

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE  
JUSTICE SUJOY PAUL  
&  
JUSTICE PRAKASH CHANDRA GUPTA  
CRIMINAL REFERENCE No.14 OF 2019**

**Between :-**

**IN REFERENCE**

**RECEIVED FROM 3RD  
ADDITIONAL SESSIONS JUDGE  
SINGROULI HEAD QUARTER  
WADHAN (M.P.)**

**....APPELLANT**

***(BY SHRI MANISTH DATT SENIOR ADVOCATE AS AMICUS CURIAE  
WITH SHRI ISHAN DATT, ADVOCATE)***

**AND**

**RAMJAG BIND S/o RAMSHANKAR  
BIND AGED ABOUT 38 YEARS,  
RESIDENT OF VILLAGE KUSHVAI  
P.S. MORWA DISTRICT  
SINGROULI (M.P.)**

**.....RESPONDENT**

***(BY SHRI ARVIND PATHAK, ADVOCATE)***

**CRIMINAL APPEAL No.10771 OF 2019**

**Between :-**

**RAMJAG BIND S/o RAMSHANKAR  
BIND AGED ABOUT 38 YEARS,  
RESIDENT OF VILLAGE KUSHVAI  
P.S. MORWA DISTRICT  
SINGROULI (M.P.)**

...APPELLANT

*(BY SHRI ARVIND PATHAK, ADVOCATE).*

AND

STATE OF MADHYA PRADESH,  
THROUGH THE P.S. MORWA  
DISTRICT SINGROULI (M.P.)*(BY SHRI A.S. BAGHEL, DY. GOVERNMENT ADVOCATE)*

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Reserved on	:	23/11/2022
Pronounced on	:	05/12/2022

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*This Criminal Reference and Criminal Appeal having been heard and reserved for judgment, coming on for pronouncement this day, Justice Sujoy Paul pronounced the following :*

### **J U D G M E N T**

The Criminal Appeal filed under Section 374(2) of Criminal Procedure Code (Cr.P.C.) and Reference impugns the judgment dated 27.11.2019 passed in S.T. No. 1500086/2014 whereby the learned IIIrd Additional Sessions Judge, Singrouli found the appellant as guilty for committing offence under Sections 302 and 201 of IPC and imposed death sentence and sentence of 5 years respectively with fine, with default stipulation.

#### **Case of Prosecution**

2. The prosecution case, in short, is that on 29.04.2014, the complainant Ramshiroman Bind son of Udgan Bind filed a missing persons report and informed the police that his father Udgan Bind and mother Shanti Bind are not traceable. On 30.04.2014, the dead bodies of both the said persons were found in a well which as per prosecution story,

owned by and belongs to the appellant. A *Dehati Nalisi merg* was registered. The statement of witnesses were recorded. The spot was inspected. After completion of formalities of post mortem etc., both the dead bodies were handed-over to family members for cremation. During the investigation, the prosecution found that because of enmity, the appellant murdered both the persons and thrown their bodies in the said well. As per the appellant's memorandum, a weapon namely 'axe' was recovered. After completion of investigation, charge-sheet was filed in the Court of Judicial Magistrate First Class from where it was committed to the Court of Additional Sessions Judge on 28.06.2014.

3. The appellant abjured his guilt and pleaded innocence. The Court below framed four questions (i) Whether death of Udgan Bind and Shanti Bind @ Santo Bind is homicidal in nature ? (ii) Whether appellant has committed murder of said two persons ? (iii) Whether the appellant in order to hide the bodies of the said two persons, thrown the bodies in the well ? (iv) conviction and sentence?

4. In support of its case, prosecution introduced following witnesses namely, Ramshiroman (PW-1), Amol Singh (PW-2), Dr. V.N. Satnami (PW-3), Rambhajan Bind (PW-4), Haridas (PW-5), Bhoj Pratap Bind (PW-6), Ramrati (PW-7), Ravendra Kumar Singh (PW-8), Munni Bai (PW-9), Shivdayal Bind (PW-10), Harilal Bind (PW-11), Bhola Prasad (PW-12), Bhoopendra Singh (PW-13), Shri Mahendra Pandey (PW-14), A.P. Goswami (PW-15). In turn, defence introduced two witnesses namely, Sushila Bind (DW-1) and Ramashankar (DW-2).

5. After recording the evidence of both the parties, the Court below opined that the appellant has committed offence under Section 302 (two counts) and Section 201 of the I.P.C. Thereafter, appellant was heard on the question of quantum of sentence. After hearing the parties, the Court below imposed the sentences mentioned hereinabove.

**Contentions of *Amicus Curiae*/Appellant**

6. Shri Manish Datt, learned Senior Counsel/*Amicus Curiae* submits that para-40 of the impugned judgment makes it clear that judgment is not based on any eye-witness account. Indeed, the whole case of prosecution is based on circumstantial evidence. As per the prosecution story, the incident had taken place between 25/04/2014 to 30/04/2014. The FIR (Ex.P/25) and '*Dehati Nalisi*' (Ex.P/17) were recorded on 30/04/2014. The Rojnamcha entry recorded pursuant to information given by Ramshiroman (PW-1) shows that the said two persons were missing. Their dead bodies were found on 30/04/2014.

7. The inquest proceeding in which the witnesses were put to notice was relied upon to show that six persons were directed to remain present before the Investigating Officer namely Ramshiroman, Rambhajan Bind, Rampratap, Purshottam Sahu, Banwari and Taramati. Out of these six persons, only Purshottam Sahu was an independent person and all other persons summoned were relatives/family members of deceased persons. The post mortem reports of Shanti Bind and Udgan Bind show that the reason of death is head injury and it appears to be a homicidal death occurred between 4-5 days. The post mortem report of Udgan Bind

shows that there was a fracture in his occipital bone and the death appears to be homicidal in nature.

8. It is further canvassed that the FIR (Ex.P/25) shows that it was recorded on 30/04/2014 on the basis of suspicion. The weapon allegedly recovered from the appellant on 01/05/2014 through seizure memo Ex.P/9 does not show that any blood stains were found on the weapon. The appellant was arrested on 01/05/2014.

9. The FSL report dated 31/07/2014 (Ex.P/19) shows that on the weapon namely 'axe' which was marked as article 'F' by Forensic Science Laboratory, human blood was found.

10. Shri Manish Datt, learned Senior Counsel/*Amicus Curiae* by placing reliance on **(2007) 5 SCC 658 (State of Madhya Pradesh vs. NISAR)** contended that the finding about availability of human blood alone is not sufficient unless blood group is matched with the blood group of the deceased.

11. Learned Senior Counsel/*Amicus Curiae* placed reliance on the statement of Ramshiroman (PW-1), son of the deceased persons. It is submitted that in the court statement, this witness stated that there was a previous dispute relating to land but in the statement recorded under Section 161 of Cr.P.C., there is complete omission regarding this part. This witness further stated that there was no parapet wall on the well. This witness deposed that the appellant assaulted his brother-in-law few days before the Holi festival. Appellant is guilty of committing seven murders. This statement of a relative needs to be examined by this Court with circumspection.

12. The next reliance is on the statement of Dr. B.L.Satyanami (PW-3) who had conducted the autopsy. This witness deposed that the injuries on the persons of the deceased could have been caused because they fell down in the Well. He further deposed that during post mortem, the blouse of Shanti Bind was removed.

13. Amol Singh (PW-2) stated that the clothes of deceased persons were received by him from the hospital. The statement of Rambhajan Bind (PW-4), son of deceased persons is important submits learned *Amicus Curiae*. The well in which the dead bodies were found is a Government Well. The well does not have any parapet wall. As per this deposition, the age of father of this witness was 97 years whereas mother was about 95 years old. Rambhajan Bind (PW-4) also deposed that the Well was full of stones. He denied the suggestion that the soil of the Well was wet. He expressed his inability to give specific date when his parents allegedly fell down in the Well. The witness further admits that in his statement recorded under Section 161 of the Cr.P.C. (Ex.D/2) he did not inform the police that when he enquired from the present appellant, he informed him that 2-3 days before the date of recovery of the dead bodies, he consumed liquor with the parents of this witness. He stated that he is unaware as to how the police has recorded the said statement. In para-23 of his deposition, he stated that the report against Ramjag Bind was recorded on the basis of doubt based upon previous enmity.

14. Haridas (PW-5) is an independent witness and neighbour of the deceased persons. This witness was declared hostile. In his deposition, he

also stated that the Well in which body of the deceased persons were found belongs to State Government.

**15.** The next witness is Bhojpratap Bind (PW-6) who is a seizure witness. Learned Senior Counsel by placing reliance on para-1 of the examination-in-chief submits that the Court below has recorded that appellant allegedly informed the police that he murdered Udgan Bind and his wife Shanti Bind by means of an axe. In view of statutory mandate ingrained in Sections 25 to 27 of the Indian Evidence Act, the portion wherein the appellant allegedly told the witness that he had murdered aforesaid two persons should not have been taken into account by the Court below. The said portion is clearly inadmissible in evidence. This witness deposed that an axe from an Almirah situated in the west side of the room of appellant's house was recovered. In addition, a steel plate having blood stains, blood stained soil and plain soil were recovered through Ex.P/8 which contains his signature. Between the courtyard of appellant's house and the Well from where the dead bodies were recovered, five small and big stones were recovered on which blood stains were found. These were recovered through seizure memo Ex.P/9. It is pointed out that this witness is also a relative i.e. grandson of the deceased persons. Interestingly, this witness denied that there was any previous enmity between him and his family and appellant Ramjag Bind.

**16.** The spot map (Ex.P/10) which was proved by Bhoj Pratap Bind (PW-6) was referred to show that from the courtyard of appellant's house, the stones marked as 'B' was recovered. Other stones marked as 'D, E and F' were found near a pathway in between the courtyard and the Well.

This site map needs to be carefully examined in juxtaposition to the F.S.L. report submits learned *Amicus Curiae*.

17. Ramrati (PW-7) is daughter of the deceased persons. This witness deposed that appellant approached his father and asked him to provide the door and frame of his house to him. The deceased Udgan Bind refused to accept his demand and therefore, he threatened him that both of them will be killed. It is further deposed that after 2-3 days from the said incident, when she was in her house at village Khutar, her younger sister Munni telephoned her and informed that she came to take parents with her but parents are not at their home and house is locked from outside. This witness denied that there was any previous enmity relating to land between her parents and the appellant.

18. The grandson of deceased persons Ravendra (PW-8) stated that on the Well in which the dead bodies were found, there was no parapet wall. He further stated that first his grandfather fell down in the Well followed by his grandmother. In Para-2 of his main deposition, he stated that his uncle ('*Foofa*') was murdered by appellant and he was convicted in the said case. He admitted that appellant, as per his information, never assaulted his grandparents. The age of his grandparents would be approximately between 80-90 years. They used to beg for their livelihood. The grandfather was not able to see from his right eye. This witness further deposed that his grandfather fell down in the well from right side and sustained injury on right side of his head. In the head of his grandfather, a wooden piece (*khunti*) was found, which was removed by family members on the direction of Police. Shri Manish Datt, learned



Senior Counsel/*Amicus Curiae* laid emphasis on the cross-examination wherein this witness stated that he is narrating the story as told to him by his aunt, father and uncle. It is submitted that the statement of this tutored witness is untrustworthy. Lastly, he admitted that bodies were so badly decomposed that it was not possible to identify the injuries on the bodies.

**19.** The prosecution then introduced Munni Bai (PW-9), daughter of the deceased persons. This witness deposed that the appellant was throwing wooden pieces and stones in the Well from where the dead bodies were recovered. In cross-examination, she admitted that above part of statement wherein she deposed that the appellant was putting wood and stone pieces in the well if not recorded in her statement under Section 161 of Cr.P.C., she is not able to furnish any explanation because she had informed the Police about the same. She further deposed that she did not enquire from the appellant about the location of her parents.

**20.** Munni Bai (PW-9) stated that while giving statement under Section 161 of Cr.P.C. (Ex.D-6), she informed the Police that Ramjag/appellant informed her that he had seen the parents 2-3 days before and has not seen them thereafter. Why this statement despite being given to the Police is not recorded is not known to this witness.

**21.** The above witness (PW-9) in Para-15 of her statement accepted that there was no previous enmity between the appellant and the parents of this witness. There were good relation between her parents and the appellant. She candidly deposed that the appellant used to provide food to her parents and take care of them. Lastly, she stated that her parents died because they fell down in the well and she has given previous statement

to falsely implicate the appellant because she was misguided by her brothers.

**22.** The axe and stones were recovered in the presence of another witness, Shivdayal Singh (PW-10). This witness is 'Samdhi' of Ramshiroman (PW-1). Hence, his statement is not creditworthy.

**23.** Harilal Bind (PW-11) is son-in-law of deceased persons. This witness turned hostile. He deposed that in the courtyard of appellant's house, he had not seen any stone. He also did not find any steel plate in the said courtyard. He further stated that while recording his statement (Ex.P-12), he informed the Police that his in-laws did not have any enmity with the present appellant. He further admitted that Ramjag did not inform Ramshiroman that his parents consumed liquor 2-3 days back with the appellant. The condition of dead bodies were very bad. This witness stated that it appears that his in-laws were murdered and thereafter their bodies were thrown in the well. However, on his own, he stated that the condition of bodies were so bad that it was difficult to identify as to which body is of father-in-law and which one is of mother-in-law.

**24.** Shri Bhola Prasad, Head Constable (PW-12) in his cross-examination admitted that Ramshromani (PW-1) in his Missing Person Information (Ex.P-13 and P-14) did not inform the Police about his suspicion about anybody's role. He merely informed that his parents are missing.

**25.** The Patwari of the area Bhupendra Singh (PW-13) stated that scene of crime is situated in Aaraji No. 18. He prepared a trace map of said area, which is marked as Ex.P-16. As per Ex.P-16, the relevant

Aaraji No.18 belongs to Government of M.P. In cross-examination, he admitted that he has not produced any document to show that well mentioned in Ex.P-16 belongs to the present appellant.

**26.** Shri Mahendra Pandey, Sub Inspector (PW-14) proved Ex.P-11 and stated that blood stained stones were seized by him in the presence of the witnesses. During investigation nobody produced any document to establish that well from where dead bodies were recovered belongs to the present appellant. Similarly, there is no eye-witness to the incident. Hari Das Agariya was neither interrogated nor he was present on the spot. This witness clearly stated that he is unable to say whether the well is situated on the Government land. He produced a *Jarayam* Register of 1997 of Police Station Morwa to state that appellant was earlier convicted in Case No.525/97 and the Sessions Court by judgment dated 24.2.1999 decided to impose capital punishment on him. The said Register related to only one case. In the said Register (Ex.P-26), there exists an entry of release of appellant on 24.2.1999. It is correct, submits this witness that appellant was free at the time of incident and was not in Police custody at the time of commission of crime.

**27.** Shri A.P. Goswami (PW-15) is Station House Officer (S.H.O.) of P.S. Morwa. He deposed that blood stained stones were recovered from the courtyard of appellant's house as well as '*Pagdandi*' (footway) and from the way which is approaching the well in question. He also proved that a steel plate was recovered, which was marked as Article A-7. He is also a witness to the recovery of axe, which is allegedly used in commission of crime. This witness produced the judgment of Sessions

Court in Case No.111/97, whereby the capital punishment was imposed on him.

28. Shri Manish Datt, learned senior counsel/*amicus curiae*, urged that Haridas (PW-5) deposed that incident had taken place about 1¼ years back in village Kushwai. While crossing the house of appellant, he had seen deceased persons at his resident at around 7-8 PM. This witness was declared as hostile. The time lag from the period deceased persons were allegedly last seen with appellant and the time when they died is huge. During these days, when they were not seen, it is not explained that they were with present appellant. If time lag is large, the Court must seek corroboration and should not rely on an old last scene evidence. Reliance is placed on **AIR 2018 SC 2744 (Ravi and another vs. State of Karnataka)**.

29. The axe allegedly recovered from the appellant was marked as 'F' in FSL report. It is mentioned that although human blood was found on the axe, no blood grouping had taken place. In view of **(para-9) (2007) 5 SCC 658 (State of M.P. Vs. Nisar)** the recovery of axe will not improve the case of the prosecution. **2021 SCC Online SC 613 (Madhav Vs. State of M.P. )** is referred to submit that origin and recovery of material on which blood stains are found is important and this aspect needs to be gone into with utmost care. Moreso, when in seizure memo of axe, there is no mention about availability of blood stains on the said weapon. **(2016) 14 SCC 640 (Mehboob Ali and Another Vs. State of Rajasthan)** is also relied upon by learned *amicus curiae*. It is further

pointed out that Shri A.B. Goswami (PW-15) in his deposition did not mention about availability of blood on the axe.

**30.** Shri Manish Datt, learned Sr. counsel also referred the statement of DW-1, wife of appellant and DW-2 father of appellant to submit that in view of these statements, appellant could not have been held guilty.

**31.** Para 43 of impugned judgment is referred to show that it is mentioned that deceased persons were seen with the appellant 2-3 days back. At the cost of repetition, it is argued that PW-1, PW-4, PW-5 and PW-9 are 'last seen witnesses' but a careful reading of their statements leave no room for any doubt that they did not depose at all that appellant was 'last seen' by them with the deceased persons. The statement of Haridas (PW-5) was again referred to point out that he did not depose the date and period when he had seen the appellant with deceased persons. The appellant cannot be held guilty based on conjunctures. Last seen evidence alone is not sufficient. For this purpose, reliance is placed, on **AIR 2017 SC 2617 (Anjan Kumar Sarma Vs. State of Assam)**. Furthermore, it is argued that suspicion however strong it may be, can not take the place of proof.

**32.** 'Panchsheel principles' laid down in **AIR 1984 SC 1622 (Sharad Birdhichand Sarda Vs. State of Maharashtra)** are still holding the field submits learned *amicus curiae*. It is urged that the chain of circumstances must be clear and complete. Accused can be held guilty if charges are proved beyond reasonable doubt and circumstances prove that he 'must' have committed the offence and not that he 'might have' committed the

offence. For the same purpose, **AIR 2002 SC 3206 (Ashish Batham Vs. State of M.P.)** and **(2003) 8 SCC 180 (State of Rajasthan Vs. Raja Ram)** were relied upon.

33. Learned Senior Counsel/*Amicus Curiae* again pointed out that '*Dehati Nalisi*' was recorded by son of deceased namely Ramshiroman (PW-1). The 'missing report' of his parents was also lodged by him. The story projected in this '*Dehati Nalisi*' makes it clear that two sisters of Ramshiroman and Ramshiroman were the persons who allegedly met with appellant and Haridas (PW-5) who told them that deceased persons were last seen together with the present appellant.

34. At the cost of repetition, it is argued that para-237 of the impugned judgment makes it clear that there is no eye-witness to the incident. The case of prosecution is based on last seen theory and alleged recovery of blood stained stones and axe from the courtyard of the appellant on the sides of foot-way (*pagdandi*) leading towards well from where bodies of deceased persons were recovered. It is urged that a minute reading of statement of Dr. V. N. Satnami (PW-3), Rambhajan Bind (PW-4), Haridas (PW-5) and Munni Bai (PW-9) will make it clear that they are not at all witnesses who have last seen the appellant with their parents. Haridas (PW-5) turned hostile and his cross-examination shows that he did not see the deceased persons inside or outside the house of the appellant. Indeed, he *assumed* that the voice coming from the house of appellant is of deceased persons. By placing reliance on **Anjan Kumar Sarma v. State of Assam, (2017) 14 SCC 359** and **AIR 2018 SC 2745 Ravi and another v. Sate of Karnataka**, it is argued that the test of last seen

together is quite tough. The prosecution needs to establish and explain the time lag between the period the deceased were allegedly last seen with the appellant and the period when their bodies were recovered. Admittedly, bodies were recovered after 4-5 days from the date they were found missing. The prosecution ought to have established that there was no possibility of anybody else to accompany the deceased persons during that intervening period and appellant alone was the person who can be roped-in being last seen person. In absence of any corroboration on this aspect, last seen theory deserves to be rejected in the facts and circumstances of this case.

**35.** The finding given by the Court below in para-42 of the judgment regarding 'motive' is criticized by placing reliance on **Anil Rai v. State of Bihar, (2001) 7 SCC 318**. To elaborate, it is urged that existence of previous enmity is like a double edged sword. There exists a tendency to arraign the persons unnecessarily on the basis of previous enmity. Thus, previous enmity alone cannot be said to be a 'motive' unless by leading clinching evidence its nexus with the commission of crime is clearly established. This factor is miserably missing in the instant case.

**36.** So far recovery of stones are concerned, it is urged that as per FSL report (Ex.P/19), blood was found on the stones marked as Article 'E' and 'I' whereas as per same report, on stones marked as 'I' human blood was found. On the stone marked 'G' blood stains were disintegrated and therefore, no definite opinion could be formed. The blood grouping could not be made which includes the stone marked as 'E'. **State of M.P. v. Nisar, (2007) 5 SCC 658** is referred to submit that in absence of blood

grouping, it cannot be safely concluded that blood allegedly found on said article/stones were of the deceased persons. For the same purpose, recent judgment of Supreme Court in **Madhav v. State of M.P. 2021 SCC Online SC 613** is again referred.

37. The recovery of axe (Article 'F') was made through seizure memo (Ex.P/9). It is submitted that three witnesses Bhoj Pratap (PW-6), Ramrati (PW-7) and Investigating Officer supported the element of recovery/seizure. However, in the seizure memo there is no mention about the existence of blood on the weapon/axe. The axe was marked as 'F'. In the FSL report (Ex./P10) proved by A.P. Goswami (PW-15), the human blood was allegedly found on the axe Article 'F' but this does not inspire confidence because in the seizure memo, there was no mention about the existence of blood on the weapon so recovered. Reliance is placed on judgment of Gujrat High Court in **R/CRA No.632/2022 (Daja Bhai vs. Mancharam Dwarkadas Sadhu)** decided on 18.8.2022.

38. The story of recovery of stones is further criticized on the ground that the most of the stones were recovered from open place accessible to all and therefore, said recovery is not trustworthy. Shivdayal Bind (PW-10) was brother-in-law of the deceased persons. Thus, his statement is not trustworthy. Merely because appellant was convicted for committing offence under Section 302 of the I.P.C. previously, he cannot be held guilty for the present offence.

39. Lastly, learned Senior Counsel/*Amicus Curiae* placed reliance on **Union of India vs. V. Sriharan, (2016) 7 SCC 1** and **Anand Kushwaha v. State of M.P., 2019 SCC OnLine MP 7013** to submit that if the



instant case is tested on anvil of tests laid down by the Supreme Court, it will be clear that the offence so committed does not warrant capital punishment.

40. Shri Arvind Pathak, learned counsel for the appellant submits that he is completely borrowing the argument of learned Senior Counsel/*Amicus Curiae* and does not wish to add anything further.

#### **Contention of State**

41. Shri A.S. Baghel, learned Deputy Government Advocate for the respondent/State on the other hand supported the impugned judgment. He placed reliance on the statement of son of deceased person Ramshiroman (PW-1) who lodged the '*Dehati Nalisi*'. A conjoint reading of statement of Ramrati (PW-7), Munni Bai (PW-9) and Ramshiroman (PW-1) makes it clear that there is a clear chain of circumstances which was duly established by the prosecution. The existence of 'motive' is also clear in view of statement of Ramrati (PW-7). Haridas (PW-5) is a last seen witness, who being neighbour of deceased persons could identify them in the house of appellant through their voice. There is nothing unnatural in this submits learned Government Advocate.

42. The recovery of axe Article 'F' and stones of Articles 'E, G, H, I and J' is duly established. The stone 'G' was recovered from the courtyard of the appellant which contains blood stains. In article 'H and I' recovered from foot-way (*pagdandi*), human blood was found. Appellant has not given any plausible and justifiable explanation of existence of blood on the axe and stone i.e. 'G'. Patwari map (Ex.P/16) was relied upon to show that the Well from where bodies recovered belongs to the

present appellant. However, during the course of argument, Shri A. S. Baghel, learned Government Advocate fairly admitted that the statement of Patwari and other witnesses show that the said Well was situated on the Government land and it was not on appellant's land.

43. Shri Baghel, learned Government Advocate further urged that this is second conviction of the appellant who appears to be a serial killer. He along with other two accused persons was earlier convicted for murdering 05 persons. After completion of sentence when he was released, he again murdered two aged persons who were his relatives. Thus, there is no mitigating circumstance in his favour and therefore, capital punishment may be affirmed.

44. Parties confined their arguments to the extent indicated above.

45. We have bestowed our anxious consideration on rival contentions and perused the record.

### **Findings**

#### **Whether well belongs to appellant :-**

46. The prosecution story shows that the appellants allegedly assaulted the deceased persons and thrown their bodies into a well. The prosecution story narrates that the said well belongs to the appellant. The spot map shows that the said well is not adjacent to appellant's house. Indeed it is situated to a distance which can be covered through a foot way. Thus, first aspect which we would like to deal with is whether well belongs to the present appellant. The Patwari Bhupendra Singh (PW-13) clearly deposed that well is situated in *Aaraji* No.18. The said *Aaraji* belongs to State

Government. Thus, it can be safely concluded that well was situated on a government land and not on the land of the appellant.

47. The statements of Ravendra (grandson) (PW-8) and Rambhajan Bind (PW-4) show that there was no parapet wall over the well and well was little lower than the ground level. Pertinently, PW-8 (Ravendra Bind) and P.W-9 (Munni Bai – daughter of deceased persons) deposed that deceased persons themselves fell down in the well and succumbed to death because of injuries arising out of said fall. The Autopsy Surgeon Dr. V. N. Satnami (PW-3) admitted that the said injuries found on the person of deceased- Shanti Bind could have been caused if she had fallen down into the well.

#### **Motive**

48. Ramrati (PW-7) daughter of deceased persons deposed that there was no previous enmity between the deceased persons and appellant relating to any land dispute.

49. Harilal (PW-1) son-in-law of deceased persons turned hostile. As per his statement, in the courtyard of appellant's house there was no stone found which was used in commission of crime and recovered by the prosecution. Similarly, he did not support the story relating to seizure of steel plate having blood stains from the courtyard. As per his version also, his in-laws did not have any enmity with the present appellant. Appellant did not inform Shiroman that his parents consumed liquor with appellant 2-3 days back.

50. The Court below in the impugned judgment opined that there was a motive for murdering the deceased persons. The motive is a state of mind. Motive can be gathered on the basis of evidence led in the case. The Apex Court in **Munish Mubar v. State of Haryana, (2012) 10 SCC 464** held as under:-

“30. In a case of circumstantial evidence motive assumes great significance and importance, for the reason that the absence of motive would put the court on its guard and cause it to scrutinise each piece of evidence very closely in order to ensure that suspicion, emotion or conjecture do not take the place of proof. However, the evidence regarding existence of motive which operates in the mind of an assassin is very often, not within the reach of others. The said motive, may not even be known to the victim of the crime. The motive may be known to the assassin and no one else may know what gave birth to such evil thought, in the mind of the assassin. In a case of circumstantial evidence, the evidence indicating the guilt of the accused becomes untrustworthy and unreliable, because most often it is only the perpetrator of the crime alone, who has knowledge of the circumstances that prompted him to adopt a certain course of action, leading to the commission of the crime. Therefore, if the evidence on record suggests sufficient/necessary motive to commit a crime, it may be conceived that the accused has committed the same. (See: *Subedar Tewari v.State of U.P.* [1989 Supp (1) SCC 91 : 1989 SCC (Cri) 218] ,*Suresh Chandra Bahri v. State of Bihar* [1995 Supp (1) SCC 80 : 1995 SCC (Cri) 60 : AIR 1994 SC 2420] and *Sunil Clifford Daniel v. State of Punjab* [(2012) 11 SCC 205] ).”

**[Emphasis supplied]**

51. In the instant case, Munni Bai (PW-9) daughter of deceased persons in para-15 of her statement clearly stated that there was no

previous enmity between the appellant and her parents. Indeed, the relation between her parents and appellant were good and cordial. The appellant used to provide food to her parents and take care of them. This witness further deposed that her parents fell down in the well and her previous statement given to Police was a false statement in order to implicate the appellant. Such a false statement was given by her because she was misguided by her brother. It is worth remembering that Munni Bai is the first person who informed her sister that her parents were not found in their house and house was locked from outside. Taking into account statements of daughters Ramrati (PW-7) and Munni Bai (PW-9) it can be safely concluded that prosecution could not establish any motive on the part of appellant.

### **Circumstance**

**52.** Indisputably, there is no eye-witness to the said incident. The conviction is based on circumstantial evidence. It is apt to deal with the relevant circumstances which were taken into account by the Court below to record conviction of present appellant.

### **Last seen evidence**

**53.** The star witness for this purpose is Haridas (PW-5) introduced by prosecution as independent witness and neighbour of the deceased persons. This witness has turned hostile. He also deposed that well in which bodies of deceased persons were found belongs to the Government.

54. A careful scrutiny of statement of Haridas (PW-5) makes it clear that he has not seen the deceased persons inside or outside the house of appellant. He deposed that he assumed from the voice of these persons which was over heard by him that the said persons must be inside the house of appellant. He did not depose about date and time of such incident. He, in our considered opinion, is not an eye-witness but merely assumed that both the deceased persons were in the house of the appellant. It is not safe to record or support conviction on the basis of such a statement of this witness solely based on assumption. His evidence cannot be said to be of sterling quality sufficient to record conviction. Apart from this, prosecution miserably failed to lead any evidence to establish that the appellant who was allegedly last seen together with the deceased person alone was responsible for commission of crime and there was no other possibility of commission of crime by anybody else. The appellant was last seen 4-5 days ago from the date of recovery of bodies. The time lag aforesaid should have been explained and should have been corroborated by leading supporting evidence. We find support in our view from the judgment of **Ravi and another (supra)** which reads thus :

“4. Last seen together” is certainly a strong piece of circumstantial evidence against an accused. However, as it has been held in numerous pronouncements of this Court, the time-lag between the occurrence of the death and when the accused was last seen in the company of the deceased has to be reasonably close to permit an inference of guilt to be drawn. When the time-lag is considerably large, as in the present case, it would be safer for the court to look for corroboration. In the present case, no corroboration is forthcoming. In

the absence of any other circumstances which could connect the appellant-accused with the crime alleged except as indicated above and in the absence of any corroboration of the circumstance of “last seen together” we are of the view that a reasonable doubt can be entertained with regard to the involvement of the appellant-accused in the crime alleged against them”.

[Emphasis supplied]

### **Recovery of Stones/Axe**

55. Another circumstance on which heavy reliance is placed by the prosecution and by Court below is the recovery of blood stained stones and the axe. As noticed above, the axe was recovered through seizure memo (Ex. P/9) from the courtyard of the appellant. Bhojpratap (PW-6) Ramrati (PW-7) and IO supported the recovery/seizure. Learned *amicus curiae* has taken pains to urge that as per the judgment of Gujarat High Court in the case of **Daja Bhai (supra)**, since in the seizure memo no finding is given about existence of blood on the weapon/axe, FSL report cannot be believed. We do not see much merit in this contention. While making a seizure, in our considered opinion, the prosecution is under no obligation to mention whether on the seized weapon there exists blood stains or not. Many times blood on the weapon is not visible through naked eyes. Thus, any finding in the seizure memo about existence of blood is neither essential nor can be a reason for disbelieving the FSL report. Although, judgment of Gujarat High Court has a persuasive value, we are respectfully disagree with the view taken that if in the *Panchnama* of recovery there was no mention about blood stains, it can be a factor for vitiating or not believing the FSL report.

**56.** It is noteworthy that existence, availability and mentioning of blood stains in the seizure memo is not of much significance. As a rule of thumb, it can not be said that in the seizure memo failure to mention existence of blood on the weapon will cause dent on the FSL report and the prosecution story. FSL report is a scientific report. Scientific equipments enable the scientists/experts to trace the blood. Thus, we are unable to persuade ourselves with the line of argument of Shri Manish Datt, learned *amicus curiae* that FSL report or seizure is vitiated on this count.

**57.** As per FSL report (Ex. P/10) proved by A.P. Goswami (PW-15), human blood was found on the axe. However, the blood group was not matched. Even assuming for the sake of argument that human blood was found on the weapon (Axe) used, it is only one circumstance which has been established by the prosecution. In a case of circumstantial evidence, the entire chain needs to be established with utmost clarity and caution. Only one link cannot be a reason to hold somebody as guilty when it does not connect with other links and forms a complete chain of circumstances.

**58.** Interestingly, other recovered stones marked as 'E' and 'I' were found outside the house of the appellant. As per FSL report, blood was found on them but there is no finding that human blood was found on these stones. Another stone 'I' contains the human blood but this stone was also found in an open space and blood group was not matched. On the stone marked as 'G', blood stains were disintegrated and therefore, no definite opinion could be formed in the FSL report.



59. The Apex Court in **NISAR (supra)** held in para-9 which reads as under:-

“9. It is to be noted that the first information report was lodged much after the so-called extra-judicial confession was made. Evidence on record shows that the body of Kandhai was lying exposed in the jungle and his lathi and khomari were lying close by. In the FIR (Ext. P-1), there was no reference to the so-called confession by the accused. Informant Bhaiyalal's explanation that he may have forgotten to disclose this fact to the police while lodging the FIR, is totally improbable and wholly unacceptable. If in fact there was any confession as claimed that would have been the first thing to be mentioned and not that there was suspicion of the accused being the assailant. Raghvendra Singh Baghel, PW 12 had admitted that the body of Chherkoo was lying about 100 paces from the dead body of Kandhai. The High Court rightly noticed that no disclosure was necessary for locating the dead body. The axe and the khomari were also lying close by and even a casual search would have revealed the dead bodies and the articles. **The chemical examiner in his report Ext. P-37 had found that the axe was stained with human blood. Curiously, the blood group was not ascertained. It was, therefore, not possible to conclude that the axe was used for killing the two deceased persons”.**

[Emphasis supplied]

60. In the recent judgment in **Madhav vs. State of Madhya Pradesh (2021 SCC OnLine SC 613)** the Apex court opined that the recovery and origin of blood are two relevant factors on the strength of which a finding can be recorded. The stones, ‘ E,’ ‘I’ and ‘G’ were recovered near pathway from an open space and not from the courtyard of the appellant. There is no clinching evidence showing their origin and nexus with the

appellant. In other words, the prosecution could not establish any thread relation between the recovery of stones, blood thereupon with the conduct of the present appellant. Thus, it will not be safe to affirm conviction on the basis of recovery of blood stains, stones and axe.

**61.** In **Sharad Birdhichand Sarda (supra)**, the Apex Court laid down the ‘Panchsheel Principles’ to be applied in the cases of circumstantial evidence. These are as under :-

“(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 : 1973 SCC (Cri) 1033 : 1973 Cri LJ 1783]** where the 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.”

**[Emphasis supplied]**

62. The aforesaid factual matrix shows that stones marked as 'E', 'I', 'G' were recovered by the prosecution near pathway which was an open space. Indisputably, the pathway and the open space from where stones were recovered was accessible and visible to all. In **State of H.P. v. Jeet Singh, (1999) 4 SCC 370** it was held that recovery of crime articles from a place which is open and accessible to others is unreliable when the place from where recovery was made is ordinarily visible to others. In the instant case, the aforesaid stones were recovered from an open place which was visible to others and accessible to all. For this reason evidence of recovery of said stones cannot be used against the appellant.

63. The *ratio decidendi* of this judgment is consistently followed by the Supreme Court till date.

64. The Apex Court recently in **Ramanand alias Nandlal Bharti vs. State of Uttar Pradesh (2022 SCC Online SC 1396)** held as under :

“50. Thus, in view of the above, the Court must consider a case of circumstantial evidence in light of the aforesaid settled legal propositions. In a case of circumstantial evidence, the judgment remains essentially inferential. The inference is drawn from the established facts as the circumstances lead to particular inferences. **The Court has to draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion that the accused alone is**

**the perpetrator of the crime in question.** All the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the accused”.

**[Emphasis supplied]**

**65.** A bare perusal of the principles laid down in the aforesaid judgment makes it clear that the prosecution needs to establish the entire chain with clarity and perfection. An accused cannot be convicted based on surmises and conjectures. The suspension, however strong can not take the place of proof.

**66.** To summarize, even at the cost of repetition, it can be safely held that there is no eye witness to the incident, Well in which bodies of deceased persons were recovered does not belong to the appellant. Autopsy Surgeon deposed that injuries found on the person of deceased Shanti could have been sustained due to her fall into well. The family members of deceased persons Ramrati (PW-7) and Munni Bai (PW-9) clearly stated that there was no previous enmity between the appellant and their parents. Munni Bai (PW-9) even deposed that the relation of appellant and deceased were cordial. Munni Bai (PW-9), the daughter of deceased persons further deposed that she falsely arraigned the present appellant because her brothers misguides her. The recovery of stones from open places cannot be the sole reason for conviction. Similarly, recovery of an axe from the courtyard which although contains human blood, in absence of matching of blood group cannot be the singular reason for affirming conviction. The complete chain must be established meticulously and with forensic clarity.

67. Putting it differently, merely because one link is established out of complete chain, the conviction cannot get stamp of approval from this Court. The prosecution must establish that every link is interconnected, intact and duly established on the anvil of Evidence Act. The prosecution could not establish the entire chain of circumstances in the instant case.

68. The appellant was admittedly convicted in S.T. No.111/1997 by the trial court and was directed to suffer capital punishment. This court affirmed the conviction in Cr.A. No. 857/1999 by the judgment dated 7.12.1999 but modified the sentence from capital punishment to life imprisonment. The appellant's conviction in the instant case can not be upheld merely because in the previous case he was convicted and said conviction remained intact in Cr.A. No. 857/1999. The appellant can be convicted and punished only when by leading cogent evidence, the prosecution proved its case to the hilt. As noticed above, the prosecution could not establish its case beyond reasonable doubt. The circumstantial evidence must be of sterling quality and should be of a nature that a conclusion can be drawn that appellant and appellant alone 'must' have committed the offence and not that appellant perhaps/might have committed the offence. The prosecution could not satisfy the aforesaid *litmus* test in the instant case.

69. Before parting with the matter, we record our appreciation for valuable assistance provided by learned counsel for the parties in general and by learned Senior Advocate/*Amicus Curiae* in particular.

70. In view of foregoing analysis, we are unable to give our stamp of approval to the impugned judgment dated 27.11.2019 passed in S.T.

No.1500086/2014. The prosecution has failed to establish its case beyond reasonable doubt. Resultantly, the impugned judgment dated 27.11.2019 is **set aside** by giving the appellant the benefit of doubt. If the appellant's presence in the prison is not required for any other offence, he be released forthwith. The appeal is **allowed**. Reference is answered accordingly.

**(SUJOY PAUL)**  
**JUDGE**

**(PRAKASH CHANDRA GUPTA)**  
**JUDGE**

PK