 21.11.1985 at 5.00 P.M. being variously armed, but none of the two

witnesses have either deposed that they have seen the deceased in the custody of the accused persons or that the appellants have committed murder of the deceased. Referring to the deposition of the informant, learned Amicus Curiae submitted that the informant of this case in the fardbeyan has mentioned that on 22.11.1985 he learnt from Baleshwar Singh and Ram Sagar Singh of village Nadwan that the appellants were seen armed with gun and various lethal weapons moving towards south of the village and on that basis he has believed that the accused persons must have kidnapped and after killing his son concealed the dead body and reason for the commission of crime was that a few days ago, there was some scuffle with them. Counsel for the appellants has drawn the attention of the Court, the major contradictions in the version of the prosecution witnesses, which was even noticed by the trial court. Referring to the statements of P.W.1 and P.W. 2, he submitted that in their deposition they have stated that when they were returning back to their village on 21.11.1985 they saw the accused persons armed with gun, Bhala, Garasa etc. and they became afraid of them and as such they hurriedly rushed to their village. Thereafter they stated that they have learnt on their arrival to the village that the son of the informant was killed by the villagers of village Patharhat by abducting from the train at Parsa Railway Station. They also learnt that Ratnesh Kumar, who has gone to his Nanihal has

not returned back from his Nanihal, as they were told by the informant of this case. Thus, the counsel appearing on behalf of the appellants submitted that firstly P.W.1 and P.W.2 have not said that either they have seen the appellants kidnapping the boy or killing the boy. There is no statement by these two witnesses that they have actually seen these appellants in actual commission of crime of the kidnapping the deceased. Their statements, if taken on its face value is only indicative of the fact that these appellants were moving towards south of Patharhat village armed with gun, Bhala, Garasa etc. that cannot itself be taken as a material to believe that these appellants were involved in the commission of crime of kidnapping of the deceased and his killing. From their version, it is also evident that P.W.1 and P.W.2 have hurriedly rushed to their village seeing the appellants equipped with various arms and as such these two witnesses are not competent to make statement either on the point of abduction of the deceased or on the point of killing. They have even not claimed that the deceased was last seen with these appellants before recovery of the dead body. The motive alleged for commission of crime does not inspire any confidence. P.W.1 in his cross-examination has stated that the villagers have filed theft case against the Yadav of village Patharhat and the villager of Nadwan village had assaulted Nepali Yadav, as such there was tension between the persons of two villages involved

in the commission of crime. The statement of this witness stands contradicted by the investigating officer, which was even noted by the trial court in para 11 of the judgment. The statement of P.W.2 is not worthy in the instant case, as P.W.2 in his deposition has stated that he had identified the accused persons at a distance of 100 yards when they were standing armed with Lathi and Garasa.

9. Mr. Sharma submitted that P.W.1 in his deposition stated that accused persons were armed with gun, Bhala and Garasa, whereas P.W.2 claims that he has seen the accused persons equipped with lathi and garasa and there is no reference of any gun and Bhala. More so, he has seen the accused persons from a distance of 100 yards. Referring to the deposition of P.W.2 Mr. Sharma submitted that P.W. 2 was 70 years old at the time of trial and due to his weak eye sight and he could not have identified the accused persons from a distance of 100 yards at about 4.00-5.00 P.M. in the month of November. This fact of weak eye sight was admitted by the witness in his deposition.

10. P.W.3 Nagendra Yadav is the maternal uncle of the deceased. He in his evidence stated that on 21.11.1985 the deceased came to his place at 8.00 A.M. and on the same day he returned. He has not disclosed at what time the deceased returned from his Nanihal on 21.11.1985. P.W.7 is the doctor, who has

performed the post-mortem.

11. The doctor has found the injury no.2 and 4 to be fatal, but he could not conclusively opined that the injury were ante-mortem in nature due to decomposition of the dead body. In his cross-examination, the doctor has admitted that due to de-composition of the dead body, no definite opinion can be given about the nature of the injury. The dead body was found from the well.

12. P.W. 4 is the father of the deceased, who lodged the fardbeyan on the basis of the information gathered from P.W.1 and P.W.2, and as such his deposition for the purpose of establishing the commission of occurrence or involvement of the appellants in the crime cannot rise higher than P.W.1 and 2. However, in para 5 of his deposition he has stated that in the case filed against Nepali Yadav and in the matter of assault of Nepali Yadav, his son was not involved. He has stated in para 6 that after the death of his son his eye sight has gone weak. However, in paragraph 7 he stated that he is unable to identify the accused persons standing in the dock. In para 11 of his cross-examination, he has admitted that there is no altercation or difference between him and Nepali Yadav. He has no concern with the case against Nepali Yadav. He also admitted that he has no grudge or enmity either with Rohan or his brother Nepali. In para 15 he has stated that Baleshwar Singh and Ram Sagar Singh have disclosed

before the villagers that they have seen the accused persons standing equipped with various arms. On suggestion that he has filed the instant case at the instance Amerika Singh and falsely implicated these appellants he denied.

13. P.W. 5 is the investigating officer of this case. He in his deposition has stated that on 22.11.1985, the Dafadar brought to him a close envelope containing copy of F.I.R. of the present case with a direction to investigate into the case. He claimed that he has recorded the statement of Dafadar and re-examination of the informant and thereafter proceeded to inspect the place of occurrence to search out the deceased, but he was not traceable, however, he has stated that he found blood in the field of Jugeshwar Yadav on way from Patharhat to Nadwan and seized the blood stained earth. The investigating officer has also stated that thereafter he proceeded towards south and reached Nagraj Khandha where he also found blood in paddy field of Banbari Yadav and seized the same. Investigating officer claimed that when he visited Patharhat, he met S.I. Digambar Singh, who told that he recovered country made gun from the possession of accused Awadhesh Prasad. The investigating officer deposed that he has recorded the statement of P.W.1 and P.W.2 of village Nadwan on 29.11.1985 and hand over the charge of investigation to successor investigating officer.

14. Mr. Sharma referring to the deposition of investigating officer (P.W.5) submitted that the investigating officer has admitted in his cross-examination (a) that he has not mentioned that there is no entry in the case diary about the recovery of gun from Awadhesh Prasad. (a) He has also admitted that he has not sent the blood stained earth for Forensic examination. (b) He also admitted that he has not mentioned in the case diary that he found the blood stained. (d) During cross-examination, he stated that Baleshwar Singh has not stated that the accused persons were equipped with Bhala and Garasa. (e) Witness Ram Sagar Singh has also not stated that the accused were standing equipped with Bhala, Lathi and Garasa. (f) He also admitted in his cross-examination that the informant has not stated before him that he along with Suresh has gone to police station and (g) the informant has not disclosed that the dead body of his son was found in the well of village Gokul.

In fact, in the instant case after the cross-examination of P.W.5, the prosecution has recalled this witness and he was examined by the prosecution where he has admitted that the charge of investigation of this case was subsequently handed over to Chandrika Prasad Singh and as such para 61 to 113 of the case diary was marked as Ext. 6 in the instant case.

15. Mr. Sharma referring to the deposition of the

investigating officer submitted that in the instant case, the police has committed perfunctory investigation and no step was taken by the investigating officer of the case for investigation on the scientific line in a case where there is no eye witness. The investigation was required to be conducted on scientific line and the failure of the investigating officer to send the blood stained for chemical examination nor its mention and the fact that in the case diary he has not mentioned about the fact of trampling of paddy in the field from where blood stained earth was seized. He submitted that the failure of the investigating officer of sending the blood stained soil for F.S.L. report renders the prosecution case doubtful. During cross-examination, the accused have given a suggestion that since the informant's side belongs to a particular caste to which the investigating officer belongs and as such he has falsely implicated the accused persons on account of caste favour in the alleged caste conflict between the two villages.

16. Counsel appearing for the appellants has submitted with reference to the deposition of the witnesses that the witnesses are firstly incompetent to make any statement as to the involvement of the appellants in the commission of crime. Their statements do not disclose the involvement of these appellants in the matter of kidnapping of the deceased or his killing.

17. Coupled with the fact that the investigating officer has not conducted the investigation on scientific line and failure on the part of the prosecution to find out the real culprit in this case by not sending the blood stained earth and not mentioning the details of the fact about the collection of blood stained earth in the case diary goes to show that the prosecution has more concealed the fact than disclosed and discovered the materials in the commission of the crime. Mr. Sharma then submitted that there is delay in sending F.I.R. to the Magistrate. The F.I.R. was purportedly registered on 22.11.1985, but it was sent to the Magistrate on 24.11.1985, which creates serious doubt about the prosecution version. The delay in sending F.I.R. to the Magistrate is vital and matters in a case based on circumstantial evidence, caste tension between two villages and when there was allegation by the defence that the investigating officer of the case was not fair in conducting the investigation, the delay in sending the F.I.R. to the Magistrate is also a suspicious circumstance that the F.I.R. was ante-dated and was prepared as an after thought and the appellants have been made accused in this case after full deliberation in the village and in a planned way, being the brother and relative of Nepali Yadav of village Patharhat against whom case of theft was lodged by the Amerika Singh of village Nadwan and caste tension was there on account of beating of Nepali Yadav by the residents of

Nadwan village. Thus he submitted that taking the entire prosecution case dispassionately, one cannot arrive at a conclusion that the circumstances are of conclusive nature to hold that the appellants have committed the crime. The circumstances as per the deposition of the witnesses are not even sufficient to reasonably believe that these appellants have committed the crime and it is settled principle of law that if the chain of events are not conclusive and leads to only one irresistible conclusion that the crime was committed in a specific manner and in no other manner and the accused persons alone could have committed that crime only then conviction on circumstantial evidence is sustainable.

18. Counsel for the appellants has raised the point of perfunctory examination of the accused/appellants under Section 313 of the Cr.P.C. In fact the appellants were not confronted with the entire adverse circumstance while their examination by the trial court under Section 313 of the Cr.P.C. It is now well settled that examination of accused under Section 313 Cr.P.C. for is not an empty formality.

19. The other points raised by the appellant also merits consideration. The object as examination of the accused that under Section 313 Cr.P.C. the accused are to be confronted to all adverse circumstances so that he may explain his position by

confronting the adverse situation. In the instant case the kind of question posed to the appellant does not satisfy the requirement of Section 313 Cr.P.C. Reference in this connection may be made to the judgment of the Apex Court in the case of **Munna Kumar Upadhyaya @ Munna Upadhyaya vs State of Andhra.Pradesh Through Public Prosecutor**, **Hyderabad, Andhra Pradesh: (2012) 6 SCC 174:**

> "73. It is a settled law that the statement under Section 313 Cr. PC is to serve a dual purpose, firstly, to afford to the accused an opportunity to explain his conduct and secondly to use denials of established facts as incriminating evidence against him. In this regard, we may refer to some recent judgments of this Court. This Court in Asraf Ali v. State of Assam [(2008) 16 SCC 328] has observed as follows :
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> > "21. Section 313 of the Code casts a duty on the court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as a necessary corollary therefrom that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced.

22. The object of Section 313 of the Code is to establish a direct dialogue between the court and the accused. If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it. Where no specific question has been put by the trial court on an inculpatory material in the prosecution evidence, it would vitiate the trial. Of course, all these are subject to rider whether they have caused miscarriage of justice or prejudice. This Court also expressed a similar view in S. Harnam Singh v. State (Delhi Admn.) while dealing with Section 342 of the Criminal Procedure Code, 1898 (corresponding to Section 313 of the Code). Non-indication of inculpatory material in its relevant facts by the trial court to the accused adds to the vulnerability of the prosecution case. Recording of a statement of the accused under Section 313 is not a purposeless exercise."

74. Again, in its recent judgment in Manu Sao v. State of Bihar [(2010) 12 SCC 310], a Bench of this Court to which one of us, Swatanter Kumar, J., was a member, has reiterated the above-stated view as under:

"12. Let us examine the essential features of this Section 313 CrPC and the principles of law as enunciated by judgments, which are the guiding factors for proper application and consequences which shall flow from the provisions of Section 313 of the Code.

13. As already noticed, the object of recording the statement of the accused under Section 313 of the Code is to put all incriminating evidence against the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time,

also to permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the court and besides ensuring the compliance therewith the court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simpliciter denial or in the alternative to explain his version and reasons for his alleged involvement in the commission of crime. This is the statement which the accused

makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law. The primary purpose is to establish a direct dialogue between the court and the accused and to put to the accused every important incriminating piece of evidence and grant him an opportunity to answer and explain. Once such a statement is recorded, the next question that has to be considered by the court is as to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the courts have explained this concept and now it has attained, more or less, certainty in the field of criminal jurisprudence.

14. The statement of the accused can be used to test the veracity of the exculpatory nature of the admission, if any, made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case. The provisions of Section 313(4) explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put in evidence against the accused in

> any other enquiry or trial for any other offence for which such answers may tend to show he has committed. In other words, the use is permissible as per the provisions of the Code but has its own limitations. The courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this section should not be considered in isolation but in conjunction with evidence adduced by the prosecution."

20. In view of the judgment of the Apex Court on the issue of examination of accused under Section 313 Cr.P.C. the judgment of conviction and order of sentence passed in this case is unsustainable in law as well as on facts.

21. Mr. S.C. Mishra appearing on behalf of the State submitted that in the instant case, the trial court has examined the case and when the trial court found that there is no other view possible in this case than to convict the appellants, convicted the appellants. The appellants are not entitled to benefit of doubt in this case, as prosecution has been able to establish the guilt beyond all reasonable doubt and the chain of events, namely, the caste tension in the two villages on account of criminal case lodged against Nepali Yadav and beating of Nepali Yadav by the villagers of Nadwan village was a

definite motive for the villagers of Patharhat to which the appellants belonged to commit the crime as a retaliation of beating of Nepali Yadav and as such the trial court has rightly convicted the appellants.

22. We have gone through the records of this case and after considering the submissions of the appellants and the APP appearing on behalf of the State, we find that P.W.1 and P.W. 2 have suspected the involvement of these appellants in the commission of crime only on the basis that he has seen the appellants equipped with gun, Bhala, Garasa etc. and marching towards south of village Patharhat. These two witnesses have not said anywhere that they have either seen the victim in their custody or they have not even suggested that they had seen the victim passing through the village and these appellants were moving towards him, P.W.1 and P.W.2 had not claimed that they have seen the victim and the appellants at the same time, which leads to believe that these appellants were equipped with arms to commit such crime. P.W.2, who claimed to have seen the accused persons from a distance of 100 years, has admitted during cross-examination that his eye sight is weak and as such we cannot place reliance on his deposition. Moreover, he has also not stated that the victim was in the custody of these appellants or victim was chased by these appellants or victim was seen close to these appellants.

23. We find infirmity in the prosecution case when

P.W.3, the maternal uncle, in his deposition stated that the deceased visited his village in the morning, but he has not disclosed that when he returned back from his Nanihal, as the time is crucial factor in the instant case, which the prosecution has not been able to explain. The investigating officer has not examined what was the time when the deceased returned back from Nanihal on 21.11.1985, as P.W.3 has stated that he visited Nanihal at 8.00 A.M. and from the deposition of P.W.4 it appears that the deceased left for his Nanihal at 6.00 A.M. and as such if he reached the place of Nanihal within two hours, then by the same standard of time and distance he was expected to return back. The statement of P.W.1 and 2 that they have seen the appellants at 4.00 to 5.00 P.M. equipped with the various arms cannot itself be taken as chain of circumstance about their involvement in absence of definite case of the prosecution that the victim was in custody of accused persons from the accused persons chasing the victim. No case against the appellants can be taken as supported by the conclusive circumstantial evidence, particularly, in absence of specific time of departure of the deceased from his Nanihal one cannot find possibility of commission of crime of abduction or killing of the deceased by these appellants, who were seen by the P.W.1 and P.W.2 at 4.00 - 5.00 P.M.

24. Thus, we are of the view that the lacunae in the

prosecution case to explain the actual time of return of the deceased from his Nanihal and possibility of his interception/kidnapping and killing after 4.00 P.M. brings the prosecution case doubtful. We also find that in the instant case, the investigation was not done on the scientific line, the blood stained earth was not sent for chemical examination and the manner in which the investigating officer has conducted the trial, which led to change of the investigating officer also speaks about the perfunctory investigation.

25. Thus in the totality of the facts situation when we find that there is no complete chain and there is no specific case of the prosecution that they have seen these accused persons either chasing the victim or the victim was found in their custody and in absence of disclosure of time of departure of the victim from his Nanihal and possibility of passing through village and also the absence of specific case of the prosecution about the place of occurrence, we find that the prosecution has not been able to make out a case of commission of crime by these appellants beyond all reasonable doubts.

The law on circumstantial evidence is well settled. The Apex Court has reiterated the principle in the judgment reported in (2017) 8 SCC 497 in para 29 to 31, which is reproduced here for ready reference:

> "29. It is now well established, by a catena of judgments of this court, that circumstantial

evidence of the following character needs to be fully established:

(i) Circumstances should be fully proved.

(ii) Circumstances should be conclusive in nature.

(iii) All the facts established should be consistent only with the hypothesis of guilt.

(iv) The circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than the accused (see State of U.P. v. Ravindra Prakash Mittal, Chandrakant Chimanlal Desai v. State of Gujarat). It also needs to be emphasised that what is required is not the quantitative, but qualitative, reliable and probable circumstances to complete the claim connecting the accused with the crime. Suspicion, however grave, cannot take place of legal proof. In the case of circumstantial evidence, the influence of guilt can be justified only when all the incriminating facts and circumstances are found to be not compatible with the innocence of the accused or the guilt of any other persons.

30. The following test laid down in Pudala Veera Reddy v. State of A.P. also needs to be kept in mind: (SCC pp.710,para 10)

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

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

accused;

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

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of 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."

31. Sir Alfred Wills in his book Wills' Circumstantial Evidence (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence:

"(1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandam;

(2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability;

(3) in all cases, whether of direct or circumstantial evidence, the best evidence must be adduced which the nature of the case admits;

(4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of

explanation, upon any other reasonable hypothesis than that of his guilt; and

(5) if there by any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.”

27. Considering the totality of the facts, we are of the view that in a case of circumstantial evidence, each and every chain of events has to be completed and if any of the chain or event is missing, conviction is unsustainable. We have noticed many infirmities and lacuna in the present case. We also noticed many situation not answered by the prosecution, which goes against the prosecution and as such we are of the view that the appellants deserve the benefit of doubt and accordingly, we allow these two appeals and set aside the judgment of conviction passed by the trial court. As the appellants are on bail, they are discharged from the liabilities of their bail bonds.

**(Rajendra Menon, CJ)**

**(Anil Kumar Upadhyay, J)**

Uday/-

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