

**Gambhir Singh**

v.

**The State of Uttar Pradesh**

(Criminal Appeal No(s). 850-851 of 2019)

28 January 2025

**[Vikram Nath, Sanjay Karol and Sandeep Mehta,\* JJ.]**

**Issue for Consideration**

Matter pertains to the sustainability of the order passed by the High Court upholding the order of conviction and death sentence awarded to the appellant by the trial court.

**Headnotes<sup>†</sup>**

**Penal Code, 1860 – ss.302, 34 – Murder – Death sentence – Appellant convicted for the ghastly incident involving murder of his real brother, sister-in-law, and their four children and awarded death sentence – Acquittal of the co-accused by giving her the benefit of the doubt – Appeal thereagainst by the State, dismissed – Also, dismissal of the appeal filed by the appellant, upholding the order of conviction and death sentence – Sustainability:**

**Held:** Not sustainable – Prosecution failed to prove even one of the three so-called incriminating circumstances, ‘motive’, ‘last seen’ and ‘recoveries’ in its quest to bring home the guilt of the appellant – Prosecution failed to lead even an iota of evidence to show that the appellant was deprived of the plot of land owned by him so as to connect such transaction with the theory of motive – Evidence of some prosecution witnesses conjectural and hearsay in nature – Two prosecution witnesses created by the prosecution and their testimony totally unworthy of credence – Inherent infirmities in the testimony of the Investigating Officer completely discredits the prosecution’s case regarding the so-called incriminating recoveries – Substratum of the prosecution case regarding the disclosure statements rendered by the appellant and the recoveries allegedly made in furtherance thereof remains unproved for want of proper evidence – Utter lackadaisical approach on part of the Investigating Agency as well as the prosecution – Investigation of a case involving gruesome murders of six innocent persons carried out in a most casual and negligent manner contributing

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significantly to the failure of the prosecution's case as against the appellant – Public Prosecutor conducting the trial and as also the Presiding Officer of the trial court totally remiss while conducting the trial – Evidence of the material prosecution witness recorded without adhering to the mandatory procedural requirements of the Evidence Act – High Court failed to advert to the inherent improbabilities and infirmities in the prosecution case – Impugned judgments quashed and the conviction of the appellant set aside – Evidence Act, 1872. [Paras 20-22, 26, 27, 32, 34-38]

**Case Law Cited**

*Sharad Birdhichand Sharda v. State of Maharashtra [1985] 1 SCR 88 : (1984) 4 SCC 116; Shivaji Sahabroo Bobade v. State of Maharashtra [1974] 1 SCR 489 : (1973) 2 SCC 793 – referred to.*

**List of Acts**

Penal Code, 1860; Evidence Act, 1872; Code of Criminal Procedure, 1973.

**List of Keywords**

Circumstantial evidence; Death penalty/sentence; Confirmation of death sentence; Beyond reasonable doubt; Incriminating circumstances; Hearsay; Conjectural evidence; Last seen; Theory of motive; Recoveries; Want of proper evidence; Lackadaisical approach on part of investigating agency; Negligence in conducting investigation.

**Case Arising From**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No(s). 850-851 of 2019

From the Judgment and Order dated 09.01.2019 of the High Court of Judicature at Allahabad in CCN No. 1900 of 2017 and RN No. 07 of 2017

**Appearances for Parties**

Rakesh Uttamchandra Upadhyay, Ms. Aarti U. Mishra, Harsh Som, Advs. for the Appellant.

Sarvesh Singh Baghel, Sushil Kumar Tomar, Shaurya Krishna, Advs. for the Respondents.

**Supreme Court Reports****Judgment / Order of the Supreme Court****Judgment****Mehta, J.**

1. Heard.
2. The law is well-settled that in a criminal case irrespective of the gravity and nature of charges, the prosecution is under an obligation to prove the guilt of the accused by leading evidence which is convincing and links the accused with the crime beyond all manner of reasonable doubt. In a case based purely on circumstantial evidence, the onus is upon the prosecution to prove the chain of circumstances beyond all manner of doubt. The law in respect of the same has been crystallized in ***Sharad Birdhichand Sharda v. State of Maharashtra***<sup>1</sup> wherein it was held 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 Sahab Rao Bobade v. State of Maharashtra*** [(1973) 2 SCC 793] 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.”

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<sup>1</sup> (1984) 4 SCC 116.

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- (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)

3. Keeping in view the above principles, we shall now advert to the facts of the case at hand. The appellant i.e., Gambhir Singh<sup>2</sup> has been convicted and sentenced to death in relation to a ghastly incident involving murder of his own brother<sup>3</sup>, sister-in-law<sup>4</sup> and their four innocent children<sup>5</sup>. The incident took place in the house of the deceased persons at village Turkiya on the intervening night of 8<sup>th</sup> and 9<sup>th</sup> May, 2012.
4. The case of prosecution in a nutshell is that on 9<sup>th</sup> May, 2012 at about 6:30 am, Mahaveer Singh (PW-1), being the brother of deceased Pushpa, received shocking information that his sister, brother-in-law, nephew and nieces had been hacked to death. On receiving this information, Mahaveer Singh (PW-1), his family members, along with other villagers reached village Turkiya, where his sister used to reside along with her husband and four children. They proceeded to the house and saw that all the six members of the family had been killed in a heinous manner with blows of sharp and blunt weapons.

2 Hereinafter, referred to as 'appellant-accused'.

3 The brother, namely "Satyabhan".

4 The sister-in-law, namely "Pushpa".

5 The children, namely Aarti, Mahla, Gudia and Kanhaiya.

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5. Mahaveer Singh (PW-1), the informant lodged a written report<sup>6</sup> with Station House Officer, Police Station Achhnera, District Agra alleging *inter alia* that the marriage of his sister Pushpa had been solemnized about 12 years ago with Satyabhan, son of Shiv Singh, resident of village Turkiya. From their wedlock a son and three daughters were born. The appellant-accused, younger brother of Satyabhan, bore enmity with them due to a land dispute. On 8<sup>th</sup> May, 2012, the appellant-accused was staying with his friend Abhishek at the house of the informant's sister. On 9<sup>th</sup> May, 2012 Mahaveer Singh (PW-1) received information that his sister, brother-in-law, nephew, and nieces i.e., the whole family of his sister had been done to death. The informant along with his family members and villagers reached village Turkiya and saw the dead bodies of his family members lying there. He made enquiries, on which it came to light that on the previous evening the appellant-accused along with his friend Abhishek and sister Gayatri was seen going from village Turkiya in a bewildered condition. Mahaveer Singh (PW-1) suspected that appellant-accused and his friend Abhishek may have murdered his sister, brother-in-law and their four children with sharp-edged weapons.
6. Based on the report given by Mahaveer Singh (PW-1), an FIR No. 105 of 2012<sup>7</sup> (Case Crime No. 329 of 2012) was registered at the Police Station Achhnera, Agra against the appellant-accused, Abhishek and Gayatri for the offences punishable under Section 302 of Indian Penal Code<sup>8</sup>. Tasleem Ahmed Rizvi (PW-12), Inspector of Police<sup>9</sup> commenced investigation. Inquest was conducted on the dead bodies of all the deceased persons<sup>10</sup> and bodies were thereafter, dispatched to the Medical Officer, Dr. Vinod Kumar (PW-8) for conducting post mortem. The Doctor carried out the autopsies and noticed injuries from sharp-edged weapons on each dead body. He issued the post mortem reports for all the dead bodies.<sup>11</sup>
7. The Investigating Officer (PW-12) on receiving information regarding whereabouts of the accused persons, proceeded to Eidgah Railway Station. He arrested the appellant-accused and two other co-accused

6 Exhibit Ka- 1.

7 Exhibit Ka-18.

8 Hereinafter referred to as "IPC".

9 Hereinafter referred to as the "Investigating Officer (PW12)".

10 Exhibit Ka- 6 to Ka- 11.

11 Exhibit Ka- 12 to Ka- 17.

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persons i.e., Abhishek and Gayatri on 9<sup>th</sup> May, 2012. He recovered a pair of *kundal*, two *bichhua*, one metallic ring, and two *ghungaroos* from the possession of the accused-appellant. A passbook of State Bank of India and a cheque book, both belonging to deceased Satyabhan were recovered from the possession of co-accused, Gayatri. Further, the identity cards of deceased Satyabhan and deceased Pushpa and a sum of Rs.200/- were also recovered from her possession. The clothes and shoes worn by the appellant-accused and co-accused, Abhishek were found to be blood-stained and thus, the same were also seized and sealed. These articles as recovered from the accused persons were seized and recovery memo<sup>12</sup> was prepared.

8. Thereafter, the disclosure statements of the accused persons were recorded by the Investigating Officer (PW-12) under Section 27 of the Indian Evidence Act, 1872<sup>13</sup>, and thereafter, they were taken to the crime scene. The weapons i.e. axe (*kulhari*) and dagger (*katari*), allegedly used in the commission of crime were recovered from a room in the house of the deceased persons where fodder was kept. These weapons were pointed out by the accused-appellant (*kulhari*) and co-accused, Abhishek (*katari*) in the presence of the *panch* witnesses. Since the weapons were found to be blood-stained, the same were sealed and kept in safe custody.<sup>14</sup> The Investigating Officer (PW-12) also collected blood-stained soil and control soil from the place of occurrence and sealed the same.<sup>15</sup> Various other articles were also recovered from the crime scene.<sup>16</sup> Articles recovered from the crime scene viz., the clothes worn by the deceased and the articles recovered from and at the instance of the accused persons were all sent to the FSL for chemical examination. The FSL report<sup>17</sup> was received as per which, human blood was identified on numerous articles, but the blood group thereof could not be ascertained.
9. On completion of investigation, the Investigating Officer (PW-12) submitted a chargesheet<sup>18</sup> against the appellant-accused and the

12 Exhibit Ka- 22.

13 Hereinafter, referred to as "Evidence Act".

14 Exhibit Ka- 2.

15 Exhibit Ka- 3.

16 Exhibit Ka- 4 and Ka- 5.

17 Exhibit Ka- 24 to Ka- 28.

18 Exhibit Ka- 23.

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co-accused Abhishek and Gayatri for the offences punishable under Section 302 read with Section 34 and Section 404 IPC. The offences being exclusively triable by the Sessions Court, the case was committed and made over to the Court of the Additional Sessions Judge, Agra<sup>19</sup>. The trial Court framed charges against the appellant-accused and the two co-accused persons for the offences mentioned above. The accused persons abjured their guilt and claimed trial. The accused, Abhishek moved an application with a prayer to be declared a juvenile. On this application, the trial Court ordered an enquiry to be conducted by the Juvenile Justice Board and *vide* order dated 18<sup>th</sup> April, 2013, co-accused Abhishek was declared to be a juvenile in conflict with law and his case was accordingly separated and was transferred to the Juvenile Court. Hence, the trial of the Sessions Case was conducted only against the accused-appellant and co-accused, Gayatri.

10. The prosecution examined as many as 13 witnesses, exhibited 23 documents and 10 material objects in order to prove its case. On closure of the prosecution evidence, the statements of the accused-appellant and co-accused Gayatri were recorded under Section 313 of the Code of Criminal Procedure, 1973<sup>20</sup>. They were confronted with the allegations as appearing in the prosecution evidence which they denied and claimed to be innocent.
11. Upon hearing the arguments advanced by the Public Prosecutor and the counsel for defence and after appreciating the evidence available on record, the trial Court, *vide* judgment dated 20<sup>th</sup> March, 2017 proceeded to hold that the prosecution was able to prove the case against the appellant-accused beyond all manner of doubt and accordingly, the appellant-accused was convicted for the offences punishable under Section 302 read with Section 34 and Section 404 of IPC. However, the co-accused, Gayatri was acquitted of all the charges by giving her the benefit of doubt.
12. After hearing the appellant-accused and Public Prosecutor in respect of sentence, the trial Court imposed death penalty along with fine of Rs. 50,000/- under Section 302 read with Section 34 of IPC and 3 years imprisonment along with fine Rs. 10,000/- under Section 404 IPC.

19 Hereinafter, referred to as the “trial Court”.

20 For short, “CrPC”.

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13. The reference<sup>21</sup> for confirmation of the death sentence awarded to the appellant-accused, was forwarded to the High Court of Judicature at Allahabad<sup>22</sup> under Section 366 CrPC. The State preferred an appeal<sup>23</sup> assailing the acquittal of co-accused, Gayatri. A separate appeal<sup>24</sup> was also preferred by the appellant-accused assailing his order of conviction awarded by the trial Court. The High Court, *vide* judgment dated 9<sup>th</sup> January, 2019, proceeded to dismiss the appeal filed by the State, assailing the acquittal of Gayatri by recording a pertinent finding that the prosecution had planted the recoveries allegedly made at the instance of the said accused, and the case against Gayatri had not been proved beyond reasonable doubt.
14. The appeal filed by the appellant-accused was dismissed. The reference under Section 366 CrPC was answered in the affirmative and the conviction of the appellant-accused and the death sentence awarded to him stood confirmed. The appellant-accused has filed the present appeal by special leave before this Court, assailing the judgment dated 9<sup>th</sup> January, 2019 rendered by the High Court whereby, the conviction and order of death sentence passed by the trial Court has been affirmed.
15. Learned counsel representing the appellant-accused urged that the entire case of the prosecution is false and fabricated. The prosecution has failed to prove even one of the so-called incriminating circumstances so as to connect the appellant-accused with the crime. The prosecution projected three circumstances for proving the guilt of the appellant-accused, i.e., 'last seen', 'motive' and 'recoveries made at the instance of the appellant-accused'. However, as per the learned counsel for the appellant-accused, none of the aforesaid incriminating circumstances was proved by leading credible evidence. He thus, implored this Court to accept the appeal and set aside the impugned judgment and acquit the appellant-accused of all the charges levelled against him.
16. *Per contra*, learned Standing Counsel appearing for the State, vehemently and fervently opposed the submissions advanced by the learned counsel for the appellant-accused. He urged that the

21 Reference No. 07 of 2017.

22 Hereinafter, referred to as the "High Court".

23 Government Appeal No. 3574 of 2017.

24 Capital Case No. 1900 of 2017.

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prosecution has proved the charges against the appellant-accused beyond all manner of doubt. The prosecution witnesses (PW-1 to PW-5) and other villagers reached the place of occurrence in the morning after receiving the information of the ghastly incident involving six murders. They made inquiries from the villagers and came to know that the appellant-accused had committed the murder of Satyabhan and his family members owing to a long standing land dispute. He urged that the appellant-accused and the deceased Satyabhan were real brothers and were involved in the murder of their own mother. The land owned by the appellant-accused was sold to cover the expenses of pleading the case involving the murder of his mother. The said property had been purchased by deceased Satyabhan in the name of his wife (deceased Pushpa). When the appellant-accused was released on bail, in the case involving murder of his own mother, he insisted that his land should be returned. Owing to this, disputes ensued between the two brothers and the appellant-accused vowed to take revenge and threatened the victim with dire consequences. Owing to this motive and greed, the appellant-accused brutally murdered his real brother, sister-in-law and their four children.

17. It was further submitted by the counsel for the respondent that the prosecution has proved the circumstances of motive, last seen theory, and recovery of the incriminating blood-stained weapons and clothes by leading cogent evidence. He thus urged that the appellant-accused was rightly convicted by the trial Court and his conviction was justifiably affirmed by the High Court. He further urged that the case involves gruesome murder of six persons including four innocent children and thus, the appellant-accused deserves no leniency on the question of sentence as well. Hence, he implored this Court to dismiss the appeals and affirm the impugned judgments and the order of death sentence awarded to the appellant-accused.
18. We have given our thoughtful consideration to the submissions advanced at the bar and have gone through the impugned judgements. We have also re-appreciated the evidence available on record with the assistance of the learned counsel representing the parties.
19. At the outset, we may note that there is no dispute regarding the cause of death of six deceased persons. The six dead bodies were subjected to autopsy by Medical Officer, Dr. Vinod Kumar (PW-8), who has proved all the post mortem reports in detail during his testimony. The evidence of Medical Officer (PW-8) remained unchallenged and

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hence, we have no reason to doubt the opinion expressed by Medical Officer (PW-8) that the death of the six victims was homicidal and had been caused by inflicting blows of sharp-edged weapons.

20. Now, we come to the theory of motive. The only semblance of motive which the prosecution has tried to attribute to the appellant-accused by way of incriminating circumstances, is based on the theory that the land owned by the appellant-accused had been sold by deceased Satyabhan to his own wife (deceased Pushpa) for covering the expenses borne in the *pairokari* of the criminal case wherein, the appellant-accused and the deceased Satyabhan were arraigned as accused for the murder of their own mother. However, on-going through the entire record, we find that other than a bald aspersion made by Mahaveer Singh (PW-1), the first informant and the brother of deceased Pushpa in his deposition, no plausible evidence has been brought on record by the prosecution to prove the above story so as to establish the motive attributed to the appellant-accused. Neither the particulars of the criminal case involving the murder of mother of deceased Satyabhan and the appellant-accused were placed on record nor did the prosecution produce the documents evidencing the sale of the plot of land, owned by the appellant-accused. Resultantly, there is no escape from the conclusion that the prosecution failed to lead even an *iota* of evidence to show that the appellant-accused was deprived of the plot of land owned by him so as to connect such transaction with the theory of motive.
21. The remaining part of evidence of Mahaveer Singh (PW-1) is conjectural and hearsay in nature. In cross-examination, Mahavir Singh (PW-1) admitted that he did not see anything with his own eyes. He could not recollect the names of the people/villagers who told him that they had seen the appellant-accused at the crime scene.
22. The evidence of Bahadur Singh (PW-2) is also hearsay in nature. In addition, the witness also stated that the police apprehended the appellant-accused, Gayatri and Abhishek and took them to the crime scene from where the appellant-accused got recovered an axe (*kulhari*) concealed under the straw kept in the house. A dagger (*katari*) was also recovered at the instance of Abhishek. This witness also gave evidence regarding collection of the blood-stained soil, blood-stained clothes etc. from the spot. This witness is the uncle of the first informant, Mahaveer Singh (PW-1) and thus, it is important to note that he did not utter a single word regarding the theory of motive as portrayed in the evidence of PW-1.

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23. Shivram Singh (PW-3) deposed as a panch witness of the recovery memos. He also stated that the appellant-accused got recovered an axe (*kulhari*) and Abhishek took out a dagger (*katari*) from inside the house and gave it to the Inspector.
24. Mahtab Singh (PW-4) and Raju (PW-5) were the panch witnesses associated with the preparation of the inquest *panchnamas* carried out on the dead bodies of the deceased victims. Their evidence is of formal character.
25. Dashrath Singh (PW-6) testified that about 3 years ago, he was sitting at his shop near village Achhnera. One Kedar Singh was also sitting beside him. In the evening at about 4 to 5 o' clock, he saw the appellant-accused along with a boy (Abhishek) and his sister, Gayatri moving very quickly. They were proceeding towards Agra from the direction of village Turkiya. The clothes worn by the appellant-accused and the boy (Abhishek) were ensanguined and Gayatri was walking at a little distance from them. The witness claimed that he knew the appellant-accused and Gayatri because her elder brother i.e., deceased Satyabhan was married in his family. The witness stated that the next day he received information from Turkiya regarding the murders and accordingly, he also reached the place of incident where he came to know that his brother-in-law, sister, and their children had been murdered.
26. In cross-examination, the witness (PW-6) stated that when he reached village Turkiya, he saw that a large crowd had gathered. People from the crowd told him that his brother-in-law, sister, and their children had been murdered. He also stated that the appellant-accused met him at 5 o' clock in the evening. The witness (PW-6) did not talk to him because the appellant-accused was not a good person and had blood on his clothes. The witness could not recollect the date of the incident. Apparently, the evidence of this witness has been created by the prosecution for lending credence to its flimsy case, as against the appellant-accused and to link him with the crime by hook or by crook. We have strong reasons for holding so. As per the prosecution case, the incident took place in the intervening night of 8<sup>th</sup> May, 2012 and 9<sup>th</sup> May, 2012. Thus, even if the evidence of Dashrath (PW-6) is to be believed, the same does not give any credence to the prosecution's case, since the witness claims to have seen the appellant-accused, Gayatri, and another person in the evening at about 4 to 5 o' clock whereas the murders admittedly took place

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much later in the night and the witness heard about the incident on the next day. Thus, apparently, this witness was created by the prosecution and his testimony is totally unworthy of credence. Similar evidence was given by Kedar Singh (PW-7) and his testimony also deserves to be discarded for the same reasons.

27. In addition, thereto, we may note that the distance between Achhnera and Turkiya is about 7 to 10 kms as stated by Mahaveer Singh (PW-1) in his deposition. Thus, the probability of the appellant-accused traversing this long distance wearing blood-stained clothes after having committed six murders is virtually impossible and unbelievable. Evidently, both these witnesses, namely, Dashrath Singh (PW-6) and Kedar Singh (PW-7), are cooked-up witnesses whose testimony has been created by the prosecution to lend credence to its story in a case of blind murder.
28. Raj Bahadur Singh (PW-9) was posted as Sub-Inspector at Police Station Achhnera on the date of the incident. He accompanied the Investigating Officer (PW-12) and the other police officials and proceeded to the crime scene where the *panchnamas* were prepared. His evidence is formal in nature.
29. Sitaram Saroj (PW-10) was posted as Sub-Inspector in the Reserve Police Line, Mainpuri. He participated in inquest proceedings. He also carried out some formal steps of investigation. On going through the testimony of PW-10, we find that the same is formal in nature and not of much relevance for linking the appellant-accused with the crime in any manner.
30. Sunil Kumar (PW-11) was posted as a Constable at Police Station Achhnera on the date of the incident. He received the written report submitted by Mahaveer Singh (PW-1) and registered the FIR No. 105 of 2012 (Crime Case No. 329 of 2012) at the Police Station and entered the same in the general diary of the police station. Thus, the evidence of the said witness is also formal in nature.
31. The most important and material witness of the prosecution is Tasleem Ahmed Rizvi (PW-12), Inspector of Police who was posted as SHO at Police Station Achhnera and conducted the investigation of the case. The relevant extracts from the testimony which are essential for appreciating and evaluating the case of the prosecution are reproduced hereinbelow: -

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“On 09.05.12, I was posted as SHO in police station Achhnera. On the basis of the report given by the informant Mr. Mahavir Singh, case crime no. 329/12 under section 302 IPC was registered. I received the copy of the chik, copy report from the police station. On this basis, on that day after registering the report I took the informant statement. The site of the incident was inspected on the instance of the informant. And on the same day, I made a map of the spot and leaving enough force on the spot for Panchnama; while searching and monitoring the accused, they were arrested from Idgah railway station and also recovered the ornaments of the deceased from them and fard was made. Also recorded the confessional statement of the accused Gambhir, statement of accused Abhishek and statement of accused Gayatri. Thereafter on the instance of the accused in front of the witnesses and the public, recovered the axe and dagger used in murder from the straw room from the house of the deceased Satyabhan, prepared the fard in front of the public and the police and a map of the spot of the verandah was also prepared. On the same day, by taking possession of blood-stained clothes and some food items from the spot, fard was prepared and had also written confessional statements about the recovery of weapons used in murders and sent the dead bodies for post-mortem after conducting Panchnama. On date - 10.05.12, after observing the Panchnama and PMR of the deceased in the form the same was copied and the statements of Panchnama and Fard's testimony were recorded. Statement of Dashrath and Kailash Singh were recorded in GD third dated 11.05. On 15.05.12, the goods of CD-4 were sent to the Forensic Science Laboratory. On 16.05.12, in CD5, accused Abhishek went to jail and re-recorded the statement and the address was confirmed and the viscera and material of the deceased concerned in the trial were sent to the Forensic Science Laboratory. After this I was transferred to the police station Achhnera. The subsequent investigation was done by SO Mr Rajiv Kumar Yadav. The site plan of the place of occurrence and the recovery weapons used in murder, is in my writing and signature. Exhibit Ka-20 was marked at the site plan of the incident. Exhibit Ka-21 was marked on weapon

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used in Murder. Fard of axe used in murder and a dagger recovered by me at the direction of the accused. Fard of which I had made by dictating it to SI Kiranpal Singh. Fard is present in front of me on the record today. I have my signature on this along with other witnesses. Exhibit Ka-2 has already been marked on the fard in the past. On the same day, 2 kundals of the deceased, 2 bichhuas, 1 chhalla, 2 ghughroo and passbook and check book etc. recovered from the possession of the accused fard of which was prepared by SSI Shri Vindra Kumar Singh was prepared by dictating on which there are my signatures along with signatures of witnesses. Fard is present in front of me on the record, on which Exhibit Ka-22 was marked. The copy of the fard was given to the accused on which his signature were taken."

32. On a meticulous examination of the deposition of the Investigating Officer (PW-12), we find the following inherent infirmities in his testimony which completely discredits the prosecution's case regarding the so-called incriminating recoveries: -
  - (i) The Investigating Officer (PW-12) neither proved nor exhibited the disclosure statement of the appellant-accused during his deposition;
  - (ii) The Investigating Officer (PW-12) did not distinctly identify the accused persons at whose instance, the particular weapon, i.e., axe (*kulhari*) or dagger (*katari*), was recovered;
  - (iii) There is no indication in the testimony of Investigating Officer (PW-12) that he took the signatures of the accused persons on the recovery memos. Not even this, the said witness did not even state that he signed and attested the memorandums under which the recoveries were effected.

Therefore, the substratum of the prosecution case regarding the disclosure statements rendered by the appellant-accused and the recoveries allegedly made in furtherance thereof remains unproved for want of proper evidence.

33. Furthermore, on going through the entire examination-in-chief of the Investigating Officer (PW-12), we do not find anything therein to suggest that the officer, conducted any investigation whatsoever

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regarding the theory of motive. The evidence of the Investigating Officer (PW-12) is totally silent on this vital aspect of the case. At this stage, we may also refer to the fact that the High Court while deciding the appeal of the co-accused Gayatri has observed that the recoveries effected at her instance were planted and fake.

34. Having considered the material available on record in its entirety, we find that the present one is a case involving utter lackadaisical approach on part of the Investigating Agency as well as the prosecution. The investigation of a case involving gruesome murders of six innocent persons was carried out in a most casual and negligent manner. The Investigating Officer (PW-12) did not examine even a single of the villagers living adjacent to the crime scene for establishing the presence of the appellant-accused at or around the crime scene, corresponding to the time of the incident. No effort whatsoever was made to collect proper evidence of motive. The Investigating Officer (PW-12) failed to collect any evidence whatsoever regarding the safe keeping of the recovered articles/material objects, till the same reached the Forensic Science Laboratory. This utter negligence in conducting the investigation has contributed significantly to the failure of the prosecution's case as against the appellant-accused.
35. We further feel that the Public Prosecutor conducting the trial and so also the Presiding Officer of the trial Court were totally remiss while conducting the trial. The evidence of the material prosecution witness in a case involving gruesome murders of six persons including four innocent children was recorded in a most casual and lackadaisical manner, without adhering to the mandatory procedural requirements of the Evidence Act.
36. In the result, we are of the view that the prosecution has failed to prove even one of the three so-called incriminating circumstances i.e., 'motive', 'last seen' and 'recoveries' in its quest to bring home the guilt of the appellant-accused. Even if, for the sake of arguments the evidence of recovery of weapons were to be accepted, the fact remains that the FSL report does not give any indication regarding the grouping of the blood found on the weapons and hence, the recoveries are of no avail to the prosecution.
37. On a careful perusal of the impugned judgment, we find that the High Court has failed to advert to these inherent improbabilities and

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infirmities in the prosecution case. The fabric of the prosecution case is full of holes and holes which are impossible to mend. Thus, the impugned judgments do not stand to scrutiny and deserves to be set aside. As a consequence, the conviction of the appellant-accused and death sentence handed down to him can also not be sustained.

38. Resultantly, the impugned judgments<sup>25</sup> are quashed and the conviction of the appellant-accused as recorded by the trial Court and affirmed by the High Court is set aside.
39. The appellant-Gambhir Singh is acquitted of the charges. He is in custody and shall be released from prison forthwith, if not wanted in any other case.
40. The appeals are allowed accordingly.
41. Pending application(s), if any, shall stand disposed of.

*Result of the case:* Appeals allowed.

<sup>25</sup>Headnotes prepared by: Nidhi Jain