Vijay Singh @ Vijay Kr. Sharma vs The State Of Bihar on 4 October, 2024

Author: Bela M. Trivedi

Bench: Bela M. Trivedi

2024 INSC 759

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1031 OF 2015

VIJAY SINGH@VIJAY KR. SHARMA ...APPELLANT(S)
VERSUS
THE STATE OF BIHAR ...RESPONDENT(S)

WITH

CRIMINAL APPEAL NO. 1578 OF 2017
CRIMINAL APPEAL NO. 765 OF 2017
CRIMINAL APPEAL NO. 1579 OF 2017

JUDGMENT

SATISH CHANDRA SHARMA, J.

1. On 30.08.1985, Neelam breathed her last in Simaltalla, PS Sikandra, District Munger, Bihar. The factum of her death was Reason: discovered in furtherance of the written report lodged by the informant and brother-in-law of the deceased, namely, Ramanand Singh (examined as PW18 before the Trial Court1) wherein he alleged that Neelam was abducted by seven persons from their house in an incident which occurred at around 10:00 PM on the said day. On the basis of this information, an FIR bearing no. 127 of 1985 was lodged at PS Sikandra and investigation was commenced which led to the filing of a chargesheet against the seven accused persons, namely – Krishna Nandan Singh (Accused No.1), Ram Nandan Singh (Accused No.2), Raj Nandan Singh (Accused No.3), Shyam Nandan Singh (Accused No.4), Bhagwan Singh (Accused No. 5), Vijay Singh (Accused No. 6) and

Tanik Singh (Accused No.7).

2. The Trial Court charged all seven accused persons for the commission of offences punishable under Sections 323, 302, 364, 449, 450, 380/34 and 120-B of the Indian Penal Code, 18602. Later, accused nos. 6 and 7 were distinctly charged for the commission of offences punishable under Sections 342, 506 read with Section 34 of IPC. After trial, the Trial Court, vide order dated 05.06.1992, convicted the accused persons listed as accused nos. 1, 2, 3, 4 and 5 for the commission of offences under Section 302/34 and 364/34 of IPC. They were acquitted of Prosecution witness or PW Hereinafter referred as "IPC" all other charges, and accused nos. 6 and 7 were acquitted of all the charges.

3. The convicts preferred an appeal before the Patna High Court against the order of conviction and the State preferred an appeal before the High Court against the order of acquittal of the two accused persons. The Patna High Court, vide a common judgment dated 26.03.20153, upheld the conviction of the five convicts and set aside the acquittal of accused nos. 6 and 7 by finding them guilty of the commission of offences under Sections 364/34 and 302/34 of IPC. Accordingly, accused nos. 6 and 7 were also convicted and were sentenced to undergo rigorous life imprisonment on each count. The present batch of appeals assail the order/judgment dated 26.03.2015 of the Patna High Court.

BRIEF FACTS

4. Shorn of unnecessary details, the facts reveal that deceased Neelam was the wife of one Ashok Kumar who happened to be the son of PW3/Ganesh Prasad Singh, and the informant PW18/Ramanand Singh was the brother of Ashok Kumar. The informant's case was that at the relevant point of time, the deceased was residing with her husband and the informant in the house belonging to her late father Jang Bahadur Singh, who Passed in Govt. Appeal (DB) No. 16/1992, Criminal Appeal (DB) No. 219/1992 and Criminal Appeal (DB) No. 271/1992 belonged to Simaltalla. The house was partially occupied by the deceased, her husband and her brother-in-law and the remaining portion was rented out and tenants were residing in those portions.

5. As per the prosecution case, on 30.08.1985 at about 10:00 PM, PW18 was sitting outside the house on a rickshaw along with one Doman Tenti, Daso Mistry and Soordas, and Neelam was sleeping inside the house. Her husband, Ashok Kumar, had gone to his native place Ghogsha. Suddenly, the seven accused persons, including the appellants before us, came from north direction along with 15 other unknown assailants. Accused Vijay Singh/A-6 caught hold of the informant/PW18 and as soon as he raised alarm and started shouting, two unknown persons pointed out pistols towards him and directed him to maintain silence. Thereafter, the accused persons who had caught the informant, assaulted him with fists and slaps, and confined him near the well situated on the north side of the house. Meanwhile, A-1 entered the house with 5-7 other accused persons by getting the house unlatched through a resident namely Kumud Ranjan Singh and dragged Neelam out of the house. As soon as they dragged her out, four persons caught hold of Neelam by her arms and legs, lifted her and started moving towards Lohanda. As per the informant, the accused persons also picked up two sarees, two blouses, two petticoats and a pair of slippers from Neelam's room while going out.

6. As the informant raised alarm, other people of the mohalla also gathered around including PW2 Vinay Kumar Singh, PW4 Chandra Shekhar Prasad Singh and PW5 Ram Naresh Singh. The said three witnesses witnessed the accused persons taking away Neelam but could not stop them. The informant explained that no one dared to follow the accused persons as they had pointed pistols and had threatened of dire consequences. The informant also explained the motive behind the commission of the crime. It transpires from his statement that Neelam's late father Jang Bahadur Singh had no son and his house was in possession of his daughter Neelam. She was abducted in order to forcefully obtain the possession of the house belonging to her father. The second limb of motive stems from the pending litigation between A-1 to A-5 (appellants) on one side and deceased Neelam, her maternal grandfather and her two sisters on the other side. The accused persons had obtained letters of administration and probate of the Will left by late Jang Bahadur Singh from the competent court and the said order came to be challenged before the Patna High Court by the deceased, her maternal grandfather and younger sisters. In the said appeal, the Patna High Court had injuncted the accused persons from alienating any part of the property. The High Court also restrained the execution of the probate of the Will by restraining the delivery of possession of the property to the accused persons. Thus, deceased Neelam was residing in her father's house along with her husband and brother-in-law in order to retain the possession of the property. In this backdrop, the matter went for trial.

BEFORE THE TRIAL COURT

7. The Trial Court, while acquitting A-6 and A-7, observed that the motive attributed for the commission of the crime was not attributable to the said two accused persons as no interest of theirs could be disclosed in the pending litigation. Further, it also found that A-6 was not named in the FIR registered upon the information supplied by PW18 and in his oral testimony, no statement of assault by A-6 and A-7 was given by him. It further held that no evidence sur-faced during the trial to indicate the participation of A-6 and A-7 in the acts of abduction and commission of murder.

8. While convicting A-1 to A-5 on the charges under Sections 302/34 and 364/34 of IPC, the Trial Court primarily relied upon the oral testimonies of PW18/informant, PW2, PW4 and PW5. The motive for the commission of the offence was supplied by the pending legal dispute relating to the property belonging to late Jang Bahadur Singh. The Court also replied upon circumstantial evidence borne out from the testimonies of PW7 (maternal uncle of the de-ceased), PW3 (father-in-law of the deceased), PW23 (sister of the deceased) and PW13 (doctor) to arrive at the finding of guilt.

BEFORE THE HIGH COURT

9. A reading of the impugned judgment passed by the High Court suggests that the High Court carried out a fresh appreciation of evidence. The High Court firstly examined the question whether Neelam was actually residing in the house from which she was abducted. Relying upon the testimonies of PW7 (maternal uncle of deceased), PW18 (broth-er-in-law of deceased and informant) and PW21 (Investigating Officer), the Court concluded that Neelam was indeed re-siding in the said house. In doing so, the Court discarded the fact that the other independent occupants of the house such as Ram Chabila Singh, his son, Kumud Ranjan Singh etc. did not come in support of

the said fact. To overcome this deficiency, the Court relied upon the statements of PW21 and PW23 (sister of deceased) that some make-up articles were found in a bag lying in the room, which was suggestive of the fact that a woman was residing in the said room.

10. In further consideration, the High Court excluded the evidence of PW5 for the reason that his presence at the place of incident was doubtful. For, PW5 deposed that he was heading towards his home from Deoghar and on the way from Lakhisarai to Simaltalla, he stopped at Sikandra Chowk along with PW2 and PW4. It was at this point that they heard the hulla and ended up witnessing the commission of offence. The High Court took note of the fact that while going from Deoghar to Simaltalla, Lakhisarai and Ghogsha would come first and thus, there was no reason for PW5 to come all the way to Sikandra Chowk if he was going to his home in Ghogsha as he could have directly proceeded from Lakhisarai to Ghogsha. Nevertheless, the High Court duly relied upon the evidence of PW2, PW4 and PW18 as well as on circumstantial evidence comprising of the testimonies of PW23, PW13 (doctor) and absence of suitable explanation in the statements of accused persons under Section 313 of the Code of Criminal Procedure, 19734 as regards the fatal injuries suffered by the deceased. Thus, the High Court upheld the finding of guilt of A-1 to A-5.

11. As regards A-6 and A-7, the High Court reversed the finding of acquittal of the Trial Court into that of conviction. Primarily, the High Court observed that the said two accused persons were acquitted on the basis of the exonerating testimony of PW5 and the same cannot be sustained as the testimony of PW5 has been excluded by the High Court in appeal. Further, the Court held that the testimonies of PW2, PW4 and PW18 were consistent regarding the participation of A-6 and A-7 and thus, they were convicted for the commission of the offences under Sections 364 and 302 of IPC read with Section 34 of IPC. The applicability of Section 34 IPC was based on the fact that A-6 and A-7 had confined PW18 near the well in order to eliminate any Hereinafter referred as “CrPC” chances of resistance in the acts committed by the other five accused per-sons.

SUBMISSIONS

12. On behalf of A-6 and A-7, it is submitted that there was no motive for the said accused persons to have indulged in the commission of the offence in question. The motive, if any, existed only for the remaining five accused persons who were interested in the outcome of the pending litigation between the parties. It is further contended that the High Court ought not to have entered into the exercise of re-appreciation of the entire evidence without finding any infirmity in the view taken by the Trial Court. To buttress this submission, it is submitted that since the view taken by the Trial Court was a possible view, it could not have been disturbed by the High Court in appeal. In this regard, reliance has been placed upon the decisions of this Court in State of Goa v. Sanjay Thakran5, Chandrappa v. State of Karnataka6, Nepal Singh v. State of Haryana7, Kashiram v. State of M.P.8, Labh Singh v. State of Punjab9 and Suratlal v. State of M.P.10 (2007) 3 SCC 755 (2007) 4 SCC 415 (2009) 12 SCC 351 (2002) 1 SCC 71 (1976) 1 SCC 181 (1982) 1 SCC 488

13. It is further submitted that no reliance could be placed upon the testimonies of PW2 and PW4 as their presence at the spot was doubtful. Further, if they were 400 yards away when hue and cry was raised, they could not have seen A-6 taking away PW18 towards the well as the said fact took place

prior to the hue and cry. It is further submitted that in the FIR, no pistol was assigned to A-6, whereas, the said fact was brought forward at the time of evidence. The appellants have also raised a question regarding the time of incident on the basis of medical evidence. It is stated that the post-mortem report indicated that half- digested food was found in the stomach of the deceased, whereas, the informant PW18 deposed that the incident took place immediately after dinner. If such was the case, the death ought to have occurred around 1-2 AM in the intervening night of 30.08.1985-31.08.1985, but the post-mortem report, based on the post-mortem conducted at around 05:30 PM on 31.08.1985, indicated that death took place about 24 hours ago and thus, the time of death was around 05:00 PM on 30.08.1985 and not 10:00 PM, as alleged.

14. The appellants have also submitted that the prosecution has not proved that the deceased was actually residing in the concerned house at Simaltalla.

15. Per contra, it is submitted on behalf of the State that mere non-examination of some independent witnesses shall not be fatal to the case of the prosecution. Reliance has been placed upon the decision of this Court in Rai Saheb & ors. v. State of Haryana11 to contend that at times, independent witnesses may not come forward due to fear. It is further submitted that the High Court has correctly appreciated the evidence in order to arrive at the finding of guilt of the accused persons. It is further submitted that the testimonies of PW2, PW4 and PW18 are consistent and the High Court has correctly placed reliance upon their testimonies. As regards motive as well, it is submitted that the evidence is sufficient to reveal motive for the commission of the crime.

16. We have heard learned counsels for the appellants as well as for the State. We have also carefully examined the record.

DISCUSSION

17. In light of the rival contentions raised by the parties, the principal issue that arises before the Court is whether the finding of guilt of the appellants arrived at by the High Court is sustainable in light of the evidence on record. As a corollary of this issue, it also needs to be examined whether the approach of the High Court was in line with the settled law for reversing an acquittal into conviction in a criminal appeal.

(1994) Supp.1 SCC 74

18. After two rounds of litigation before the Trial Court and the High Court, it is fairly certain the case is to be examined only with respect to the offences under Sections 364 and 302 of IPC read with Section 34 IPC. With respect to the offence under Section 364 IPC, the case of the prosecution is based on direct oral evidence, and with respect to the offence under Section 302 IPC, the case of the prosecution is essentially based on circumstantial evidence as no direct evidence of the commission of murder could be collected. However, it is quite evident that the offence of murder was committed after the commission of the offence of abduction. There is a sequential relationship between the two offences and thus, in order to set up a case for the commission of the offence of murder, it is necessary to prove the commission of the offence of abduction by the accused persons/appellants.

For, the chain, in a case based on circumstantial evidence, must be complete and consistent.

19. In order to prove the offence under Section 364 IPC, the prosecution has relied upon the oral testimonies of four eye witnesses – PW-2, PW-4, PW-5 and PW-18. Their testimonies have been assailed on various counts. The appellants have termed the said witnesses as interested and chance witnesses. The former charge originates from the fact that the witnesses were related to the deceased, and the latter charge originates from the fact that the witnesses had no rea-son to be present at the place of offence and they just appeared unexpectedly as a matter of chance. Let us examine both the aspects. We may first examine the testimonies of the witnesses independently, without going into their relationship with the deceased.

20. The informant PW18 has deposed that he was standing near a rickshaw outside his house and the deceased was sleeping inside the house. PW18 was standing along with three independent persons namely, Doman Tenti, Daso Mistry and Soordas. The seven accused persons came along with 15 other persons. A-6 and A-7, along with unknown persons, first came to PW18 and took him away towards the well and confined him there. Thereafter, the remaining accused persons, along with other unknown assailants, entered the house wherein the deceased was sleeping. Interestingly, as per the version of the informant, the house was bolted from inside and was opened by a tenant namely Ku-mud Ranjan Singh. The problem with the informant's version begins from this point itself. As per his version, the first eye witnesses of the incident ought to have been Doman Tenti, Daso Mistry, Soordas and Kumud Ranjan Singh. One person, namely Soordas, was stated to be blind and thus, he may be excluded. Nevertheless, the prosecution ought to have examined the three natural witnesses of the incident namely, Doman Tenti, Daso Mistry and Kumud Ranjan Singh. There is no explanation for non-examination of the natural eye witnesses. The version becomes more doubtful when it is examined in light of his statement that he could not prevent the accused persons as A-6 had threatened him with a pistol. In the FIR, no pistol has been attributed to A-6, whereas in the statement recorded before the Trial Court, this fact was introduced for the first time, which is indicative of improvement. Furthermore, PW18 got it recorded in the FIR that A-6 and others had assaulted him with fists and slaps, but the said fact was not deposed before the Trial Court in his examination in chief. The discrepancy assumes greater seriousness in light of the fact that no pistol has been recovered from any of the accused persons and if the factum of branding of pistol is un-der the cloud of doubt, the entire conduct of PW18 becomes doubtful and unnatural, as he did not try to prevent the accused persons from entering the premises or from abducting the deceased or from taking away the deceased on their shoulders in front of his eyes as he was the brother-in-law of the deceased.

21. The other eye witnesses, PW2, PW4 and PW5, de-posed collectively in favour of the prosecution as they had arrived at the scene of crime together. At around 10:00 PM on the fateful night, the said eye witnesses happened to be present at Sikandra Chowk and they heard some hue and cry at the house of the deceased. The witnesses were coming together in a jeep from Lakhisarai and were going towards their home in Ghogsha village, the village wherein the deceased was married and also the native village of PW18/informant. PW2 was the driver of PW4. The testimo-nies of the said PWs have made it clear that while coming from Lakhisarai to Sikandra Chowk, Ghogsha came first, followed by Lohanda and Simaltalla. In such circumstances, their presence at Sikandra Chowk at

10:00 PM must be explained to the satisfaction of the Court. For, if they were going to their village, there was no occasion for them to come to Simaltalla as it did not fall on their way. But no such ex-planation is forthcoming from the material on record.

22. Interestingly, this lacuna was duly noted by the High Court with respect to PW5 as there was no reason for him to be present at Sikandra Chowk at the time of incident and his testimony was excluded. However, the same logic was not extended to the testimony of PW4 as well, as it was equally improbable for him to be present at Sikandra Chowk at 10:00 PM on the date of incident. His visit to Sikandra Chowk was not necessitated for going to his village. Even otherwise, since the three eye witnesses were similarly placed as per their own version, the rejection of testimony of one witness ought to have raised a natural doubt on the testimonies of the other two witnesses unless they had a better explanation. However, no such doubt was entertained by the High Court and the impugned judgment offers no explanation for the same. In light of their own testimonies, none of the three eye witnesses were required to visit Sikandra Chowk or Simaltalla for going to their village.

23. The testimonies of the eye witnesses are also impeachable in light of the other evidence on record. PW21 was the investigating officer in the case and he had examined the aforesaid PWs as eye witnesses of the incident. The version put forth by the eye witnesses meets a serious doubt when examined in light of the evidence of DW3 and DW4, the concerned Deputy Superintendent and Superintendent of Police respectively who had supervised the investigation of the present case. Both these officers were examined as defence witnesses on behalf of the appellants. As per the supervision notes prepared by DW3 during the course of investigation, PW2 and PW4 got to know about the incident only when PW18 came running to them after the incident. PW2, at that time, was sitting in a hotel with Umesh Singh to have 'prasad'. Similarly, the evidence of DW4 indicates that on the date of incident, at around 10:00 PM, PW4 was coming from Lakhisarai in his jeep and he saw six-seven persons fleeing away in a jeep and he identified them as the accused persons. Thus, PW4 entered the scene after the commission of offence and he did not witness the act of abduction. The testimony of PW2 strengthens the doubt as he deposed that when they reached the police station after the incident with PW18, neither him nor PW4 in-formed the IO that they had directly seen the incident. The stark difference between the versions put forth by the PW21 and DW3/DW4 raises serious concerns regarding the fairness of investigation conducted by PW21 and it is a reasonable possibility that the eye witnesses were brought in to create a fool proof case. The evidence of DW3 and DW4, both senior officers who had exercised supervision over the investigation conducted by PW21, indicates that the so- called eye witnesses of the incident were actually accessories after the fact and not accessories to the fact.

24. The second limb of the objection against the testimonies of the eye witnesses is that none of the eye witnesses is an independent witness of fact. Ordinarily, there is no rule of law to discard the testimonies of the witnesses merely be-cause they were known to the victim or belonged to her family. For, an offence may be committed in circumstances that only the family members are present at the place of occurrence in natural course. However, the present case does not fall in such category. In the facts of the present case, the natural presence of the eye witnesses at the place of occurrence is under serious doubt, as discussed above, and for unexplained reasons, the naturally present public persons were not examined as witnesses in the matter. The non- examination of

natural witnesses such as Doman Tenti, Daso Mistry, Soordas, Kumud Ranjan Singh and many other neighbours who admittedly came out of their houses to witness the offence, coupled with the fact that the projected eye witnesses failed to explain their presence at the place of occurrence, renders the entire version of the prosecution as improbable and unreliable. The eye witnesses, being family members, were apparently approached by PW18 who in-formed them about the incident and later, their versions were fabricated to make the case credible. Notably, when the version put forth by the interested witnesses comes under a shadow of doubt, the rule of prudence demands that the independent public witnesses must be examined and corroborating material must be gathered. More so, when public witnesses were readily available and the offence has not taken place in the bounds of closed walls.

25. Pertinently, the conduct of the eye witnesses also ap-pears to be unnatural considering that they were all relatives of the deceased. Firstly, PW18 did not try to prevent the ab-duction. Even if it is believed that he was held against a pistol, the statement regarding the existence of pistol comes as an improvement from his first information given to the police, as already noted above. Nonetheless, it is admitted that PW2, PW4 and PW5 came in a jeep and they saw the accused persons leaving with Neelam after abducting her. It is also admitted that they had identified the accused persons, who were essentially the relatives of the eye witnesses. In such circumstances, as per natural human conduct, the least that they could have done was to follow the accused persons in their jeep. They admittedly had a ready vehicle with them. Despite so, there was no such attempt on their part, so much so that the dead body of Neelam was not even discovered until the following morning as none of the eye witnesses had any clue as to where the accused persons had taken away the deceased after abducting her.

26. One crucial foundational fact in the present case is that the deceased was residing in her father's house at Simaltalla. Although, the Trial Court and High Court have not doubted the said fact, we have our reservations regarding the same. In addition to the statements of PW18 (informant), PW23 (sister of deceased) and PW7 (maternal uncle of deceased), no other witness has deposed to prove the factum of residence. The admitted evidence on record sufficiently indicates that various other tenants were residing in the same house, including Kumud Ranjan Singh, Education Officer Ram Chabila Singh along with his daughter and son.

27. The investigating officer PW21 had inspected the house and no direct material, except some make-up articles, could be gathered so as to indicate that Neelam was actually residing there. Admittedly, another woman namely, Chando Devi (sister of Ram Chabila Singh) was also residing in the same portion of the house. The High Court did take note of this fact but explained it away by observing that since Chando Devi was a widow, the make-up articles could not have belonged to her as there was no need for her to put on make-up being a widow. In our opinion, the observation of the High Court is not only legally untenable but also highly objectionable. A sweeping observation of this nature is not commensurate with the sensitivity and neutrality expected from a court of law, specifically when the same is not made out from any evidence on record.

28. Be that as it may, mere presence of certain make-up articles cannot be a conclusive proof of the fact that the deceased was residing in the said house, especially when another woman was

admittedly residing there. Furthermore, if Neelam was indeed residing there, her other belongings such as clothes etc. ought to have been found in the house and even if not so, the other residents of the same house could have come forward to depose in support of the said fact.

29. Notably, certain clothes such as two sarees, two blouses and two petticoats were recovered along with the dead body of the deceased. The prosecution version is that the accused persons had taken away the said clothes from the house of the deceased while abducting her. There is absolutely no explanation for the said conduct on the part of the accused persons. It is difficult to understand as to why the accused persons would take her clothes along while abducting her. On the contrary, this fact actually serves the case of the prosecution in proving that the de- ceased was actually residing at the house in Simaltalla. The clothes appear to have been planted along with the dead body in order to support the fact of actual residence of the deceased at her father's house in Simaltalla. In light of the material on record, it could be concluded that no material whatsoever could be found at the house of Jang Bahadur Singh to directly indicate that the deceased was residing there. The make-up articles were linked with the deceased on the basis of a completely unacceptable reasoning and without any corroborative material. The prosecution has failed to examine even one cohabitant to prove the said fact. Furthermore, no personal belongings of the deceased, such as clothes, footwear, utensils etc., could be found in the entire house. Therefore, we are not inclined to believe that the deceased was actually residing in the house at Simaltalla. In the same breath, we may also note that even for PW18, no material was found in the said house to indicate that he was in fact residing there. Apart from his own statement, no witness has come forward to depose that the informant was a resident of the said house. The prosecution has not spotted any room in the entire house wherein PW18 was residing and thus, his own presence at the place of occurrence is doubtful.

30. The appellants have also raised certain objections with respect to the time of death. The discrepancy has been flagged in light of the post mortem report, based on the post-mortem conducted at around 5:30 PM on 31.08.1985, which indicates that death took place around 24 hours ago. It indicates that the time of death must have been around 5:00 PM on 30.08.1985, which is contrary to the evidence of PW18 that the incident took place around 10:00 PM on 30.08.1985. A post mortem report is generally not considered as conclusive evidence of the facts mentioned in the re-port regarding the cause of death, time of death etc. It could always be corroborated with other direct evidence on record such as ocular evidence of the eye witnesses.

However, when there is no other credible evidence on record to contradict the report, the facts stated in the post mortem report are generally taken as true. In the present matter, the evidence of the eye witnesses has been declared as wholly unreliable including on the aspect of time of death. Thus, there is no rea-son to doubt the post mortem report and the findings there-in.

31. At this stage, we may also note that the approach of the High Court in reversing the acquittal of A-6 and A-7 was not in line with the settled law pertaining to reversal of acquittals. The Trial Court had acquitted the said two accused persons on the basis of a thorough appreciation of evidence and the High Court merely observed that their acquittal was based on the improbable statement of PW5 and since the evidence of PW5 stood excluded from the record, there was no reason left for the acquittal of A-6 and A-7. Pertinently, the High Court did not arrive at any finding of illegality or

perversity in the opinion of the Trial Court on that count. Furthermore, it did not arrive at any positive finding of involvement of the said two accused persons within the sphere of common intention with the remaining accused persons. Equally, the exclusion of the evidence of PW5, without explaining as to how the evidence of PW2 and PW4 was not liable to be excluded in the same manner, was in-correct and erroneous.

32. We do not intend to say that the High Court could not have appreciated the evidence on record in its exercise of appellate powers. No doubt, the High Court was well within its powers to do so. However, in order to reverse a finding of acquittal, a higher threshold is required. For, the presumption of innocence operating in favour of an accused through-out the trial gets concretized with a finding of acquittal by the Trial Court. Thus, such a finding could not be reversed merely because the possibility of an alternate view was alive. Rather, the view taken by the Trial Court must be held to be completely unsustainable and not a probable view. The High Court, in the impugned judgment, took a cursory view of the matter and reversed the acquittal of A-6 and A-7 without arriving at any finding of illegality or perversity or impossibility of the Trial Court's view or non-appreciation of evidence by the Trial Court.

33. We may usefully refer to the exposition of law in Sanjeev v. State of H.P.12, wherein this Court summarized the position in this regard and observed as follows:

> "7. It is well settled that:
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> 7.1. While dealing with an appeal against acquittal, the reasons which had weighed with the trial court in acquitting the accused must be dealt with, in case the appellate court is of the view that the acquittal rendered by the trial court deserves to be upturned (see Vijay Mohan (2022) 6 SCC 294 Singh v. State of Karnataka13, Anwar Ali v. State of H.P.14) 7.2. With an order of acquittal by the trial court, the normal presumption of innocence in a criminal matter gets reinforced (see Atley v. State of U.P.15) 7.3. If two views are possible from the evidence on record, the appellate court must be extremely slow in interfering with the appeal against acquittal (see Sambasivan v. State of Kerala16)"

34. Having observed that the case of the prosecution is full of glaring doubts as regards the offence of abduction, we may briefly note and reiterate that the offence of murder is entirely dependent on circumstantial evidence. Although, the post mortem report indicates that the death of the deceased was unnatural and the commission of murder can-not be ruled out. But there is no direct evidence on record to prove the commission of murder by the accused per-sons. The link of causation between the accused persons and the alleged offence is conspicuously missing. The circumstantial evidence emanating from the facts sur-rounding the offence of abduction, such as the testimonies of eye witnesses, has failed to meet the test of proof and cannot be termed as proved in the eyes of law. Therefore, the (2019) 5 SCC 436 (2020) 10 SCC 166 AIR 1955 SC 807 (1998) 5 SCC 412 foundation of circumstantial evidence having fallen down, no inference could be drawn from it to infer the commission of the offence under Section 302 IPC by the accused persons. It is trite law that in a case based on circumstantial evidence, the chain of evidence must be complete and must give out an

inescapable conclusion of guilt. In the pre-sent case, the prosecution case is far from meeting that standard.

35. As regards motive, we may suffice to say that motive has a bearing only when the evidence on record is sufficient to prove the ingredients of the offences under consideration. Without the proof of foundational facts, the case of the prosecution cannot succeed on the presence of motive alone. Moreover, the motive in the present matter could operate both ways. The accused persons and the eyewitnesses belong to the same family and the presence of a property related dispute is evident. In a hypothetical sense, both the sides could benefit from implicating the other. In such circumstances, placing reliance upon motive alone could be a double-edged sword. We say no more.

36. The above analysis indicates that the prosecution has failed to discharge its burden to prove the case beyond reasonable doubt. The reasonable doubts, indicated above, are irreconcilable and strike at the foundation of the prosecution's case. Thus, the appellants are liable to be acquitted of all the charges.

37. In light of the foregoing discussion, we hereby conclude that the findings of conviction arrived at by the Trial Court and the High Court are not sustainable. Moreover, the High Court erred in reversing the acquittal of A-6 and A-7. Accordingly, the impugned judgment as well as the judgment rendered by the Trial Court (to the extent of conviction of A-1 to A-5) are set aside, and all seven accused persons (appellants) are hereby acquitted of all the charges levelled upon them. The appellants are directed to be released forthwith, if lying in custody.

38. The captioned appeals stand disposed of in terms of this judgment. Interim application(s), if any, shall also stand disposed of. No costs.

.....J. [BELA M. TRIVEDI] .....J. [SATISH CHANDRA SHARMA] NEW DELHI SEPTEMBER 25, 2024