SHANKAR

v.

THE STATE OF MAHARASHTRA

(Criminal Appeal No. 954 of 2011)

MARCH 15, 2023

[AJAY RASTOGI AND C. T. RAVIKUMAR, JJ.]

Penal Code 1860: s. 302 r/w 34 – Conviction under, on basis of circumstantial evidence – Sustainability of – Prosecution case that the victim assaulted with sharp weapons, sustained 22 ante-mortem injuries leading to instantaneous death – On the fateful day, the victim went to the house of PW 8, the accused persons also came there and the appellant in the latter appeal hurled abuses on the victim and asked him why he along with his friend had assaulted his brother, though the victim denied the assault – Later, the accused invited the victim for drinks and all of them left the house of PW 8 on motorcycles – An hour later, the dead body of the victim was found by the complainant – There was no eye-witness – Based on the circumstantial evidence, the trial court convicted the appellants u/s. 302/34 and sentenced them to life imprisonment – High Court upheld the same – On appeal, held: If doubt lingers with respect to the probability or conclusiveness of any circumstance relied on by the prosecution, forming a link in the chain of circumstances pointing to the guilt of convict, despite the existence of concurrent findings, the evidence has to be scrutinized by this Court so as to ensure that the totality of the evidence and circumstances relied on, did constitute a complete chain and it points to the guilt of the convict – On facts, correctness of the last seen version emanating from PW-8 becomes doubtful, especially against the appellants – Oral testimonies of PW-8 and PW-10 are at variance about the last seen and it becomes inconclusive – Prosecution failed to prove the alleged motive – Though the victim met with a homicidal death, it cannot be said that the rest of the circumstantial evidence culled out by the courts below unerringly point to the culpability of the appellants in the homicidal death of the deceased – Even the recovery of the weapon and the dress, at the instance of the appellant not conclusive – Conviction of the appellants cannot be maintained, thus, given benefit of doubt and are acquitted – Evidence.

A **Allowing the appeals, the Court**

HELD: 1.1In view of the law relating circumstantial evidence and the scope of interference in exercise of power under Article 136 of the Constitution of India in respect of cases where concurrent findings are recorded by the lower courts, if doubt B **lingers with respect to the probability or conclusiveness of any circumstance relied on by the prosecution, forming a link in the chain of circumstances pointing to the guilt of convict, despite the existence of concurrent findings, the evidence has to be scrutinized by this Court so as to ensure that the totality of the evidence and circumstances relied on, did constitute a complete** C **chain and it points to the guilt of the convict and it did not brook any hypothesis other than the guilt of the convict. [Para 13][671-B-C]**

1.2 There can be no doubt with respect to the fact that in a case where the conviction is based on circumstantial evidence, D **motive assumes great significance. Just like complete absence of motive failure to establish motive after attributing one, should also give a different complexion in a case based on circumstantial evidence and it will certainly enfeeble the case of prosecution. [Para 18][674-A, C-D]**

E **1.3 The prosecution alleged a motive. According to the prosecution on 29.09.2001, the deceased along with his friend assaulted the brother of appellant in the latter appeal (the first accused in the Sessions Trial). It is also the case of the prosecution that after the accused persons entered the house of PW-8, the** F **first accused/the appellant in the latter appeal hurled abuses on the deceased and asked him why he along with his friend assaulted his brother. It is also the case of the prosecution that though the deceased denied any such occurrence, the said appellant continued to say that the deceased had done dishonesty and assaulted his brother. After alleging motive the prosecution had** G **failed to establish the same. In this context, it is to be noted that the trial court made a positive finding that the prosecution had miserably failed to establish the alleged motive. Despite the said finding of the trial court and despite that issue was pointedly raised before the High Court, obviously the High Court in the impugned**

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judgment did not consider the said aspect at all. This failure on the part of the High Court is a ground specifically taken in this appeal. The failure to establish the alleged motive in a case based on circumstantial evidence, had weakened the case of the prosecution. This aspect should have been given proper weight by the courts below. [Para 21][675-G; 676-A-D]

1.4. When the factual position obtained from the oral testimonies of PW-8 and PW-10, the High Court which observed that the circumstance of 'last seen' is an important circumstance in the case on hand and its proof would depend upon the quality and nature of the testimonies of PW-8 and PW-10 should have bestowed a threadbare, serious consideration to answer the question whether the evidence of PW-10 would lend corroboration to the evidence of PW-8. So also, the courts below in the overall circumstances, ought to have carefully considered the question whether the solitary oral evidence of PW-8 would conclusively prove the factum of the deceased lastly seen in the company of the deceased. On the careful scrutiny of the evidence of PW-8 and PW-10 it is held that both the trial court and the High Court have failed to make a proper exercise of that task taking into account the fact that the prosecution relies only on circumstantial evidence to establish the guilt of the accused. Thus, virtually the evidence of PW-10 not only failed to lend corroboration to the evidence of PW-8 but also puts it under a shadow of doubt. Hence, the High Court went wrong in holding that as relates the said circumstantial evidence of 'last seen' the evidence of PW-8 gets corroboration from the evidence of PW-10 and in that view of the matter, in agreeing with the conclusion of the trial court that the prosecution has succeeded in proving that the deceased was lastly seen with the accused, conclusively. [Para 25][678-G-H; 679-A-D]

1.5 It is unsafe to rest on the sole testimony of PW-8 to apply the 'last seen theory' in this case against the appellants especially, going by PW-8 he had only nodding acquaintance with them. Thus, in a nutshell the correctness of the last seen version emanating from PW-8 becomes doubtful, especially against the appellants. The oral testimonies of PW-8 and PW-10 are at

variance about the last seen and it becomes inconclusive for the reasons mentioned. The prosecution has miserably failed to prove the alleged motive. In such circumstance, though the deceased had met with a homicidal death it cannot be said that the rest of the circumstantial evidence culled out by the courts below unerringly point to the culpability of the appellants in the homicidal death of the deceased. Even the recovery of the weapon and the dress, at the instance of the appellant in the latter appeal cannot, by itself, be conclusive as admittedly, the *panch* witnesses for their recovery also did not support the prosecution. The remaining circumstances relied on by the prosecution and held as proved by the courts below would not unerringly point to the guilt of the appellants. Thus, it is unsafe on the said circumstances to maintain the conviction of the appellants; thus, the benefit of doubt is extended to them. The appellants are acquitted. [Paras 28-30][680-F-H; 681-A-C]

Prakash v. State of Rajasthan **(2013) 4 SCC 668 : [2013] 2 SCR 458;** *Sharad Birdhichand Sarda v. State of Maharashtra* **(1984) 4 SCC 116 : [1985] 1 SCR 88;** *Anwar Ali & Anr. v. State of Himachal Pradesh* **(2020) 10 SCC 166:[2020] 9 SCR 878;** *Shivaji Chintappa Patil v. State of Maharashtra* **(2021) 5 SCC 626;** *Sarbir Singh v. State of Punjab* **1993 SCC (Cri) 860;** *Brijlal Prasad Sinha v. State of Bihar* **(1998) SCC (Cri) 1382;** *Tomaso Bruno & Anr. v. State of Uttar Pradesh* **(2015) 7 SCC 178 : [2015] 1 SCR 721;** *Nandu Singh v. State of Madhya Pradesh (now Chhattisgarh)* **2022 SCC OnLine SC 1454 – referred to.**

Case Law Reference

(1993) SCC (Cri) 860	**referred to**	**Para 5**
(1998) SCC (Cri) 1382	**referred to**	**Para 7**
[2013] 2 SCR 458	**referred to**	**Para 8**
[1985] 1 SCR 88	**referred to**	**Para 8**
[2015] 1 SCR 721	**referred to**	**Para 11**

			A
[2020] 9 SCR 878	**referred to**	**Para 19**	
(2021) 5 SCC 626	**referred to**	**Para 20**	

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 954 of 2011.

From the Judgment and Order dated 12.08.2009 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Appeal No. 7 of 2004. B

With

Criminal appeal No. 955 of 2011.

Sanjay Jain, Sunil Kumer Verma, Advs. for the Appellant. C

Sachin Patil, Siddharth Dharmadhikari, Geo Joseph, Risvi Muhammed, Durgesh Gupta, Aaditya Aniruddha Pande, Advs. for the Respondent.

The Judgment of the Court was delivered by D

C. T. RAVIKUMAR, J.

1. The captioned appeals, by lifers, are directed against the self-same judgment and order dated 12.08.2009 passed by the High Court of Judicature at Bombay, Bench at Nagpur in Criminal Appeal No.7 of 2004. The former appeal was filed by the second and third appellants therein who were accused Nos.2 and 3 in Sessions Trial No.80 of 2002 on the file of Additional Sessions Judge, Bhandara. The sole appellant in the latter appeal was the first appellant in Criminal Appeal No.7 of 2004 and he was the first accused in Sessions Trial No.80 of 2002. During the pendency of the trial, the fourth accused breathed his last and the first appellant in the former appeal viz., Sri Hiralal died during its pendency. Hence, qua him the former appeal stands abated. As per the judgment of the Trial Court the appellants were convicted under Sections 302 read with Section 34 of the Indian Penal Code, 1860 (hereinafter, 'the IPC') for having committed murder of one Rahul Pundlik Meshram (hereafter referred to as 'the deceased'). They were sentenced to suffer imprisonment for life besides imposing a fine of Rs.500/- and in default of payment of fine they are to suffer rigorous imprisonment for one month each. As per the impugned judgment the conviction and sentences thus imposed by the Trial Court were confirmed. Hence, these appeals. E F G H

A 2. The prosecution case, in nutshell, is as follows: -

On 12.12.2001 at about 5.00 pm, the deceased along with a friend went to Indira Gandhi Ward at Bandhara where the house of Chintaman Giddu Gatey (PW-8) situates. After parking his Luna Moped the deceased went inside of the house of Chintaman Giddu Gatey (PW-8), leaving his B friend near the vehicle. Deceased and Chintaman Giddu Gatey (PW-8) smoked ganja and while so the deceased accused No.4 (Raju Pande), Hiralal, the first appellant in the former appeal who is no more and accused Nos.1 and 3, who are the surviving convicts (hereinafter referred to as 'the appellants'), came there on two motorcycles and they too, went C inside the house of Chintaman Giddu Gatey (PW-8). All of them smoked ganja. While so, appellant in the latter appeal viz., accused No.1 questioned the deceased as to why he along with his friend Parag Sukhdeve assaulted his brother. It is worthy to note at this juncture that according to the prosecution, on 29.09.2001, the deceased along with his D friend Parag Sukhdeve assaulted the brother of the appellant in the latter appeal. Though, the deceased denied assault on his brother, the appellant in the latter appeal (the first accused) continued to say that the deceased did dishonesty and assaulted his brother. Though, the friend of the deceased who was waiting outside came inside and asked him to come out the deceased remained there and thereupon his friend left the place. E Later, the first accused invited the deceased for drinks and all of them, including the deceased, left the house of Chintaman Giddu Gatey (PW-8) on two motorcycles by about 6 p.m. After about an hour, the dead body of the deceased was found by one Manoj Goswami, a resident of Paladi. The case is that upon being informed by the villagers, Manoj F Goswami (PW1) went to the spot and on finding the dead body he went to Bhandara Police Station and lodged a report. As per the prosecution, the deceased was taken by the accused on one of the motorcycles through National Highway No.6 towards Lakhani town. To the north of the said National Highway and at a distance of about 10 kilometers from Bhandara there was another road leading to village Paladi and on the G side of the said Bhandara-Paladi road, at about by one kilometer from National Highway No.6, they stopped their motorcycles and started assaulting the deceased using sharp weapons. The deceased sustained 22 ante-mortem injuries, all over his body and met with instantaneous death.

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3. Admittedly, there was no eye-witness in this case. Based on the circumstantial evidence, the Trial Court found the appellants guilty and convicted and sentenced them, as mentioned above. Aggrieved by the conviction and consequent sentence, the surviving accused viz., accused Nos. 1 to 3 in the said Sessions Trial preferred appeal before the High Court. After considering the circumstances relied on by the Trial Court and despite its reservation against some of the procedures followed the High Court confirmed the conviction and sentence imposed on appellants by the Trial Court holding that certain proven circumstances are material circumstances and would complete the requisite chain.

4. The appellants in the captioned appeals challenge the findings of conviction and consequential imposition of sentence raising various grounds. But, before considering the contentions against the concurrent findings raised by the appellants, we find it only appropriate to refer to the following decisions on the law relating circumstantial evidence.

5. In the decision in *Sarbir Singh v. State of Punjab*[1], this Court observed and held thus: -

> *"5. ...But in a case based on circumstantial evidence neither the accused nor the manner of occurrence is known to the persons connected with the victim. The first information report is lodged only disclosing the offence, leaving to the investigating agency to find out the offender.*
>
> *6. It is said that men lie but circumstances do not. Under the circumstances prevailing in the society today, it is not true in many cases. Sometimes the circumstances which are sought to be proved against the accused for purpose of establishing the charge are planted by the elements hostile to the accused who find out witnesses to fill up the gaps in the chain of circumstances. In countries having sophisticated modes of investigation, every trace left behind by the culprit can be followed and pursued immediately. Unfortunately it is not available in many parts of this country. That is why courts have insisted (i) the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established; (ii) all the facts so established should be*

[1] 1993 SCC (Cri) 860

A *consistent only with the hypothesis of the guilty of the accused and should be such as to exclude every hypothesis but the one sought to be proved; (iii) the circumstances should be of a conclusive nature; and (iv) the chain of evidence should not have any reasonable ground for a conclusion consistent with the innocence of the accused.*

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6. Further it was held therein as under:-

7. ...It has been impressed that suspicion and conjecture should not take the place of legal proof. It is true that the chain of events proved by the prosecution must show that

C *within all human probability the offence has been committed by the accused, but the court is expected to consider the total cumulative effect of all the proved facts along with the motive suggested by the prosecution which induced the accused to follow a particular path. The existence of a motive is often an enlightening factor in a process of presumptive reasoning in*

D *cases depending on circumstantial evidence.*

7. In *Brijlal Prasad Sinha v. State of Bihar*[2], this Court held thus:

"In a case of circumstantial evidence the prosecution is bound

E *to establish the circumstances from which the conclusion is drawn must be fully proved; the circumstances should be conclusive in nature; all the circumstances so established should be consistent only with the hypothesis of guilt and inconsistent with the innocence; and lastly the circumstances should to a great certainty exclude the possibility of guilt of*

F *any person other than the accused. The law relating to circumstantial evidence no longer remains res integra and it has been held by catena of decisions of this Court that the circumstances proved should lead to no other inference except that of the guilt of the accused so that, the accused can be*

G *convicted of the offences charged. It may be stated as a rule of caution that before the court records conviction on the basis of circumstantial evidence, it must satisfy itself that the circumstances from which inference of guilt could be drawn have been established by unimpeachable evidence and the*

H [2] (1998) SCC (Cri) 1382

circumstances unerringly point to the guilt of the accused and further, all the circumstances taken together are incapable of any explanation on any reasonable hypothesis save the guilt of the accused."

8. In the decision in *Prakash v. State of Rajasthan*[3], this Court took note of the following principles laid down regarding the law relating circumstantial evidence in *Sharad Birdhichand Sarda v. State of Maharashtra*[4]: -

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

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793] where the following observations were made:

19. ..."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

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[3] (2013) 4 SCC 668
[4] (1984) 4 SCC 116

A *(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.*

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

9. After noting the above five golden principles, it was held in *Prakash's* case (supra), that they would constitute the Panchsheel of C the proof of a case based on circumstantial evidence and conviction could be sustained on the basis of last seen, motive and recovery of incriminating articles in pursuance of the information given by the accused if those five golden principles of the proof of a case based on circumstantial evidence are satisfied.

D 10. Virtually, the law laid down relating circumstantial evidence in those decisions are unfailingly followed by this Court while dealing with the cases where conviction is rested on circumstantial evidence.

11. We are also fully aware of the position that normally in an appeal by special leave under Article 136 of the Constitution of India E when concurrent findings of conviction and sentence are against the appellants / convicts there would be no scope for interference except in exceptional circumstances. In the decision in *Tomaso Bruno & Anr. v. State of Uttar Pradesh*[5], a Three Judge Bench of this Court held:-

F *"42. By and large, this Court will not interfere with the concurrent findings recorded by the courts below. But where the evidence has not been properly appreciated, material aspects have been ignored and the findings are perverse under Article 136 of the Constitution, this Court would certainly interfere with the findings of the courts below though concurrent. In a case based on circumstantial evidence,* G *circumstances from which inference of guilt is sought to be drawn should be fully proved and such circumstances must be of conclusive nature pointing to the guilt of accused. There shall be no gap in such chain of circumstances…."*

H [5] (2015)7 SCC 178

12. Heard, Mr. Sanjay Jain and Mr. Sunil Kumar Verma, learned counsel for the appellant and Mr. Sachin Patil, learned counsel for the respondent-State. A

13. In view of the law relating circumstantial evidence exposited under the decisions referred hereinbefore and the scope of interference in exercise of power under Article 136 of the Constitution of India in respect of cases where concurrent findings are recorded by the Lower Courts, we are of the considered view if doubt lingers with respect to the probability or conclusiveness of any circumstance relied on by the prosecution, forming a link in the chain of circumstances pointing to the guilt of convict, despite the existence of concurrent findings, the evidence has to be scrutinized by this Court so as to ensure that the totality of the evidence and circumstances relied on, did constitute a complete chain and it points to the guilt of the convict and it did not brook any hypothesis other than the guilt of the convict. Upon hearing the learned counsel on both sides and on careful consideration of the evidence and materials on record, we are of the considered view that the case at hand is a befitting case where such an exercise is required. Before we undertake such an exercise, it is only proper to look into the questions whether the death of Rahul Pundlik Meshram is homicidal in nature. As a matter of fact, there is not much dispute on this aspect. B C D

14. The evidence of PW-13 with Exhibit-54 postmortem report made the Courts below to concurrently come to the conclusion that death of Rahul Pundlik Meshram is homicidal in nature. The postmortem report would reveal the presence of 22 ante-mortem injuries on the body of the deceased. It would also reveal that out of the 22 ante-mortem injuries, except 7 of these are incised wounds. The said 7 injuries are serious stab injuries inflicted on different parts of the body. It is taking into account the nature of all those injuries that PW-13 opined that the cause of death of deceased was due to multiple injuries on the chest and back involving the vital organs such as heart and lungs. We have absolutely no hesitation to hold in the said circumstances that the Courts below have rightly arrived at the conclusion, in the light of the evidence that death of Rahul Pundlik Meshram is homicidal in nature. E F G

15. Admittedly, the conviction of the appellants is rested on circumstantial evidence only. As per the Trial Court, the following circumstances were relied upon by the prosecution to establish the guilt of the accused, including the appellants, before it: - H

A *"1. Visit of the deceased Rahul Meshram to the house of Chintaman Gatey (P.W.8).*

2. While the deceased was at the house of Chintaman, the accused nos. 1 to 3 and deceased accused Raju Pande arrived at the house of Chintaman Gatey.

B *3. The motive altercation had taken place between the accused on one side and the deceased on the other side.*

4. That, the accused persons, under the pretext of consuming liquor persuaded the deceased to accompany them.

C *5. That, the deceased and the accused nos. 1 to 3 and deceased accused Raju Pande, left the house of Chintaman Gatey, on two motor-cycles.*

6. That, immediately, there after i.e. after the deceased left the house of Chintaman Gatey with accused persons, D *he was found met with homicidal death.*

7. Recovery of the weapon from the accused No.1 with the blood stains of Group 'A' which was of the deceased.

8. The Opinion of the Dr. Sau. Manjusha Rangari that by E *the said weapon, the injuries which were found on the dead body of the deceased, could be caused.*

9. The discovery of the fact of burning clothes stained with blood by the accused No. 1 and those clothes were belonged to accused nos. 1 and 2.

F *10. The full pant belonged to accused No.1 was stained with blood, of blood group "A" which was of the deceased."*

16. After considering the said relied on circumstances, the Trial Court held that the prosecution had succeeded in establishing eight G circumstances, as under: -

"1. The visit of deceased Rahul Meshram at the house of Chintaman Gatey.

2. Arrival of the accused No. 1 to 3, alongwith the deceased accused, at the house of Chintman Gatey. H

3. That, the accused No.1 to 3 and deceased accused succeeded in persuading the deceased to join them for consuming liquor.

4. That, the accused No.1 to 3, deceased accused Raju Pande, and deceased Rahul Meshram left the house of Chintaman Gatey, on two motor cycles.

5. That immediately after the deceased and the accused persons left the house of Chintaman Gatey, the deceased was found murdered.

6. At the instance of the accused No.1 weapon having handle at one end and the other end sharp and edged one, was recovered, which was found stained with blood, of Group "A" which was of the deceased.

7. Doctor opined that by the said weapon, the injuries could be caused, which were found on the dead-body of the deceased.

8. The accused No.1 burnt the clothes at place near the water tank in M.S.E.B, Colony, Bhandara."

17. Consequently, the Trial Court considered the question whether the culled-out circumstances would form a complete chain unerringly pointing to the guilt of the accused and that accused alone and obviously, the conviction was entered into upon answering that question in the affirmative. According to the Trial Court, the following three proven circumstances are sufficient to constitute circumstantial evidence unerringly connecting the accused with the homicidal death: -

"1. That, while the deceased was at the house of Chintaman Gatey, deceased accused Raju Pande along with the accused Nos.1 to 3. came to the house of Chintaman Gatey and succeeded in persuading the deceased to accompany them, for consuming liquor.

2. That the deceased in the company of the accused Nos.1 to 3 and deceased accused Raju left the house of Chintaman Gatey, on two moto cycles.

3. That, soon thereafter, the deceased was found murdered."

A 18. There can be no doubt with respect to the fact that in a case where the conviction is based on circumstantial evidence, motive assumes great significance. A Three Judge Bench of this Court in *Nandu Singh v. State of Madhya Pradesh (now Chhattisgarh)*[6] by its judgment dated 25.02.2022, after observing thus, held as under:-

B *"It is not as if motive alone becomes the crucial link in the case to be established by the prosecution and in its absence the case of prosecution must be discarded. But, at the same time, complete absence of motive assumes a different complexion and such absence definitely weighs in favour of the accused."*

C We may add here that just like complete absence of motive failure to establish motive after attributing one, should also give a different complexion in a case based on circumstantial evidence and it will certainly enfeeble the case of prosecution.

D 19. In the decision in Nandu Singh's case an earlier decision of this Court in *Anwar Ali & Anr. v. State of Himachal Pradesh*[7], was quoted with agreement, thus: -

"24. Now so far as the submission on behalf of the accused that in the present case the prosecution has failed to establish
E *and prove the motive and therefore the accused deserves acquittal is concerned, it is true that the absence of proving the motive cannot be a ground to reject the prosecution case. It is also true and as held by this Court in Suresh Chandra Bahri v. State of Bihar (1995 Supp (1) SCC 80) that if motive is proved that would supply a link in the chain of*
F *circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. However, at the same time, as observed by this Court in Babu (Babu v. State of Kerala, (2010) 9 SCC 189), absence of motive in a case depending on circumstantial evidence is a factor that weighs*
G *in favour of the accused. In paras 25 and 26, it is observed and held as under: (Babu case, SCC pp. 200-01).*

"25. In State of U.P. v. Kishanpal (2008) 16 SCC 73), this Court examined the importance of motive in cases of

[6] 2022 SCC OnLine SC 1454

H [7] (2020) 10 SCC 166

circumstantial evidence and observed: (SCC pp. 87-88, paras 38-39)

'38. ... the motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to explain what actually promoted or excited them to commit the particular crime.

39. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction.'

26. This Court has also held that the absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. (Vide Pannayar v. State of T.N. (2009) 9 SCC 152)".

20. In the decision in *Shivaji Chintappa Patil v. State of Maharashtra*[8], after referring to the decision in *Anwar Ali's* case (supra), this Court observed thus: -

"27. Though in a case of direct evidence, motive would not be relevant, in a case of circumstantial evidence, motive plays an important link to complete the chain of circumstances."

21. In the case on hand, the prosecution alleged a motive. According to the prosecution on 29.09.2001, the deceased along with his friend Parag Sukhdeve assaulted the brother of appellant in the latter appeal (the first accused in the Sessions Trial). It is also the case of the prosecution that after the accused persons entered the house of PW-8,

[8] (2021) 5 SCC 626

A Chintaman Giddu Gatey the first accused/the appellant in the latter appeal hurled abuses on the deceased and asked him why he along with his friend Parag Sukhdeve assaulted his brother. It is also the case of the prosecution that though the deceased denied any such occurrence, the said appellant continued to say that the deceased had done dishonesty and assaulted his brother. After alleging motive as above, prosecution
B had failed to establish the same. In this context, it is to be noted that the Trial Court made a positive finding that the prosecution had miserably failed to establish the alleged motive. Despite the said finding of the Trial Court and despite that issue was pointedly raised before the High Court, obviously the High Court in the impugned judgment did not consider the
C said aspect at all. This failure on the part of the High Court is a ground specifically taken in this appeal. In the light of the decision in *Anwar Ali's* case (supra) and *Shivaji Chintappa Patil's* case(supra), and also based on what we held in respect of the impact of failure to establish the alleged motive in a case based on circumstantial evidence it can only be held that the said failure had weakened the case of the prosecution. This
D aspect should have been given proper weight by the courts below.

22. Now, we will proceed to consider the other circumstance(s) relied on and whether they would make a complete chain of circumstances and dispel the hypothesis of the innocence of the appellant. In that context, it is only appropriate to refer to the circumstance mainly,
E relied on and held as proved by the High Court for confirming the conviction of the appellants viz., that the deceased was 'lastly seen' in the company of the appellants just prior to the finding of his dead body. Having observed thus, the High Court held that the proof thereof would depend upon the quality and nature of the testimonies of Chintaman
F (PW-8) and Dhanraj (PW-10).

23. Paragraph 14 of the impugned judgment would reveal that after referring to evidence based on 'last seen theory', recovery of weapons and seizure of clothes the High Court observed that the following twin material circumstances would complete the requisite
G chain, namely: -

> *"(a) On the day of incident, at about 4.00 p.m., deceased Rahul and all the appellants were present at the house of Chintaman (PW-8).*
>
> *(b) Deceased Rahul left the house of Chintaman at about 5.00*
H *p.m., on the day of incident along with the appellants and*

within two hours, the dead body of Rahul with multiple incise and stab wounds was found lying by the side of the road, 10 kms. away from Bhandara city. There is nothing on record to show that deceased Rahul had enmity with anybody other than the appellants and in absence thereof, the possibility of somebody else committed assault on the deceased and would have caused so many multiple injuries is completely ruled out."

24. With respect to the material circumstance referred to as (a) in the impugned judgment, as extracted above, what is stated by the High Court is totally against the weight of evidence. The evidence of PW-8 when juxtaposed to that of PW-10 would reveal the said position. It is stated therein that on the day of incident, at about 04.00 pm, the deceased Rahul Pundlik Meshram and all the appellants were present at the house of Chintaman (PW-8). In a case rested on circumstantial evidence and 'last seen' theory is relied on as a link in the chain of circumstances, the evidence relating the time at which the deceased was lastly seen with the accused has to be proved conclusively as when it is proximate with the time of finding the dead body the burden to establish the innocence would be that of the accused. Indisputably, in contrast to the aforesaid statement therein what is deposed by Chintaman (PW-8) is that on the day of the incident at about 05.00 pm, the deceased came to his house and then asked for a glass of water and thereafter, Raju Pande (the deceased accused No.4) along with three other persons with respect to whom he got only nodding acquaintance, came to the house. He would also depose that thereafter Raju Pande started hurling abuses on the deceased. Both the Trial Court and the High Court noted the case of the prosecution that Raju Pande hurled abuses on the deceased for having assaulted the brother of accused No. 1, along with his friend Sri Parag Sukhdeve. However, a scanning of the oral testimony of PW-8 would show that he did not depose that Raju Pande hurled abuses on the deceased on the ground of assault on the brother of accused No. 1. Naturally, he did not mention the name Parag Sukhdeve as well. So also, it would go to show that he had stoutly denied involvement in the sale of ganja, or availability of ganja in his house. According to him Raju Pande and accused No. 1 alone had come to the chappari of his house and the remaining two accused were standing in the courtyard of his house. That apart, as per PW-8 it was about 06:00 PM that accused Raju Pande and the deceased left his house. Thus, it is obvious that the statement in

A the material circumstance mentioned as 'a' in paragraph 14 of the impugned judgment is based on the oral testimony of Dhanraj (PW-10). It is true that PW-10, deposed that at about 04.00 pm he was returning home from S.T. Stand and then he found two motorcycles parked at the house of Chintaman (PW-8), that at the house of Chintaman, 4 to 5 persons were then sitting and at that time accused Nos. 2 and 3 viz., deceased first appellant and the surviving appellant in the former appeal, whom he knew by face and one Pande were present. It is pertinent to note that PW-10 did not depose about the presence of the deceased in the house of Chintaman when himself, Pande and the other accused persons were there in the said house. Naturally, in his oral testimony he had not deposed anything about the hurling of abuses by Pande on the deceased. Another aspect of his oral testimony is that he deposed about the query made by Pande about the identity of a pregnant girl who resides behind the house of Chintaman. According to him, Chintaman told Pande that he did not know anything about that girl and then Pande asked him about her. On being told that he did not know anything about her, Pande asked him to leave that place, going by the deposition of PW-10. At this juncture, it is to be noted that PW-10 did not make any mention about this aspect in his evidence. It is true that the Trial Court found that this is an improved version by PW-10. Anyway, the fact revealed from the oral testimony of PW-10 is that he saw the accused persons, including Raju Pande and the appellants herein, at the house of Chintaman (PW-08) immediately after 04:00 PM on the day of occurrence and he did not speak about the presence of the deceased in the house of PW-8. That apart, according to him, Raju Pande was enquiring with him and PW-8 about a pregnant girl who was residing behind the house of PW-8. It is also relevant to note that the evidence on record would further go to show that PW-8 had not mentioned about the alleged hurling of abuses by deceased accused Raju Pande on the deceased in his statement under Section 161 of Cr.P.C. Above all, PW-8 did not mention the presence of PW-10 at his residence anytime during the period from 04:00 PM to 06:00 PM on that fateful day.

25. When the above being the factual position obtained from the oral testimonies of PW-8 and PW-10, the Hon'ble High Court which observed that the circumstance of 'last seen' is an important circumstance in the case on hand and its proof would depend upon the quality and nature of the testimonies of PW-8 and PW-10 should have bestowed a threadbare, serious consideration to answer the question whether the

evidence of PW-10 would lend corroboration to the evidence of PW-8. So also, the courts below in the overall circumstances, ought to have carefully considered the question whether the solitary oral evidence of PW-8 would conclusively prove the factum of the deceased lastly seen in the company of the deceased. On our careful scrutiny of the evidence of PW-8 and PW-10 as above we are constrained to hold that both the Trial Court and the High Court have failed to make a proper exercise of that task taking into account the fact that the prosecution relies only on circumstantial evidence to establish the guilt of the accused. According to us, the discussion as above would go to show that virtually the evidence of PW-10 not only failed to lend corroboration to the evidence of PW-8 but also puts it under a shadow of doubt. Hence, according to us, the Hon'ble High Court went wrong in holding that as relates the said circumstantial evidence of 'last seen' the evidence of PW-8 gets corroboration from the evidence of PW-10 and in that view of the matter, in agreeing with the conclusion of the Trial Court that the prosecution has succeeded in proving that the deceased was lastly seen with the accused, conclusively.

26. The above-mentioned situation constrained us to scan the evidence of PW-8 scrupulously to find out whether his sole testimony is unimpeachable and impeccable to conclusively establish the joining up of the deceased and the accused/convicts at the house of PW-8 at the relevant point of time as alleged by the prosecution. In this context, it is to be noted that the prosecution case would suggest that the house of PW-8 is a hub of ganja smokers. But then, PW-8 stoutly denied of any kind of involvement with ganja business. Hence, the question is why it still attracts and allures persons? If the prosecution case is to be believed then what made all those persons viz., the deceased, the accused/convicts and PW-10, visit the house of PW-8 at that time? Obviously, there is no indicatory material on that count. It is to be noted that it is not the case of the prosecution that the accused persons, including the appellants, reached there on coming to the know about the presence of the deceased. Going by the case of the prosecution the deceased reached the home of PW-8 on his Luna Moped along with his friend and he went inside after leaving the friend near the parked vehicle. PW-8 did not say that he had friendship with the deceased and he deposed only to the effect that he knew the deceased and the deceased on occupying a seat asked for a glass of water. Soon, thereafter, Raju Pande and the three others with whom he had only nodding acquaintances came to his house. PW-8

would further depose that thereupon Raju Pande hurled abuse on the deceased and then the deceased pleaded that he did no wrong. As noted earlier, it has come out in evidence that the act of hurling of abuse by Raju Pande on the deceased was not recorded in the previous statement of PW-8 recorded under Section 161, Cr.P.C. Above all, PW-8 in his testimony before the court did not depose anything even to suggest that hurling of abuse by Raju Pande was because of the assault on his brother by the deceased and his friend Parag Sukhdeve. Then, how and for what reason this incident was alleged as the motive for the murder of the deceased Rahul? Who introduced this story as part of the prosecution case before the court. Certainly, it cannot be said that it was PW-10 who spoke to that effect as his testimony would reveal he had not even spoken about the presence of the deceased at the house of PW-8 when the accused/convicts were seen there.

27. Another aspect revealed from the evidence on record is that as per PW-10 when he entered the house of PW-8 after 04:00 p.m. on the day of occurrence, Raju Pande and the others were present there and Raju Pande asked him about a pregnant girl who was residing behind the house of PW-8. According to PW-10, Raju Pande asked the same to PW-8 as well and both of them revealed their lack of knowledge about such a girl and then Raju Pande asked PW-10 to leave the place and thereupon he left the place. It would suggest, if it was true that he reached there along with others ahead of the deceased, in search of such a girl lest why he got infuriated/dejected over it and asked PW-10 to leave the place. PW-8 did not speak about the presence of PW-10 and also about such a query made by Raju Pande.

28. For all the above reasons and circumstances, it is unsafe to rest on the sole testimony of PW-8 to apply the 'last seen theory' in this case against the appellants especially, going by PW-8 he had only nodding acquaintance with them.

29. Thus, in a nutshell the correctness of the last seen version emanating from PW-8-Chintaman becomes doubtful, especially against the appellants herein. As noticed earlier, virtually, the oral testimonies of PW-8 and PW-10 are at variance about the last seen and it becomes inconclusive for the reasons mentioned hereinbefore. We have also found that the prosecution has miserably failed to prove the alleged motive. In such circumstance, though the deceased had met with a homicidal death it cannot be said that the rest of the circumstantial evidence culled out

by the courts below unerringly point to the culpability of the appellants in the homicidal death of Rahul Pundlik Meshram. Even the recovery of the weapon and the dress, at the instance of the appellant in the latter appeal cannot, by itself, be conclusive as admittedly, the *panch* witnesses for their recovery also did not support the prosecution. In our considered view, the remaining circumstances relied on by the prosecution and held as proved by the courts below would not unerringly point to the guilt of the appellants.

30. Thus, in our view, it is unsafe on the aforesaid circumstances to maintain the conviction of the appellants; we thus, extend to them the benefit of doubt. Accordingly, we order for the acquittal of the appellants. The appeals are thus allowed, upsetting the judgments and orders of the High Court as also that of the court of Session. The bail bonds executed by the appellants stand discharged.

Nidhi Jain Appeals allowed.
(Assisted by : George J. and Rakhi, LCRAs)