IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.263 of 2004

==========

Ram Pravesh Mahto Son of Late Baleshwar Mahto R/o vill - Makha Chak, P.S. - Bakhari, Distt. - Begusarai.

... ... Appellant/s

Versus

The State of Bihar.

... ... Respondent/s

==========

with

CRIMINAL APPEAL (DB) No. 381 of 2004

==========

Pappu Sah Son of Sri Ram Lakhan Sah R/O Vill - Gangraho, P.S. - Bakhri, Distt. - Begusarai.

... ... Appellant/s

Versus

The State of Bihar.

... ... Respondent/s

==========

Appearance :

(In CRIMINAL APPEAL (DB) No. 263 of 2004)

For the Appellant/s	:	Mr. Ansul, Advocate
		Mrs. Sagrika, Advocate
		Mr. Shiw Kumar Prabhakar, Advocate
		Mr. Gautam, Advocate
		Mr. Aditya Pandey, Advocate
For the State	:	Mr. Sujit Kumar Singh, APP
For the Informant	:	Mr. Amrendra Kumar Singha, Advocate
		Mr. Bijendra Kumar Singh, Advocate

(In CRIMINAL APPEAL (DB) No. 381 of 2004)

For the Appellant/s	:	Mr. Ansul, Advocate
		Mrs. Sagrika, Advocate
		Mr. Shiw Kumar Prabhakar, Advocate
		Mr. Gautam, Advocate
		Mr. Aditya Pandey, Advocate
For the State	:	Mr. Sujit Kumar Singh, APP
For the Informant	:	Mr. Amrendra Kumar Singha, Advocate
		Mr. Bijendra Kumar Singh, Advocate

==========

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 13-12-2023

Both these appeals are filed under Section 374(2) of

the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') against the common judgment of conviction dated 17.03.2004 and order of sentence dated 19.03.2004, passed by learned 1st Additional Sessions Judge, Begusarai in Sessions Trial No.124 of 2002, arising out of Bakhri P.S. Case No.82 of 2001 whereby the court has convicted both the appellants for the offences punishable under Sections 364, 302, 201 read with Section 34 of the Indian Penal Code and they have been sentenced to suffer RI for life and a fine of Rs.2000/- under Sections 302/34 of the Indian Penal Code. The appellants have further been sentenced to suffer imprisonment for seven years and a fine of Rs.2000/- for the offence punishable under Sections 201/34 of the Indian Penal Code and both the sentences shall run concurrently. In default of payment of fine, both the convicts shall further serve the sentence of imprisonment for a period of two months each for each count.

2. The factual matrix of the present case is as under:-

2.1 *Fardbeyan* of Ruby Devi came to be recorded on 26.10.2001 wherein the informant has stated that on 25.10.2001, Sunita Devi, Meena Devi, Usha Devi, Sushila Devi, Pinki Kumari and Rampari Devi, the deceased (mother of the informant Ruby Devi) had gone to see the Durga Puja at Bakhri Bazar. While returning, when they came near Bakhri bus stand at around 11:00

p.m., accused Rampravesh Mahto, Pappu Sah and two unknown persons kidnapped Rampari Devi (mother of the informant). On protest, the accused threatened them with guns because of which no one could raise alarm. This occurrence was narrated to the informant by her niece Pinki Kumari who came running to the house of the informant when the incident started. On receiving the information, the informant ran to the place of occurrence but by that time, the deceased had been taken somewhere by the said four accused. The informant alleged that the reason for the incident was that around two months ago, Murlidhar Mahto, the brother-in-law of the informant was killed by the accused Rampravesh Mahto, his brother Pramod Mahto alongwith others. In that case, Rampukar Mahto was the informant. The mother of the informant was kidnapped on the pretext that her husband would make compromise in the previous case. The informant also apprehends that her mother might be killed, if compromise is not reached by her father.

2.2 After registration of the formal FIR on the basis of the aforesaid *fardbeyan*, the Investigating Agency started investigation. During course of investigation, dead body of person who was kidnapped, namely, Rampari Devi was found and, therefore, the Investigating Agency added Sections 302 and 201 of the Indian Penal Code. During course of investigation, the

Investigating Officer recorded the statement of the witnesses, collected the documentary evidence and thereafter filed charge-sheet against both the appellants and another accused.

2.3 The case was exclusive triable by court of sessions and, therefore, the learned Magistrate committed the same to the concerned sessions court where the same was registered as Sessions Trial No.124 of 2002.

2.4 During course of trial, the prosecution had examined 15 witnesses whereas the defence had examined one witness. Documentary evidence was also produced before the Trial Court. Thereafter further statement of the accused under Section 313 of the Code came to be recorded. After conclusion of the trial, the Trial Court acquitted the accused, Ramphal Tanti whereas both these appellants have been convicted for the aforesaid offences as stated hereinabove.

2.5 Against the judgment of conviction and order of sentence passed by the learned Trial Court, the appellants have filed two separate appeals.

3. Heard Mr. Ansul, learned counsel for both the appellants, Mr. Sujit Kumar Singh, learned APP for the State in both the appeals as well as Mr. Amrendra Kumar Singha, learned counsel appearing on behalf of the informant.

4. Learned counsel appearing for the appellants

would mainly contend that most of the prosecution witnesses have turned hostile and they have not supported the case of the prosecution, therefore, the case of the prosecution rests on deposition given by two witnesses who have stated before the Court that the accused had kidnapped Rampari Devi, mother of the informant. However, there are major contradictions in the deposition of the said witnesses. It is further submitted that even the independent witness has not supported the case of the prosecution and other independent witnesses have not been examined by the prosecution though number of persons were gathered at the time of so called occurrence of kidnapping of mother of the informant. Learned counsel thereafter contended that even there is no eye witness to the incident of killing of the deceased, i.e., the mother of the informant and, therefore, the case of the prosecution rests on circumstantial evidence. It is submitted that the prosecution has failed to prove the case against the appellants-accused beyond reasonable doubt by completing the chain of circumstances. It is also submitted that Section 106 of Evidence Act would be applicable once the burden of proof was discharged by the prosecution and thereafter the said burden to prove can be shifted to the accused. However, the prosecution has failed to discharge the initial burden of proof against the present appellants herein and, therefore, also the provision of Section 106

of the Evidence Act would not be attracted. Learned counsel for the appellants further submits that even assuming without admitting that the appellants were lastly seen in company of the deceased even then the prosecution has failed to prove beyond reasonable doubt by leading cogent evidence that only the present appellants have killed the deceased. It is pointed out that the dead body of the deceased was found after three days. Thereafter it is contended that even with regard to the motive part, the witnesses have put forward different stories and, therefore, also when the prosecution has failed to prove the motive on the part of the appellants to commit the alleged offences, the Trial Court has committed grave error while passing the judgment of conviction and order of sentence.

5. Learned counsel for the appellants have placed reliance upon the following decisions:

(i) Shambu Nath Mehra vs. State of Ajmer, reported in 1956 SCC OnLine SC 27

(ii) Nizam v. State of Rajasthan, reported in (2016) 1 SCC 550

(iii) State of Karnataka vs. Chand Basha, passed by Hon’ble Supreme Court in Criminal Appeal No.1547 of 2011

(iv) Reena Hazarika v. State of Assam, reported in (2019) 13 SCC 289

(v) Nandu Singh vs. State of Madhya Pradesh, reported in 2022 SCC OnLine SC 1454

(vi) Chandrapal vs. State of Chhattisgarh, passed by Hon'ble Supreme Court in Criminal Appeal No.378 of 2015

(vii) Jabir and Others vs. State of Uttarakhand, reported in 2023 SCC OnLine SC 32

(viii) R. Sreenivasa vs. State of Karnataka, reported in 2023 SCC OnLine SC 1132

6. On the other hand, the learned APP for the State as well as learned counsel appearing for the informant have vehemently opposed both these appeals. It is submitted that the FIR was immediately lodged by the daughter of the deceased wherein she has narrated the occurrence in detail. It is further submitted that two witnesses, in presence of whom mother of the informant was kidnapped, have also supported the case of the prosecution and, therefore, the FIR for the offence punishable under Section 364 of the Indian Penal Code came to be registered against the appellants and another accused. Thereafter dead body of the person who was kidnapped, was found after three days and, therefore, Section 302 read with Section 201 of the Indian Penal Code were added. It is submitted that once the two prosecution witnesses have supported the case of the prosecution beyond reasonable doubt, no error is committed by the Trial Court while

passing the impugned judgment and order of conviction. It is further submitted that the prosecution has also proved the motive on the part of the appellants to commit the alleged offences. From the medical evidence also, prosecution has proved that the death of the decease was homicidal death. It is further submitted that the appellants-accused have failed to discharge the burden of Section 106 of the Evidence Act. Thus, it is urged that this Court may not interfere with the impugned judgment of conviction and order of sentence rendered by the learned Trial Court.

7. We have considered the submissions canvassed by learned counsel appearing for the parties, we have also perused the materials placed on record, the evidence led by the prosecution and the defence before the Trial Court. From the materials placed on record, it transpires that the prosecution has examined 15 witnesses whereas the defence has examined one witness. So far as Pws.1, 3, 4, 5 and 7 are concerned, they have not supported the case of the prosecution and, therefore, they were declared hostile. It is pertinent to note that P.W.1, Baleshwar Mahto as well as P.W.7, Genu Sah are the independent witnesses whereas Pws.3, 4 and 5 are near relatives of the deceased and eye witnesses to the occurrence of alleged kidnapping of Rampari Devi have also not supported the case of the prosecution. So far as P.W.2, Ramsagar Sah is concerned, the said witness is witness of the inquest report.

However, he stated that he put his thumb impression on the said report but during cross-examination he specifically admitted that the said thumb impression was given on the plain paper. Similarly, P.W.11, Mantun Mahto is also a witness of inquest report. The said witness has stated in the examination-in-chief that he has signed the inquest report. However, in paragraph-4 of the cross-examination, the said witness specifically admitted that the said signature was taken when he was at petrol pump and he has signed the blank paper. P.W.12, Krishna Kumar Mishra is a witness of seizure-cum-seizure list. The said witness also admitted in the cross-examination that he had signed on the blank paper and the seizure list was not prepared in his presence. Similarly, P.W.13, Ram Lakhan Paswan is also a witness of search and seizure list. The said witness also stated during cross-examination that search was not carried out in his presence.

8. Thus, the case of the prosecution rests on the deposition given by P.W.6, Sushila Devi who has claimed that she is eye witness to the occurrence of kidnapping. Similarly, P.W.8, Janakmani Devi is also projected as eye witness to the occurrence of kidnapping. Admittedly P.W.10 ,Ruby Devi, who is informant, is not an eye witness to the incident of kidnapping.

9. P.W.6, Sushila Devi stated in her deposition that when she was returning after attending Durga Puja and when she

reached near Bakhri bus stop, accused Pappu Sah, Rampravesh Mahto and Ramphal Tanti caught Rampari Devi and took her on foot towards the west. 2-3 days thereafter dead body of Rampari Devi was recovered. At that time, one Usha Devi, Sunita Devi, Pinki Kumari, Ruby Devi were also present with her. She has identified the accused. She has further stated that Murlidhar Mahto was killed in which her father had given the name of the accused as a result of which the accused were giving threats to them.

9.1 During cross-examination, the said witness has stated that there was no land dispute with the accused from the beginning. Bakhri bus stop is situated in the market. The shops of Baleshwar Mahto, Babar Ali, Mahendra, Ratan Yadav, Pappu Sah are situated in the market. They had gone to see fare of Durga Puja. There were many people near the bus stand. There was lot of crowd due to fare. Bakhri police station is near to the said place. They had gone to see the fare at about 09:00 p.m. At that time, the female members of the family were also accompanying her. It is further stated that Rampari Devi was her mother. The accused was not having any enmity with her. She has further categorically admitted during cross-examination that the accused took her mother on the tractor. At that time, two *Chowkidars* and 20-25 female were also present. Janakmani was also there. They fled away in the said tractor. Out of two *Chowkidars*, one was of her

village. Though they made *hulla*, nobody came for help. Thereafter the information was given to the police station. She has further stated that when she had given the statement before the police, she had also given the name of Ramphal Tanti.

10. P.W.8, Janakmani Devi has stated in her examination-in-chief that Rampari Devi was her daughter. It was a time of *Dusshera* fare. At about 11:00 p.m. during night hours, they had gone to visit the fare. At that time, one Sushila, Sunita, Meena and Pinki were also with her. Rampravesh came near the bus stand and forcibly took Rampari from the said place. She has identified the accused who were present in court. She has further stated that there was a dispute with regard to land.

10.1 During cross-examination, she has stated that there are number of shops situated near Bakhri bus stand and there is a police station near the said bus stand. There was huge crowd at the bus stand. The accused took Rampari on foot. At that time, Ruby was also present. They went to the police station. At that time, Ruby was also present. Ruby had given the *fardbeyan* to *Darogaji*. At the time of occurrence, they made *hulla*. People also gathered. They had tried to stop. The police had recorded her statement. She has further stated that at the time of fare, *Chowkidar* and police were also present. She has further stated that she has not told to the police that Pinki told us about the

incident that Rampravesh had kidnapped Rampari.

11. P.W.9, Rampukar Mahto is not an eye witness to the occurrence. The said witness is husband of Rampari Devi. He got the information about kidnapping of his wife when he was present in his house. The said witness also stated that his son-in-law was killed in which the said witness was informant and, therefore, Rampravesh was giving threats. The said witness identified the accused in the court.

11.1 During cross-examination, P.W.9, specifically stated that he is not an eye witness to the incident of kidnapping and he got the information from one Geeta Devi who is his sister.

12. P.W.10, Ruby Devi is the informant who had given the information to the police. Rampari Devi was her mother. She has stated that Usha Devi, Pinki Kumari, Meena Devi, Sunita Devi and Sushila Devi came to the house after visiting fare and informed that Rampravesh Mahto had kidnapped her mother Rampari Devi. Thereafter she had given her *fardbeyan* to the police.

12.1 During cross-examination, she has specifically stated that she is not an eye witness to the occurrence of kidnapping.

13. PW14 Dr. Akhilesh Kumar had conducted the post-mortem on the dead body of the deceased. The said witness

has stated in his deposition as under:-

> *"The dead body was identified by constable 589 Hari Nath Singh the following antemortem injuries were found are her person-*
>
> *(i) Face eye balls congested with tounge precluded from mouth*
>
> *(ii) Bruise 2" x 1/2" over the front of neck with fracture underlying lareingle cartiledge traichea contained bloody froth.*
>
> *(iii) On exploration lungs found congested.*
>
> *2. Post Mortem Injuries*
>
> *(i) Abdomen was incised from xiphisternum to pubic imphasis, cutting the skin, santanious tissue, rectus pletonium and small, large intenstine, liver and bladder.*
>
> *3. All the veceras were* ***...illegible...*** *with murder.*
>
> *4. Foul smelling futrid smell found with pilling of skin at several place.*
>
> *It seemed that dead body was taken out from under water level.*
>
> *5. Opinion – Death was due to suphysea as a result of conpasion of the front of neck.*
>
> *Time elapsed since death from 48 to 72 hrs. Rigor mortis absent in limbs and lungs.*
>
> *Decomposition started*
>
> *Manges found congested*
>
> *6. Heart – Left chamber empty, Right chamber contained 10ml of blood.*
>
> *Saliva mixed mud near mouth.*
>
> *Stomach ruptured.*

13.1 During cross-examination the said witness stated that it was not a case of drowning. The death was caused due to throttling.

14. P.W.15, Pramod Kumar Jha had carried out the investigation of the FIR lodged by P.W.10. The said witness has carried out the investigation of the FIR which was initially registered for kidnapping and during the course of investigation, he had recorded the statement of the witnesses and thereafter dead body of the deceased was found from water. Inquest report was prepared in presence of two witnesses and thereafter dead body was sent for post-mortem.

14.1 During cross-examination, the said witness admitted that Sushila Devi had not given the name of Ramphal Tanti as an accused. He has further stated that he had not recorded in the case diary about the time of information which he got and when he has proceeded to the spot. It is further stated by the said witness that statement of *Chowkidar* was also not mentioned in the case diary. He has specifically admitted that Janakmani Devi informed that she got the information about the occurrence from Pinki Kumari

15. From the aforesaid deposition of the prosecution witnesses, it is revealed that Sushila Devi though is projected as eye witness to the occurrence of kidnapping, there are major contradiction in her deposition. At one place, she has stated that the accused came and took Rampari Devi on foot whereas during cross-examination she has stated that she was taken on the tractor

in which two *Chowkidars* and 20-25 female were present. Similarly, Janakmani Devi is also projected as eye witness however, there are major contradiction in her deposition. From the deposition of P.W.15, the Investigating Officer, it is revealed that Janakmani Devi has specifically stated before the police that she got information about the occurrence of kidnapping from Pinki however, while giving the deposition before the court, she has stated that she was present at the place of occurrence when Rampari Devi was kidnapped. It is further revealed that Ruby Devi is not a witness to the occurrence and she got information from Sunita Devi, Meena Devi, Usha Devi and Pinki. It is pertinent to note that Sunita Devi, Pinki Devi and Usha Devi have not supported the case of the prosecution and, therefore, they were declared hostile. Further, the prosecution has not examined Meena Devi. Further Sushila Devi in her deposition stated that Ruby was preset at the place of occurrence however, as per the case of the prosecution, Ruby Devi got information from Pinki. Thus, if the occurrence of kidnapping is not proved beyond reasonable doubt then theory of last seen together would not be attracted.

16. It is relevant to note that dead body of the deceased was recovered after 2-3 days from the date of alleged kidnapping and, therefore, even assuming that the appellants have kidnapped Rampari Devi even then there is time gap of three days

between the alleged kidnapping and the recovery of the dead body.

17. In the case of **Reena Hazarika** (supra), the Hon'ble Supreme Court has observed in paragraph-9 as under:

> "9. The essentials of circumstantial evidence stand well established by precedents and we do not consider it necessary to reiterate the same and burden the order unnecessarily. Suffice it to observe that in a case of circumstantial evidence the prosecution is required to establish the continuity in the links of the chain of circumstances, so as to lead to the only and inescapable conclusion of the accused being the assailant, inconsistent or incompatible with the possibility of any other hypothesis compatible with the innocence of the accused. Mere invocation of the last-seen theory, sans the facts and evidence in a case, will not suffice to shift the onus upon the accused under Section 106 of the Evidence Act, 1872 unless the prosecution first establishes a prima facie case. If the links in the chain of circumstances itself are not complete, and the prosecution is unable to establish a prima facie case, leaving open the possibility that the occurrence may have taken place in some other manner, the onus will not shift to the accused, and the benefit of doubt will have to be given.

17.1 In the case of **R. Sreenivasa** (supra), the Hon'ble Supreme Court has observed in paragraphs 15, 16 and 17 as under:

> "15. The burden on the accused would, therefore, kick in, only when the last seen theory is established. In the instant case, at the cost of repetition, that itself is in doubt. This is borne out from subsequent decisions of this Court, which we would advert to:
>
> (a) *Kanhaiya Lal v. State of Rajasthan*, (2014) 4 SCC 715, where it was noted:

*'**12.** The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant.'*

(emphasis supplied)

(b) *Nizam v. State of Rajasthan*, (2016) 1 SCC 550, the relevant discussion contained at Paragraphs 16-18, after noticing Kashi Ram (supra):

*'**16.** In the light of the above, it is to be seen whether in the facts and circumstances of this case, the courts below were right in invoking the "last seen theory". From the evidence discussed above, deceased Manoj allegedly left in the truck DL 1 GA 5943 on 23-1-2001. The body of deceased Manoj was recovered on 26-1-2001. The prosecution has contended that the accused persons were last seen with the deceased but the accused have not offered any plausible, cogent explanation as to what has happened to Manoj. Be it noted, that only if the prosecution has succeeded in proving the facts by definite evidence that the deceased was last seen alive in the company of the accused, a reasonable inference could be drawn against the accused and then only onus can be shifted on the accused under Section 106 of the Evidence Act.*

***17.** During their questioning under Section 313 CrPC, the appellant-accused denied Manoj having travelled in their Truck No. DL 1 GA 5943. As noticed earlier, the body of Manoj was recovered only on 26-1-2001 after three days. The gap between the time when Manoj is alleged to have left in Truck No. DL 1 GA 5943 and the recovery of the body is not so small, to draw an inference against the appellants. At this juncture, yet another aspect emerging from the evidence needs to be noted. From the*

statement made by Shahzad Khan (PW4) the internal organ (penis) of the deceased was tied with rope and blood was oozing out from his nostrils. Maniya Village, the place where the body of Manoj was recovered is alleged to be a notable place for prostitution where people from different areas come for enjoyment.

18. *In view of the time gap between Manoj being left in the truck and the recovery of the body and also the place and circumstances in which the body was recovered, possibility of others intervening cannot be ruled out. In the absence of definite evidence that the appellants and the deceased were last seen together and when the time gap is long, it would be dangerous to come to the conclusion that the appellants are responsible for the murder of Manoj and are guilty of committing murder of Manoj. Where time gap is long it would be unsafe to base the conviction on the "last seen theory"; it is safer to look for corroboration from other circumstances and evidence adduced by the prosecution. From the facts and evidence, we find no other corroborative piece of evidence corroborating the last seen theory.'*

(emphasis supplied)

16. The cautionary note sounded in Nizam (supra) is important. The 'last seen' theory can be invoked only when the same stands proved beyond reasonable doubt. A 3-Judge Bench in Chotkau v. State of Uttar Pradesh, (2023) 6 SCC 742 opined as under:

'15. It is needless to point out that for the prosecution to successfully invoke Section 106 of the Evidence Act, they must first establish that there was "any fact especially within the knowledge of the" appellant. ...'

(emphasis supplied)

17. In the present case, given that there is no definitive evidence of last seen as also the fact that there is a long time-gap between the alleged last seen and the

recovery of the body, and in the absence of other corroborative pieces of evidence, it cannot be said that the chain of circumstances is so complete that the only inference that could be drawn is the guilt of the appellant. In *Laxman Prasad v. State of Madhya Pradesh*, (2023) 6 SCC 399, we had, upon considering *Sharad Birdhichand Sarda v. State of Maharashtra,* (1984) 4 SCC 116 and the *Shailendra Rajdev Pasvan v. State of Gujarat,* (2020) 14 SCC 750, held that '*... In a case of circumstantial evidence, the chain has to be complete in all respects so as to indicate the guilt of the accused and also exclude any other theory of the crime.'* It would be unsafe to sustain the conviction of the appellant on such evidence, where the chain is clearly incomplete. That apart, the presumption of innocence is in favour of the accused and when doubts emanate, the benefit accrues to the accused, and not the prosecution. Reference can be made to *Suresh Thipmppa Shetty v. State of Maharashtra,* 2023 INSC 7494."

17.2 In the case of **Jabir and Others** (supra), the Hon'ble Supreme Court has observed in paragraph-25 as under:

"25. A basic principle of criminal jurisprudence is that in circumstantial evidence cases, the prosecution is obliged to prove each circumstance, beyond reasonable doubt, as well the as the links between all circumstances; such 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; further, the facts so proved should unerringly point towards the guilt of the accused. 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. These were so stated in *Sarad Birdichand Sarda* (supra) where the court, after quoting from *Hanumant,* observed that:

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

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

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra *(1973) 2 SCC 793 where the following observations were made : [SCC para 19, p. 807 : SCC (Cri.) p. 1047]*

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

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

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

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

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

have been done by the Accused."

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

18. From the aforesaid decision rendered by the Hon'ble Supreme Court, it can be said that in the case of circumstantial evidence, the prosecution is required to establish the continuity in the links and the chain of circumstances so as to lead to the only and inescapable conclusion of the accused being the assailant, inconsistent or incompatible with the possibility of any other hypothesis compatible with the innocence of the accused. Mere invocation of the last-seen theory, sans the facts and evidence in a case, will not suffice to shift the onus upon the accused under Section 106 of the Evidence Act unless the prosecution first establishes a prima facie case.

19. Keeping in view the aforesaid decisions rendered by the Hon'ble Supreme Court if the facts of the present case are examined, we are of the view that the present is a case of circumstantial evidence and, therefore, it is the duty of the prosecution to prove the complete chain of circumstances. In the present case, the prosecution has failed to prove the chain of circumstances and, therefore, when the prosecution has failed to prove the case beyond reasonable doubt, we are of the view that the Trial Court has committed error while passing the judgment of conviction and order of sentence.

20. In view of the discussions aforesaid, both these appeals are allowed and the impugned judgment of conviction dated 17.03.2004 and order of sentence dated 19.03.2004 passed by learned 1st Additional Sessions Judge, Begusarai in connection with Sessions Trial No. 124 of 2002, (arising out of Bakhri P.S. Case No. 82 of 2001 dated 26.10.2001) is quashed and set aside. The appellants, namely, Rampravesh Mahto and Pappu Sah are acquitted of the charges levelled against them by the learned trial court.

20.1 Since the appellant namely, Pappu Sah in Cr. Appeal (DB) No. 381 of 2004 is on bail. He is discharged of the liabilities of his bail bonds. Appellant namely, Rampravesh Mahto in Cr. Appeal (DB) No. 263 of 2004 is in jail, he is directed to be released forthwith, if his presence is not required in any other case.

(Vipul M. Pancholi, J.)

(Rudra Prakash Mishra, J.)

Sanjay/-

AFR/NAFR	A.F.R
CAV DATE	NA
Uploading Date	18.12.2023
Transmission Date	18.12.2023