

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.108 of 2018**

Arising Out of PS. Case No.-18 Year-2013 Thana- SIKRAUL District- Buxar

1. Tunna Choudhary, S/o Baban Choudhary
 2. Baban Choudhary, S/o Munshi Choudhary, Both R/o village- Narahandih, P.S.- Sikaraul , District- Buxar.
- Appellant/s
- Versus
- The State Of Bihar
- Respondent/s
-
-

with
CRIMINAL APPEAL (DB) No. 11 of 2018

Arising Out of PS. Case No.-18 Year-2013 Thana- SIKRAUL District- Buxar

1. Sukari Devi, Wife of Baban Choudhary
 2. Sunita Devi, Wife of Tunna Choudhary
 3. Rajendra Choudhary, Son of Munsu Choudhary
 4. Ashok Choudhary, Son of Lalan Choudhary. All 1 to 4 resident of Village- Narahandih, P.S.- Sikaraul, District- Buxar.
- Appellant/s
- Versus
- The State Of Bihar
- Respondent/s
-
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Appearance :

(In CRIMINAL APPEAL (DB) No. 108 of 2018)

For the Appellant/s : Mr. Bachan Jee Ojha, Advocate

For the Informant : Mr. Anil Kumar Roy, Advocate

For the Respondent/s : Mrs. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 11 of 2018)

For the Appellant/s : Mr. Bachan Jee Ojha, Advocate

For the Informant : Mr. Anil Kumar Roy, Advocate

For the Respondent/s : Mr. Ashwani Kumar Sinha, APP

**CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA**



CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA)

Date : 08-12-2023

Both the aforesaid appeals have been taken up together and are being disposed of by this common judgment.

2. We have heard the learned counsel for the appellants, learned Additional Public Prosecutors for the State assisted by learned counsel for the informant.

3. All the six accused persons/ appellants namely, Tunna Choudhary, Baban Choudhary, Sunita Devi, Rajendra Choudhary, Ashok Choudhary and Sukari Devi were tried by the learned Additional Sessions Judge, VIth, Buxar in Sessions Trial No. 388 of 2013, arising out of Sikraul P.S. Case No. 18 of 2013 for the offences punishable under Sections 302 and 201/34 of the Indian Penal Code.

4. By the judgment and order dated 18.11.2017, the learned Additional Sessions Judge- VIth, Buxar convicted the accused Tunna Choudhary and Baban Choudhary under Section 302 of the Indian Penal Code and all the six accused persons have been convicted under Section 201 of the Indian Penal Code and they have been sentenced vide order dated 24.11.2017 in the manner stated below:

(i). Accused Tunna Choudhary and Baban



Choudhary, the appellants in Cr. Appeal (DB) No. 108 of 2018 have been sentenced to undergo imprisonment for life and fine of Rs. 25,000/- each under Section 302 of the Indian Penal Code and they have also been sentenced seven years rigorous imprisonment and Rs. 5000/- fine under Section 201 of the Indian Penal Code.

(ii). The accused Sukari Devi has been sentenced to undergo imprisonment for 5 years and fine of Rs. 5000/-, accused Sunita Devi has been sentenced to undergo rigorous imprisonment of 6 years and fine of Rs. 2000/-, the accused Rajendra Choudhary and Ashok Choudhary have been sentenced to undergo rigorous imprisonment of 1 year and Rs. 5000/- fine under Section 201 of the Indian Penal Code and in default of payment of fine the accused have to suffer further imprisonment of two months and the fine amount shall be paid to the informant Mangal Choudhary. The sentences of accused Tunna Choudhary and Baban Choudhary have been ordered to run concurrently.

5. Aggrieved by the aforesaid judgment and order of their conviction and sentence, two accused persons namely Tunna Choudhary and Baban Choudhary have preferred Cr. Appeal bearing no. 108 of 2018 and four accused persons



namely Sukari Devi, Sunita Devi, Rajendra Choudhary and Ashok Choudhary have preferred separate appeal bearing Cr. Appeal No. 11 of 2018.

6. Since the above captioned appeals arise out of common factual matrix and impugned judgment dated 18.11.2017 we are disposing them by this common judgment.

7. The prosecution case, in brief is that one Mangal Choudhary gave fardbeyan at Narhandih village before S.H.O., Sikraul P.S. namely S.I. Ravikant on 29.03.2013 at 17.15 hours to the effect that his son Jyoti Kumar aged about 3 years on 27.03.2013 at 2.00 pm had gone for playing outside his house, but not returned till evening then a search was made with the help of villagers but the same was not successful. The said information was not given to the police station. Second day also search was made in pond and other places of village but the child was not recovered. There was suspicion on Tunna Jee and his family members due to old enmity. On 29.03.2013, he and co-villagers had called Tunnajee Choudhary and questioned him and aggressive villagers assaulted him then he disclosed that on 28.03.2013 after killing the child, dead body was concealed in bamboo clump of Hiralal Choudhary. He and all villagers reached there and started searching the child whose dead body



was found in bamboo clump and when dead body was found, Baban Choudhary, father of Tunna tried to flee away but was caught by villagers who became very aggressive and started beating them in which they became injured. Wife of Tunna had already fled away earlier to that. In the meantime, the police reached there and taken them in custody in injured condition and the dead body was taken away from there. It is alleged that with common intention Tunna Choudhary, his father Baban Choudhary and wife of Tunnajee Choudhary (Sunita Devi) murdered his son and concealed his dead body. The formal FIR was registered vide Sikraul P.S. Case No. 18 of 2013 for the offences under Sections 302, 201 and 34 of the Indian Penal Code.

8. The investigation of the case was carried out by the Investigating Officer (I.O., hereafter) and after completion of investigation submitted charge-sheet against two accused persons namely Tunna Choudhary and Baban Choudhary, but learned Chief Judicial Magistrate, Buxar took cognizance against three accused persons namely Tunna Choudhary, Baban Choudhary and Sunita Devi (wife of Tunna Choudhary), thereafter, the case was committed on 25.11.2013 and charge was framed on 06.01.2014 against the original accused namely



Baban Choudhary, Tunna Choudhary and Sunita Devi under Sections 302/34 and 201 of the Indian Penal Code. The prosecution started examining the witnesses and four witnesses were examined on the side of the prosecution. At that stage, the prosecution filed a petition dated 10.04.2015 under Section 319 Cr. P.C. to summon three appellants namely Rajendra Choudhary, Ashok Choudhary and Sukari Devi as accused. The petition was allowed and the Court proceeded against them under Section 319 Cr.P.C. and charge was also framed against them on 04.01.2016 and they were also tried together. In view of Section 319 (4) (a) Cr. P.C. the proceeding commenced afresh and the witnesses reheard. The entire proceeding commenced from beginning of the trial. The *de novo* trial started.

9. In order to substantiate the charges, the prosecution adduced the following six oral evidence:

PW-1 Mangal Choudhary, (Informant)

PW-2 Dinesh Singh

PW-3 Vijay Choudhary

PW-4 Manoj Choudhary, (Hostile)

PW-5 Dr. Ram Kumar Gupta (who had conducted the post-mortem of the victim Jyoti Kumar on 30.03.2013).



PW-6 Ravikant (Investigating Officer).

10. The prosecution also adduced the following documentary evidence:

- (i). Exhibit 1- Signature of informant on *fardebayan*.
- (ii). Exhibit 2- *Panchnama*.
- (iii). Exhibit 3- Post-mortem report of deceased Jyoti Kumar.
- (iv). Exhibit 4- *Fardbeyan* of informant.
- (v). Exhibit 5- Inquest report.
- (vi). Exhibit 6- Endorsement of I.O. on *fardebayan*.
- (vii). Exhibit 6/1- Signature of SHO, Sikraul P.S. on formal FIR.

11. After completion of the oral as well as documentary evidence, the statement of accused under Section 313 of the Cr. P.C. were recorded. The defence of the appellants are that they are quite innocent and they have falsely been implicated in this case only on the basis of suspicion.

12. At the conclusion of trial, the trial court convicted the appellants and sentenced them as aforesaid. Feeling aggrieved by the said judgment and order these appeals.

13. It will be most appropriate to note the findings



given by the learned trial court for convicting the accused persons/ appellants and sentencing them accordingly. The learned trial court in paragraph 16 of the impugned judgment concluded that there was enmity between Mangal Choudhary (informant) and accused persons. The son of informant, Jyoti Kumar aged 3 years was playing and disappeared from there. There was recovery of dead body of Jyoti Kumar from bamboo orchard of Hiralal Choudhary on 29.03.2023 on the basis of confessional statement of Tunna Choudhary and Baban Choudhary before villagers. Before the said recovery, the dead body was concealed in the paddy powder in the house of Ashok Choudhary. All the six accused persons are involved in concealing the dead body of Jyoti Kumar.

14. Learned counsel for the appellants has submitted that there is no cogent material against the appellants and the entire family members have been falsely implicated on the basis of suspicion. The appellant nos.1, 3 and 4 in Cr. Appeal (DB) No.11 of 2018 were proceeded under Section 319 of the Criminal Procedure Code during the trial on the basis of prosecution evidence who made material improvement deviating from original statement changing the prosecution version before the court in order to implicate them which creates serious doubt



about their truthfulness and are not reliable. There is no eye-witness to the alleged occurrence. It is further submitted that there was no motive behind the occurrence by the appellants. The prosecution failed to support the hypothesis of guilt of appellants. He further submits that there are material contradictions and improvements in the statement by the witnesses. It is further submitted that no one has seen the appellants with the victim. From the evidence of witnesses, it can be concluded that they are wholly unreliable, based on such testimonies, it may not proper for the court to hold accused persons/ appellants guilty.

15. In the light of the aforesaid submissions learned counsel for the appellants submitted that the prosecution has failed to prove the guilt of the appellants under the given facts and circumstances of the case.

16. On the contrary, the learned APP for the State assisted by learned counsel for the informant has submitted that the dead body of the victim was recovered on the disclosure made by the appellants and there is no material contradictions in the statement of the prosecution witnesses. Their statements are consistent and remained intact throughout the cross-examination. There is no reason to disbelieve the prosecution



witnesses and the story of occurrence that had taken place. It is not required to prove the motive of appellants for convicting the accused persons when it is not in dispute that there was inimical relation between the informant and the appellants. He has prayed that there being no merit in the appeals filed by the accused appellants, those may be dismissed.

17. We have carefully perused the records and proceedings and the submissions advanced by learned counsel for the parties.

18. The Appellate Court is empowered to reappraise the entire evidence on the record for the purpose of ascertaining as to whether the accused persons or any of them had committed any offence or not and if the impugned judgment and order is ultimately found to be clearly unreasonable and perverse then such judgment and order can be set aside by the appellate court.

19. To examine the correctness of the findings, we will first assess the testimony of prosecution witness. P.W. 1 Mangal Choudhary, father of the victim is the informant of this case who has stated in his evidence that on 27.03.2013 at about 2-3 p.m., his son Jyoti Kumar aged 3 years was playing on *chavar* from where he was disappeared. They started searching



him then Tunna Choudhary with whom his son Sunny Deol was also present said that someone had taken his son on bicycle towards west then he alongwith 10-12 persons searched on that side but his son was not found and they returned to home. It was 8.00 pm, Tunna Choudhary, Baban Choudhary, Rajendra Choudhary, Ashok Choudhary came at his house and told that they will search the victim anyhow. *Panchayati* was held on 28.03.2013. In *panchayati* Tunna Choudhary, Baban Choudhary, Rajendra Choudhary and Ashok Choudhary were called by the villagers but Rajendra Choudhary and Ashok Choudhary had not turned up. Tunna Choudhary and Baban Choudhary assured to produce the victim till evening but he failed to do then on 29.03.2013, the *panchayati* was again held in which Tunna Choudhary accepted that six accused persons/ appellants have killed the victim and appellant Baban Choudhary has also told the same. Police came there, then Baban Choudhary and Tunna Choudhary tried to escape but were arrested and told that after killing, the dead body of the victim has been kept in the paddy powder at the house of Ashok Choudhary. The police has taken them there where blood was found but dead body was not found. Then they have stated that Sukari Devi may have concealed the dead body. Sukari Devi disclosed that the dead body has been



concealed at bamboo clump of Hiralal Choudhary. The police recovered the dead body of Jyoti Kumar from the said place police had recorded his fardbeyan on which he had signed.

20. In his cross-examination P.W. 1 admitted that he had dispute with Tunna Choudhary and Baban Choudhary since 2009 who had kidnapped his wife but due to compromise in police station he had not lodged any case and his wife was recovered within 12 hours. He has further stated that in fardbeyan also he had taken name of Ashok Choudhary, Rajendra Choudhary and Sukari Devi. He denied the suggestion that he had not given statement before the police that Tunnajee had told that Ashok Choudhary, Rajendra Choudhary, Baban Choudhary, Sukari Devi and Sunita Devi having common intention killed Jyoti Kumar and concealed the dead body in paddy powder of Ashok Choudhary. He also denied that he had not stated that in the said paddy powder blood was found.

21. P.W. 2, Dinesh Singh, stated that he came to know that son of Mangal Choudhary has disappeared and villagers tried to search him but he was not found and on the next day i.e. 28th suspicion was raised on Tunna Choudhary, on asking he did not tell anything and on 29th, Police Station Incharge came, he told that his mother know this when his



mother was asked then she told that the dead body of the boy is at bamboo clump where the dead body of the boy was found. In his cross-examination he has admitted that police had not taken his statement. He also accepted that no *panchayati* paper was prepared.

22. P.W. 3 Vijay Choudhary stated that Tunna Choudhary and Baban Choudhary told the villagers that the boy has been killed then police arrived. Tunna Choudhary stated that his mother will disclose about the dead body. Sukari Devi told about the dead body that the same is in bamboo clump of Hiralal Choudhary where the dead body of the boy was found in presence of people and police. Police had arrested Tunna Choudhary, Baban Choudhary (father of Tunna Choudhary) and Sukari Devi (Mother of Tunna Choudhary) but later on police left Sukari Devi then *panchayati* was held after 20 to 25 days of occurrence and a *Panchnama* (Exhibit-2) was prepared by Krishna Yadav.

23. P.W. 4, Manoj Choudhary was declared hostile on the request of the prosecution. He has stated that police had not taken his statement and he has no knowledge that how Jyoti was died.

24. P.W. 5 Dr. Ram Kumar Gupta, who had



conducted post-mortem of the victim on 30.03.2013 at 8.30 am stated the cause of death of the victim as asphyxia due to throttling. The time since death was stated between 6 to 24 hours. It may be stated here that the cause of death of the deceased is not disputed.

25. P.W. 6 Ravi Kant is the I.O. who in his evidence stated that on 29.03.2013 he came to know about the rumor about the killing of a child and throwing of his dead body in village Narhandih. He reached at the spot with armed force and dead body of a child was recovered. He has recorded fardbeyan (Ext. 4) of the informant. He had made inquest report of Jyoti Kumar in presence of two witnesses. He himself taken charge of investigation. He further stated that place of occurrence is bamboo clump of Hiralal Choudhary. He has taken restatement of informant and statement of witnesses present there namely Dinesh Singh, Sanjay Choudhary, Vijay Choudhary, Kanhaiya Choudhary and Manoj Choudhary, who had supported the occurrence. After investigation, finding the occurrence true, filed chargesheet under Sections 302, 201/34 of the IPC against Baban Choudhary and Tunna Choudhary. In his cross-examination, he has admitted that in his fardbeyan the name of three persons came. Accused Tunna Choudhary and Baban



Choudhary were present at the place of occurrence who were made captive by the villagers. He admitted that he had taken restatement of informant at police station and in his statement he had taken name of three accused persons namely Tunna Choudhary, Baban Choudhary and wife of Tunna Choudhary in diary also except three persons no other name came therein.

26. What emerges from the evidence of P.W. 1 is that on 29.03.2013 appellants Tunna Choudhary and his father Baban Choudhary who were present before *Panchayati* accepted that appellants have killed the victim. Then police came and arrested them and they told to police that the dead body was kept in the paddy powder at the house of appellant Ashok Choudhary but when they were taken there the dead body was not found there. So, there was no recovery of dead body on the basis of their disclosure statement. The police recovered dead body from bamboo clump of Hiralal Choudhary on the disclosure statement of Sukari Devi. It emerges from the evidence of P.W. 2 that on suspicion Tunna Choudhary was questioned but he said nothing. It appears from the evidence of P.W. 3 that Tunna Choudhary had stated that his mother will disclose about the dead body. P.W. 6 who is I.O. of the case, deposed that he came to know through rumor on 29.03.2013



about the killing and throwing his dead body and he reached the place of occurrence, dead body was recovered and recorded fardbeyan of informant, P.W. 1. He accepted that Tunna Choudhary and his father Baban Choudhary were made captive by the villagers. It emerges from his evidence that before the police appellants had not made any confession and Tunna Choudhary and Baban Choudhary who were made captive were arrested and informant and witnesses during investigation named only three accused Tunna Choudhary, Baban Choudhary and wife of Tunna Choudhary.

27. There were no eye-witnesses to the incident and the case is based on circumstantial evidence. For proving a crime, it is not necessary that it must be seen to have been committed or must be proved by a direct ocular evidence. The offence can be proved by circumstantial evidence also. It is settled principle of law that an accused can be punished if he is found guilty even in cases of circumstantial evidence provided the prosecution is able to prove beyond reasonable doubt the complete chain of events and circumstances which definitely points towards the involvement and guilty of the suspect or accused as the case may be.

28. Three Judges Bench of Hon'ble Supreme Court



in the Judgment dated 13.10.2022 in **Ramanand @ Nandlal Bharti Vs. State of Uttar Pradesh** reported in **2022 SCC Online SC 1396** at **paragraph 46** observed as under:

“46. Although there can be no straight jacket formula for appreciation of circumstantial evidence, yet to convict an accused on the basis of circumstantial evidence, the Court must follow certain tests which are broadly as follows:

1. Circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;

2. Those circumstances must be of a definite tendency unerringly pointing towards guilt of the accused and must be conclusive in nature;

3. The circumstances, if 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 but should be inconsistent with his innocence. In other words, the circumstances should exclude every possible hypothesis except the one to be proved.”

29. The burden is always on the prosecution to



prove its case beyond reasonable doubt on the basis of legally admissible evidences. The law does not permit the courts to punish the accused on the basis of suspicion alone. It is settled principle of criminal jurisprudence that greater the felony the stricter the degree of proof. The Hon'ble Supreme Court in the case of **Sarwan Singh Rattan Singh Vs. State of Punjab (AIR 1957 SC 637)** in paragraph 12 observed as under:

“ It is no doubt a matter of regret that a foul cold- blooded and cruel murder should go unpunished. There may also be an element of truth in the prosecution story against the accused. Considered as a whole, the prosecution story ‘may be’ true; but between ‘may be true’ and ‘must be true’ there is inevitable a long distance to travel and whole of this distance must be covered by prosecution by legal, reliable and unimpeachable evidence before an accused can be convicted.”

30. Now, on the basis of material on record it is required to be examine whether the prosecution has firmly established various circumstances which linked together forges a chain so complete that it leads to sole hypothesis of guilt of the accused beyond all reasonable doubt. The basic links in the chain of circumstances start with motive, then move on to last seen theory, recovery, medical evidence, expert opinions if any



and any other additional link which may be part of the chain of circumstances.

31. The Hon'ble Supreme Court in **Inderjit Das Vs. State of Bihar reported in (2023) Live Law (SC) 152** held in as under:

“15. In a case of circumstantial evidence, motive has an important role to play. Motive may also have a role to play even in a case of direct evidence but it carries much greater importance in a case of circumstantial evidence than a case of direct evidence. It is an important link in the chain of circumstances. Reference may be made to the following two judgments on the importance of motive in a case of circumstantial evidence:

(1) Kuna Alias Sanjaya Behera vs. State of Odisha (2018) 1 SCC 296

and

(2) Ranganayaki vs. State by Inspector of Police (2004) 12 SCC 521

32. There is nothing on record to indicate that what was the motive of the appellants to kill the son of the informant. The prosecution has failed to prove the motive of appellants. Although, P.W. 1, in his cross-examination has admitted that they have quarrel since 2009 and his wife was kidnapped by



accused Tunna Choudhary but he had not lodged the case due to compromise and she was found within 12 hours. The inimical relation with accused does not show strong motive for killing the child of the informant but it may be one of the reasons to implicate the entire family members (appellants) as accused when he got opportunity.

33. The Hon'ble Supreme Court in paragraph 88 of the Judgment in Ramanand @ Nandilal Bharti Vs. State of Uttar Pradesh (supra) observed as under:

“It is a settled principle of criminal jurisprudence that in a case based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. This Court in various decisions has laid down the principles holding that motive for commission of offence no doubt assumes greater importance in cases resting on circumstantial evidence than those in which direct evidence regarding commission of offence is available. It is equally true that failure to prove motive in cases resting on circumstantial evidence is not fatal by itself. However, it is also well settled and it is trite in law that absence of motive could be a missing link of incriminating circumstances, but once the prosecution has established the other incriminating circumstances to its entirety, absence of motive will not give any benefit to the accused.”



34. There is no material to show that all the accused had common intention and they had participated in the offence, the intention itself not being proved and their participation in it is not made out of credible evidence. Without a clear finding regarding common intention and participation therein by each of the accused members, there can be no conviction with the aid of Section 34 IPC.

35. In the present case, the accused appellant no. 1 is said to have made an extra judicial confession that he had killed the son of the informant. The extra-judicial confession of appellant no. 1 and recovery of dead body were linked together by prosecution to form a chain. The extra-judicial confession is questionable and it has to be seen about the circumstances in which it was made viz, the number of people in whose presence it was made, degree of coercion/intimidation that elicited alleged confession, among others.

36. Confessions may be divided into two classes, i.e. judicial and extra judicial. Judicial confessions are those which are made before Magistrate or Court in the course of judicial proceedings. However extra judicial confessions are those which are made by the party elsewhere before a Magistrate or Court.



As to extra judicial confessions, two questions arises:

- (i) were they made voluntarily? And
- (ii) are they true?

37. Confessions would be voluntary if it is made by the accused in a fit state of mind, and if it is not caused by any other inducement, threat or promise which has reference to the charge against him, proceeding from a person in authority. Whether or not the confession was voluntary would depend upon the facts and circumstances of each case, judged in the light of Section 24 of the Evidence Act.

38. The law is clear that a confession cannot be used against an accused person unless the court is satisfied that it was voluntarily and at that stage the question whether it true or false does not arise. In the aforesaid judgment of **Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh** (Supra), the Hon'ble Supreme Court in paragraph 83 of the judgment held as under:-

“83. Extra judicial confession is a weak piece of evidence and the court must ensure that the same inspires confidence and is corroborated by other prosecution evidence. It is considered to be a weak piece of evidence as it can be easily procured whenever direct evidence is not available. In order to accept extra judicial



confession, it must be voluntary and must inspire confidence. If the court is satisfied that the extra judicial confession is voluntary, it can be acted upon to base the conviction.”

39. There is material contraction in the deposition of I.O. and the informant. I.O. deposed that accused Tunna Choudhary and Baban Choudhary were present at the place of occurrence i.e. (bamboo-clump where dead body of the child was recovered) and were made captive by the villagers. On the other hand, informant (P.W.-1) in his deposition stated that Tunna Choudhary and Baban Choudhary after arrest by police told that the dead body of victim had been kept in paddy powder at the house of Ashok Choudhary and the police had taken them there where blood was found but dead body was not found thus the informant version is wholly inconsistent on this point. Secondly, the informant had deposed that the dead body of the boy was recovered by the police on disclosure of Sukari Devi which has not been corroborated by the I.O. in his evidence and the I.O. has categorically deposed that informant had taken name of three accused persons only namely Tunna Choudhary, Baban Choudhary and wife of Tunna Choudhary and on looking at informant version, it is wholly inconsistent and there was absolutely no evidence worthy of consideration which could



have been relied on to convict the appellants.

40. It is clear as crystal that the sole connecting evidence against the appellants was recovery based on disclosure of Sukari Devi, in our opinion, is not sufficient to qualify as 'fact.. discovered' within the meaning of Section 27 of Evidence Act. Needless to state that Section 27 is exception to Section 25 and 26 of the Evidence Act. The statement made by the accused in police custody is admissible only to the extent permissible under Section 27 of the Evidence Act. As such, it is necessary for the prosecution to establish specifically as to what statement was made by the accused when he was in police custody and how a particular statement has laid the police to discover a particular fact which was relevant to the facts in the case in question.

41. The prosecution's entire case is premised on the confessional statement of appellant Tunna Choudhary and disclosure statement made by Sukari Devi, but they were not given the opportunity to explain the circumstances and the question put to appellants under Section 313 Cr.P.C. by the trial Court is an empty formality. It is trite law that examination of accused under Section 313 should not be held in perfunctory manner. It appears that the suggestions which has been put forth



show a general and omnibus allegation on the appellants in regard to commission of offence and on suggestions have been put to the appellant with respect to individual act in commission of offence for which they have been charged and convicted. The Hon'ble Supreme Court consistently underscored the significance of Section 313 Cr. P.C. (See: **Jai Prakash Tiwary Vs. State of Madhya Pradesh 2022 SCC Online 966**).

42. We are conscious that on the ground of minor inconsistencies, the evidence of informant cannot be brushed aside. However, it is to be noted that there are material improvement in his evidence. His evidence is required to be scrutinized. Even according to prosecution, there is previous enmity between the accused and the deceased. As held by the Hon'ble Supreme Court in case of **Ramashish Rai Vs. Jagdish Singh (2005) 10 SCC 498**, previous enmity is a double-edged sword. On one hand, it provides motive to the crime and on the other, there is a possibility of false implication.

43. It is relevant to point out that in fardbeyan P.W. 1, informant stated that appellant Tunnajee Choudhary had disclosed that he had killed the boy and his dead body was concealed in the bamboo-clump of Hiralal Choudhary. However, in his examination-in-chief he has deposed that Tunna



Choudhary in *panchayati* on 29.03.2013 had accepted that all six appellants had killed the boy and appellant Baban Choudhary also admitted the same. He further improved his version that Baban Choudhary and Tunna Choudhary was arrested by police when they were trying to escape and told that the dead body was kept in paddy powder at the house of Ashok Choudhary and police had taken there where blood was found but I.O. in his evidence has stated that when he reached, the dead body was lying in bamboo-clump of Hiralal Choudhary. The said fact was not stated in the fardbeyan of the informant nor the I.O. has supported this fact. It appears that with a view to implicate Ashok Choudhary in the crime, the said story was created. Then to implicate Sukari Devi, P.W. 1 has stated in his deposition that Sukari Devi had stated that the dead body was kept in bamboo-clump. Blood stained paddy powder or earth were not collected from the house of appellant Ashok Choudhary. The deposition of I.O. (P.W.6) and the Inquest Report (Exhibit-5) do not corroborate the prosecution version.

44. The other circumstances relied by the learned trial court for convicting the appellants is *Panchnama* (exhibit-2) which was exhibited by P.W. 3 and it was pointed out that there were signature and thumb impression of 50 people. As per



P.W. 3, the said document was drawn after 20-25 days of incidence by Krishna Yadav who was not examined. P.W. 2 has admitted that no *panchayati* paper was prepared. It was not produced before the police during the investigation. It must be kept in mind that proof of contents of a document is totally different from the truth of the contents of the document. The truthfulness of the contents of document has to be proved by the personal knowledge only. The witness should be the author of the document sought to be proved and this mode of proof by way of oral evidence is stipulated under Section 59 of the Evidence Act. The learned trial court, it appears, was under the impression that *panchnama* is substantive piece of evidence. *Panchnama* is not substantive piece of evidence and the same can be used as corroborative piece of evidence.

45. Considering the entire materials from the records and proceedings, it is not possible to conclude that the appellants/convicted accused before this Court had committed the subject crime and none else. The logical inference through the material on record does not probablize the contingency that except the accused none else had committed the crime in question.

46. In the light of this discussion, the



appellants/convicted accused are certainly entitled for benefit of doubt as the prosecution has failed to establish their guilt by adducing clear, cogent, trustworthy and clinching evidence. In the result, all these appeals deserve to be allowed and are allowed with the following orders:

I. The appeals are allowed.

II. The impugned judgment and order dated 18.11.2017 passed in the Sessions Trial No. 388 of 2013 arising out of Sikraul P.S. Case No. 18 of 2013 passed by the learned Additional Sessions Judge VIth, Buxar thereby convicting the appellants/convicted accused and sentencing them, accordingly, is set aside.

III. All the appellants are acquitted of the charges leveled against them and held to be proved against them by the learned trial Court.

IV. Appellant no.1 Tunna Choudhary in Cr. Appeal (DB) No.108 of 2018, who is in jail custody, be set at liberty forthwith if not required in any other case.

V. Appellant no.2 Baban Choudhary in Cr. Appeal (DB) No.108 of 2018 and appellants namely Sukari Devi, Sunita Devi, Rajendra Choudhary and Ashok Choudhary in Cr. Appeal



(DB) No. 11 of 2018, who are on bail, are discharged from their liability of their respective bail bonds.

VI. The fine amount, if any, paid by them should be refunded to them.

47. The aforesaid appeals, accordingly, stand disposed of.

48. Let a copy of this judgment be dispatched to the Superintendent of the concerned jail forthwith for compliance and record.

49. The records of these appeals be returned to the trial court forthwith.

50. Interlocutory application, if any, in both appeals, also stands disposed of accordingly.

(Sunil Dutta Mishra, J)

(Arvind Srivastava, J)

(Arvind Srivastava, J)

khushbu/-

AFR/NAFR	AFR
CAV DATE	07.11.2023
Uploading Date	
Transmission Date	

