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The State Vs. Ismail and anr.

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Court : Jammu and Kashmir

Decided On : May-30-2002

Reported in : 2003CriLJ936

Judge : T.S. Doabia and; S.K. Gupta, JJ.

Acts : Ranbir Penal Code (IPC), 1989 Smvt. - Section 300; ;Indian Penal Code (IPC), 1860 - Section 300

Appeal No. : Confirmation No. 27 of 1999

Appellant : The State

Respondent : ismail and anr.

Advocate for Def. : S.C. Gupta, Adv.

Advocate for Pet/Ap. : H. Rahman, Govt. Adv.

Judgement :

S.K. Gupta, J.

1. We have heard Mr. H. Rehman, learned Government Advocate, as well as Mr. S.C. Gupta, learned advocate appearing for the accused, in extenso. By means of this reference, learned Additional Sessions Judge, Kishtwar has submitted the proceedings for confirmation of the sentence of life imprisonment awarded to the

accused, Ismail and Mohd. Shafi, in proof of offence under Sections 302/34, RPC in File No. 26/Session on 28-7-1999.

2. Facts that culminated in the prosecution of the accused depicted in narration are that, on 22-10-1993, both the accused, namely, Ismail and Mohd. Shafi, who bore animosity with the deceased persons and intending to liquidate them, followed the deceased at Thasgrah, where the latter had gone with their cattle. The accused on finding an opportunity and taking advantage of his seclusion, attacked the deceased Taju and his son Abdullah on the night preceding 22nd-23rd October, 1993 and inflicted multiple injuries with stones and lathi, which proved fatal. Mohd. Shafi, who had temporarily shifted his residence along with his brother to Thasgrah area on 23-10-1993 for grazing their cattle noticed the dead bodies of deceased. Taju and his son Abdullah, lying in a pool of blood at a short distance from their dhera. He immediately informed Faqiroo, the brother of the deceased about the death of his brother and brother'a son. After receiving information, Faqiroo, complainant, accompanied by Hans Raj, Numberdar and Peeru proceeded to Police Station, Kishtwar and reported the matter to the effect that Taju along with his son Abdullah carried his cattle for grazing to Thasgrah area, where he had been murdered by some miscreants and their dead bodies were lying there. This led to the registration of a case for offence under Section 302, RPC and investigation proceeded. The police visited the spot, seized blood-stained lathi and blood-stained stones from the place of occurrence. The dead bodies of the deceased were removed for post-mortem examination. Accused Ismail was taken in custody, and on his disclosure statement, one danda was recovered at his instance from his house. The other accused Mohd. Shafi was, however, arrested subsequently by the police on 8-12-1993, as he had absconded after the commission of the crime. After recording the statement of the witnesses and on conclusion of the investigation, both the accused, Ismail and Mohd. Shafi, were sent to stand trial under Sections 302/34, RPC and the learned trial Court after recording the evidence adduced by the prosecution and the accused in defence and hearing the parties, held both the accused guilty of offences under Sections 302/34, RPC and sentenced them to suffer imprisonment for life and a fine of Rs. 5,000/- each and in default of making payment of fine to undergo simple imprisonment for six months, and submitted the proceedings for confirmation of

the sentence in terms of Section 374, Cr. P.C.

3. Mr. Rehman, learned Government Advocate appearing for the State, vehemently urged that the circumstantial evidence relied upon by the prosecution is consistent only with the hypothesis that the accused alone had killed Taju and his son Abdullah on the ill-starred night of occurrence. Whereas Mr. S.C. Gupta, learned counsel appearing for the accused submitted that there being no direct evidence, the circumstantial evidence relied upon by the trial Court does not warrant conviction because the evidence provided by the witnesses is interested, tainted and smack of partisanship. The manner in which extra-judicial confession is attributed to the accused-Ismail, having made before the Panchayat, which had assembled and inquiries were made from the accused about his involvement in the commission in pursuance of suspicion against them because of enmity. That such a confession was neither voluntary nor ou of free will and, therefore, such kind of confession cannot be received in evidence. He further submitted that there is no reliable evidence to connect the accused with the commission of the crime.

4. It may be pointed out at the first blush that there is no direct evidence and the prosecution case hinges on circumstantial evidence. The circumstantial evidence relied upon by the Trial Court is; (1) Motive, (2) Extra-Judicial Confession, (3) Disclosure statement of the accused leading to recovery of the incriminating articles, (4) Medical Evidence and (5) other corroborative evidence.

(1) Motive :

If in a criminal case, motive as circumstance is putforth, it must be fully established like any other incriminating circumstances. There cannot be any guidelines or yardsticks to decide what will operate as sufficient motive for commission of a particular crime. It may vary from individual to individual depending on character, psychology and various other factors. Motive is something which prompts a man to form an intention to do a particular act. 'The common inducements to crime,' writes Wills, 'are the desire of revenging some real or fancied wrong; of getting rid of rival or an obnoxious connection; of escaping from the pressure of pecuniary or other obligation or burden, of obtaining plunder or other coveted object; of preserving reputation, either that of general character of the conventional reputation of

profession or sex; or of gratifying some other selfish or malignant passion.' On a trial for murder Campbell CJ summed up this : 'If there be any motive which can be assigned, I am bound to tell you that the adequacy of that motive is of little importance. We know from experience that atrocious crimes have been committed from very slight motives; not merely from malice and revenge, but to gain a small pecuniary advantage and to drive off for a time pressing difficulties.'

Motive is something which is locked up in the heart of the complainant and sometime, it could not be possible to have any trace of it. So, it cannot be said that unless no motive is established, the chain is broken and the prosecution must fail. To Judge the real states of a person's mind, the sur-rounding circumstances and subsequent events can be referred. It, therefore, follows that if the evidence shows that the accused having a strong motive had the opportunity of committing the crime and the established circumstances exclude the reasonable possibility of any one else being the real culprit within the chain of evidence can be considered to be complete as to hold the accused guilty. It is projected by the prosecution that the relations between the accused and the deceased were far from cordial and they, therefore, decided to eliminate at Thasgrah where the deceased, Taju and his son Abdullah, had carried their cattle for grazing. In order to prove the first circumstance of motive, the prosecution relied upon the testimony of PW Faqiroo, Mohd. Yousuf, Ghulam Mustafa and Abdul Gani Lone. PWs. Faqiroo is the father of the accused and also brother of deceased Taju and a complainant in the case. This witness has stated that he has no knowledge about the occurrence-nor did he know why the accused have been arrested by the police. He also expressed ignorance whether the deceased died natural death or have been murdered. He has been declared hostile. He, however, emphatically denied that any Panchayat was held in the village about the alleged occurrence. Information about the death of the deceased was given to him by PW Mohd. Shafi. Similarly, P.W. Mohd. Yousuf, son of deceased Taju and brother of deceased Abdullah, stated that the accused were inimical with the deceased on a 'Behak'. It is also in his evidence that the accused had broken the leg of a yak belonging to the deceased with an axe about two years ago and Panchayat was held where the accused admitted the accusation and agreed to compensate the loss suffered by the deceased. Since the compensation was not paid to the deceased by the accused, their relations no

longer remained good. He further stated that many times, the deceased requested the father of the accused to control his son and not to create trouble for the deceased, but the accused always threatened the deceased to liquidate them whenever found opportunity. The witness further stated that the accused also committed theft in their house in which cash and ghee were stolen by them, but later on returned back in a Panchayat. P.W. Abdul Gani Lone also stated that accused had a dispute with the deceased regarding the 'Dhok' on account of which suspicion was raised in respect of involvement of the accused in the murder of the deceased. PW Ghulam Mustafa has, however, scribed, the affidavit dated 24-12-1993 stated to have been sworn by Faqiroo, complainant, and marked as EXPWGM. According to the prosecution, the contents of the affidavit disclosed that the accused bore animosity against Taju, brother of the complainant and used to quarrel with him very oftenly in respect of which Taju had complained to their father, Faqiroo, PW, many a times, but it did not have any desired effect and accused continued to trouble the deceased. The affidavit further disclosed that the accused had murdered his brother and Abdullah, his son, on 22-10-1993. This affidavit stated to have been sworn by PW Faqiroo, the father of the accused and the brother of deceased Taju, but it was never put to the witness in his evidence nor the accused had an opportunity to cross-examine him in respect of the contents of the document. This affidavit, therefore, cannot be received in evidence and loses its significance. According to prosecution, there was on record some hostility between the parties. If motive to murder can be there, it can also provide motive to implicate falsely. Undoubtedly, motive behind a crime is a relevant fact of which evidence can be given. Strained relations of the accused with the deceased has been pleaded as motive for committing the crime. PW Mohd. Yousuf, a son of the deceased, stated that there was an enmity between the accused and the deceased on a 'Behak' and also the leg of the yak was broken by the accused about two years ago for which no compensation was paid, besides theft committed by the accused with regard to cash and ghee in their house, which was restored back to them in a Panchayat. Other evidence relied upon is the affidavit allegedly executed by PW Faqiroo. This affidavit has not been put to him in his cross-examination cannot be received in evidence and relied upon. Similarly, the evidence provided by Abdul Gani Lone is to the effect that there was a dispute

between the accused and the deceased with regard to 'Dhok' on account of which, a suspicion has arisen about their involvement in the crime. The causes of inimical relationship between the accused and the deceased given by Mohd. Yousuf and the one given by Abdul Gani Lone in their evidence are at variance and conflicting. Mohd. Yousuf is the son of the deceased and an interested and related witness. His evidence, therefore, does not inspire confidence in the Court when it is in contradiction with the cause of enmity given by PW Abdul Gani Lone. The other witnesses examined in the case, who also happened to be from the same village, stated least about the strained relations between the accused and the deceased prior to the alleged commission of the offence. The Trial Court has landed in serious error in relying upon the affidavit stated to have been sworn by Faqiroo, the contents of which were never put to him in his evidence nor an opportunity afforded to the accused to cross-examine him in this respect. In the absence of a positive and cogent evidence with regard to strained relations between the parties so as to show that the accused has a strong motive to kill the deceased, this circumstance cannot be said to have been established to provide a link to connect the accused with the commission of the crime.

(2) Extra-judicial confession :

The next circumstance relied upon by the prosecution in proof of guilt against the accused is the extra-judicial confession made by Ismail-accused before the Panchayat in stating that he and Mohd. Shafi had caused the murder of the deceased. This extra-judicial confession had been made by Ismail before the Baradari when the Rasam 'Charam' of the deceased was being celebrated in the village, when inquiries were made from accused Ismail about the alleged occurrence by Hans Raj on a promise to hush up to matter in case he tells the truth as to what had happened. The evidence provided by PW Hans Raj is to the effect that when dead bodies of deceased were buried, the clothes of Mohd. Shafi were seen with blood-stains upon which a suspicion had arisen about his involvement in the crime. When inquiries were made from Mohd. Shafi-accused, but the latter absconded. He further stated that accused Ismail was present in the performance of their religious function on account of death of the deceased. Inquiries were made from Ismail about the occurrence and the latter admitted his

involvement in the commission of the offence. He also admitted that he and Shafi-accused had killed Taju and Abdullah at Thasgrah. It is also in the evidence of PW Hans Raj that during inquiries made from accused Ismail in which he made a confession with regard to his and Mohd. Shaft's involvement in committing the murder of the accused, a danda marked as EXPW-H9 was also seized. Similarly, PW Vidya Lal stated that inquiries were made from accused Ismail about his involvement in the alleged crime by Abdul Gani Lone, P.W. and after the accused had made a confession, he was kept in a room for the night and next day handed over to the police. That the confession was made by the accused in presence of respectable members of the Panchayat, in which he admitted to have committed murder of deceased and his son Abdullah. According to PW Abdul Gani Lone, there were rumours that militants have committed the murder of the deceased. A Baradari meeting was held whereas Ismail was also present and confessed that he and Mohd. Shafi had inflicted injuries with stones and axes on the deceased on account of which they died. PW Mohd. Yousuf also stated that the accused-Ismail confessed that he along with Mohd. Shafi had caused the murder of the deceased, in the Panchayat held in the village. The accused was thereafter handed over to the police. In cross-examination, the witness admitted that Faqiroo was also present when the confession was made by the accused in the Panchayat. But PW Faqiroo, on the other hand, emphatically stated that no Panchayat was held in the village about the alleged occurrence. There is nothing found in the evidence with regard to the confession made by the accused that he along with Mohd. Shafi committed the murder of the accused. PW Vidya Lal had stated least about the presence of PW Mohd. Yousuf at the time when accused-Ismail made the confession about his and Mohd. Shaft's involvement in the alleged Crime in response to the inquiries made by Hans Raj and Abdul Gani Lone. Even PW Hans Raj did not state anything about the presence of PW Mohd. Yousuf at the relevant time when the.extra-judicial confession with regard to the commission of the offence was made by accused Ismail in the Panchayat.

Extra-judicial confessions are those, which are made by the parties elsewhere than before the Magistrate, or in the Court; this term embraces not only express confession of crime, but all those admissions and acts of the accused from which guilt may be implied. All voluntary confessions of this kind are receivable in

evidence, on being proved like other facts. The evidence of extra-judicial confession in the very nature of things is a weak piece of evidence, as is held by the Apex Court in Jagta v. State of Haryana, AIR 1974 SC 1545 : (1974 Cri LJ 1010) and further reiterated in State v. Bhajan, AIR 1975 SC 258 : (1975 Cri LJ 282). However, it would not be open to the Court to start with the presumption that extra-judicial confession is a weak type of evidence. It would depend upon the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession and its voluntary nature. Such a confession, if oral, must be assessed carefully and voluntary nature of confession must also be considered before it can be acted upon. In other words, extra-judicial confession must be proved by evidence of most reliable character.

However, a voluntary confession of guilt proceeds only from penitence and remorse or a desire to make reparation for the crime and it usually comes from a person who commits a crime in a fit of passion or for what he imagines a righteous cause; but experience of human nature shows how few people are actuated by such feelings and it has been found in numerous cases in this country that confessions have been made as a result of inducement or threat or promise. It, therefore, follows that to receive extra-judicial confession in evidence, it must be proved by unimpeachable testimony and without a slightest doubt about its voluntary nature.

In State of U.P. v. M. K. Anthony, (1985) 1 SCC 505 : (1985 Cri LJ 493), the Apex Court while dealing with the proposition of extra-judicial confession observed as under:

'15. There is neither any rule of law nor of prudence that evidence furnished by extra-judicial confession cannot be relied upon unless corroborated by some other credible evidence. The Courts have considered the evidence of extra-judicial confession a weak piece of evidence.... If the evidence about extra-judicial confession comes from the mouth of witness/witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the

witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, if it passes the test, the extra-judicial confession can be accepted and can be the basis of a conviction. In such a situation to go in search of corroboration itself tends to cast a shadow of doubt over the evidence. If the evidence of extra-judicial confession is reliable, trustworthy and beyond reproach the same can be relied upon and a conviction can be founded thereon.'

Again in Baldev Raj v. State of Haryana, 1991 Supp (1) SCC 14 : (1990 Cri LJ 2643), the Apex Court further stated the law as below :

'9. An extra-judicial confession, if voluntary, can be relied upon by the Court along with other evidence in convicting the accused. The value of the evidence as to the confession depends upon the veracity of the witnesses to whom it is made. It is true that the court requires the witness to give the actual words used by the accused as nearly as possible but it is not an invariable rule that the Court should not accept the evidence, if not the actual words but the substance were given. It is for the Court having regard to the credibility of the witness to accept the evidence or not. When the Court believes the witness before whom the confession is made and it is satisfied that the confession was voluntary, conviction can be founded on such evidence. Keeping these principles in mind, we find that the confession has been properly accepted and acted upon by the Courts below and there is no scope for any doubt regarding the complicity of the appellant in the crime. The confession of the appellant was voluntary. The testimony of P.W. 4 and P.W. 5 being responsible persons could not be doubted in the absence of any material to show that they had been motivated to falsely implicate the appellant. The very presence of the appellant and his father with the party of Ishar Dass throughout the operation up to lodging of complaint at the police station dispel any suspicion against the prosecution case and clearly point to the truthfulness of the same. We are, therefore, unable to find any infirmity in the confession which has been accepted and relied upon by the Courts below.'

While it is true that in Narayan Singh's case, the Apex Court expressly observed that it is not open to any Court to start with a presumption that an extra-judicial confession is a weak type of evidence, but in a later decision in Kavita v. State Tamil Nadu, (1998) 6 SCC 108 : (1998 Cri LJ 3624), the Court observed as under :

'4. There is no doubt that convictions can be based on extra-judicial confession but it is well settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon the veracity of the witness to whom it is made. It may not be necessary that the actual words used by the accused must be given by the witness to whom it is made and it is for the Court to decide on the acceptability of the evidence having regard to the credibility of the witnesses.'

Having dealt with the basics of the legal issues as regards the evidentiary value of the extra-judicial confession and adverting to the factual matrix of the matter, it is unequivocally gatherable from the testimony of the witnesses that the extra-judicial concession made by the accused proceeded on a promise that if he tells the truth, the case would be hushed up. So is clearly, with unerring clarity and unambiguously elicited from the statement of PW Hans Raj, Numberdar of the village. Thus, an extra-judicial confession, which is obtained by promise of favour or false hope and is not plenary in character and voluntary in its nature acknowledging the guilt, and made in presence of a body of persons, such a confession could not be acted upon. Such a confession when surrounded by bodies of persons, its creditability becomes doubtful, particularly when proved in the testimony of witnesses, who are of sterling character and their evidence is Interested and unworthy of credence, it loses its importance. The Courts always look for independent reliable corroboration before relying upon an extra-judicial confession. That apart, it is highly improbable and unnatural that the accused after having committed a murder would remain present amongst the family members of the deceased and participating in the religious performance of the ceremonies and would make a confession in presence of a Panchayat held by the villagers to ascertain about the alleged occurrence. The normal conduct of an accused, in such an event after the commission of the offence, would be to flee away from the

place of occurrence instead of remaining in the village and waiting for making a clean breast of his guilt before the witnesses including the son of the deceased and the Numberdar of the village and to be arrested by the police in the case. In the instant case, alleged extra-judicial confession by the accused is neither made voluntarily nor has been proved in the testimony of reliable, credible witnesses so as to be believed as truthful and trustworthy. The witnesses have emphatically stated that during inquiry and on a promise made by Hans Raj, Numberdar to hush up the matter in case the accused told that truth, extra-judicial confession was made involving himself and Mohd. Shafi in causing the murder of the deceased. This clearly shows that the confession made by the accused was not voluntary, but on a promise to hush up the case against him and, therefore, cannot be relied upon by the Court. Even the witnesses examined in proof of such a confession, on account of their relationship with the accused, are neither independent, truthful and believable so as to inspire confidence in the Court, having regard to the credibility of the evidence and involuntary nature of the confession made by the accused before a body of persons in Panchayat, the conviction cannot be founded on such evidence. Such a confession can never be properly accepted nor acted upon. The confession in this case, if any, appears to be induced by promise to hush up the case. The prosecution, therefore, also do not succeed in proving this circumstance against the accused with regard to their involvement in the commission of the offence.

(3) Disclosure Statement :

The other circumstances relied upon by the prosecution in proof of guilt of the accused is the disclosure statement made by accused-Ismail, which led to the recovery of a 'danda', the alleged weapon of offence, from the house of the accused at his instance. Accordingly to PW Bashir Ahmed, ASI, the disclosure statement was made by accused-Ismail before him while in police custody on the basis of which a 'danda' was recovered from the house of the accused. This disclosure statement is stated to have been made in presence of Hans Raj and Peer Baksh. Both the attesting witnesses of the disclo-sure statement, namely, Hans Raj and Peer Baksh, were examined by the prosecution. According to PW Hans Raj, disclosure statement made by the accused to the police in his presence,

in pursuance of which one 'danda, the weapon of offence, was recovered by the police from his house. He proved contents of the disclosure statement, which have been marked as EXPW-H9 and the seizure memo in respect of 'danda' as EXPW-H10, was also prepared. PW Hans Raj, however, stated least about the presence of Peer Baksh, another attesting witness, to be present at the time when the disclosure statement was made by the accused before the police, which led to the recovery of a 'danda' from the house of the accused. Whereas PW Peer Baksh, on the other hand, though admitted his signature on the disclosure statement, but denied its contents. Thus, in view of the conflicting and contradicting statements made by the attesting witnesses with regard to the disclosure statement by the accused leading to recovery of a 'danda', the alleged weapon of offence, renders the very factum of recovery of 'danda' on the basis of disclosure statement of the accused, highly doubtful and suspicious. That apart, it is not the case of the prosecution that the 'danda' stated to have been recovered from the house of the accused, in consequence of the disclosure statement, was blood-stained so as to provide a connecting link between the accused and the commission of the offence. P.W. ASI. Investigating Officer, is the scribe of the disclosure statement made by the accused be-fore him that led to the recovery of an alleged weapon of offence from the house of accused Ismail at the latter's instance. It is further pertinent to point out that there is no whisper either in the evidence of the Investigating Officer, PW Bashir Ahmed, ASI or in the evidence of Hans Raj as to whether the attesting witnesses of the disclosure statement made by the accused-Ismail that led to the recovery of a 'danda' at his instance from the residence of the accused present there. PW Peer Baksh has unambiguously stated in his evidence that Hans Raj was not present at the time when the seizure of the 'danda' from the house of the accused. PW Peer Baksh further clarified that seizure memo was not prepared in his presence though he identified the signature on the seizure memo. He also identified the signature on the disclosure statement, but denied its contents. Even Hans Raj stated least about the presence of Peer Baksh at the time when disclosure statement was made by the accused, as a consequence of which, a 'danda' was recovered from his house. This being the nature of evidence produced by the prosecution with regard to the disclosure statement of accused-Ismail and consequent discovery of 'danda', this circumstance cannot be attributed to the

accused so as to provide nexus between the accused and commission of offence. In view of the conflicting evidence in material particulars provided by the prosecution with regard to the disclosure and consequent recovery, it cannot be said to connect with the facts as its cause so as to provide incriminating circumstances under Section 27 of the Act.

That apart, discovery evidence by itself is subsidiary and cannot sustain a conviction. It is undoubtedly a valuable piece of corroborative evidence. Therefore, the mere discovery of a fact by mere (sic) an information by the accused is not relevant under Section 27. To make the information admissible, it must further be shown by other evidence that the articles discovered were connected with the offence charged of the guilt of the accused. In other words, it may be emphasized that the articles discovered will be related only if they are proved by other evidence to have been used in the commission of offence as the Privy Council in Pulukuri Kottaya v. R., 51 CWN 474 : AIR 1947 PC 67 : 741A 65 : (1947 (48) Cri LJ 533) observed as under :

'.....It can seldom happen that information leading to the discovery of a fact forms the foundation of the proof, and the other link must be forged in manner allowed by law.'

The circumstances regarding recovery of the weapon after the arrest of the accused recedes to the background if not blood-stains particularly of human origin have been found on such weapon. Section 27 of the Evidence Act is not only a proviso to Section 26 but cuts down the operation of Sections 24 and 25 as well. 'Fact' in Section 27 means some material or concrete fact capable of being perceived by the senses and not psychological or mental fact. It, therefore, follows that unless it is further shown by other evidence that the article discovered is in some way connected with the offence charged and the accused, it loses relevancy. This circumstance also does not provide any link in the chain of circumstances to connect the accused with the commission of the offence.

(4) Medical Evidence :

According to PW Dr. Shabir Hussain. Asstt. Surgeon, SDH, Kishtwar, who carried out the post-mortem examination of the dead bodies of Taju and Abdullah and recorded injuries found on their persons in the post-mortem report, found as many as 13 injuries on Taju-deceased and 7 injuries on Abdullah-deceased. According to the doctor, the cause of the death of the deceased was due to neurogenic shock and haemorrhage. The doctor further in his statement opined that the injuries mentioned in the post-mortem report of the respective deceased and marked as Ex PW-SH1 and Ex PW-SH2, can be caused by sharp-edged weapon only. It is also in his evidence that these injuries cannot be caused by stones and lathis. He, however, again stated that injuries can be caused by the stories having sharp edge. Neither the 'danda' stated to have been seized in pursuance of disclosure statement made by accused-Ismail nor the blood-stained stones seized from the spot were shown to the doctor to ascertain if the injuries found on the persons of both the deceased can be inflicted with the seized 'danda' and stones. The Additional Sessions Judge has misquoted and misappreciated the evidence of the doctor in his judgment in para 40, which is reproduced in verbiage as under : '40. The injured were got medically examined after their dead bodies were brought to Padarna and the doctor had noted down the injuries which were found on the dead bodies of Taju and Abdullah which injuries as per the opinion of the doctor could be caused by stones having sharp edges and also by blunt object. The lathi which has been seized in the case is blunt object and the stones seized are having sharp edges also, are the weapons of offence, therefore, can be said to have been used by the accused while they had attacked and assaulted the deceased at Thasgrah in order to do away with their lives. The doctor's evidence has been discussed herebefore and since there is nothing on record to make the evidence of the doctor unreliable, as such, the testimony of doctor also lends support to the allegations of the prosecution to the effect that death of the deceased was caused by violence and attack so made on them by the accused.'

Medical evidence also does not corroborate the prosecution version relating to the injuries found on the persons of the deceased to have been caused with the weapon of offence recovered at the instance of the accused by the police.

(5) Other Corroborative Evidence :

The other incriminating material depended upon by the prosecution is the report of Serologist with regard to the presence of blood-stains on the stones, the clothes of the deceased and the bark. This may be a corroborative evidence, but neither substantial nor conclusive to establish the guilt of the accused sufficient to record their conviction.

5. To convict a person on the basis of circumstantial evidence as has been relied upon by the prosecution, must be clearly established. The proved circumstances must be such as would reasonably exclude every possibility of the innocence of the accused. The circumstantial evidence should be consistent with the guilt of the accused, and inconsistent with his innocence. The chain of circumstances furnished by the prosecution should be so complete as not to lead any reasonable ground consistent with the innocence of the accused. Medical evidence in such a case may be the main circumstance giving assurance to the consistency of every circumstance alleged against the accused when the evidence against the accused, particularly when they are charged with grave offence like murder, consists of only circumstances, it must be qualitatively such that on every reasonable hypothesis, the conclusion must be that the accused is guilty, not having any significant possibility of any direct inference, but rationale and reasonable means making from the probative force of facts and circumstances.

6. In other words, the circumstances must make so strong a mesh that the innocence of the accused is wholly excluded and on every reasonable hypothesis the guilt of the accused is the only inference. As a proposition of law, unlike direct evidence, the indirect light circumstances may throw, may vary from suspicion to certitude and care must be taken to avoid subjective pitfalls of exaggerating a conjecture into a conviction. The Apex Court in Dharam Das Wadhwani v. State of Uttar Pradesh, AIR 1975 SC 241 : (1974 Cri LJ 1249), while considering the matter relating to appreciation of circumstantial evidence observed as under :--

'12. Every evidentiary circumstance is a probative link, strong or weak, and must be made out with certainty. Link after link forged firmly by credible testimony may form a strong chain of sure guilt binding the accused. Each link taken separately may just suggest but when hooked on to the next and on again may manacle the

accused inescapably. Only then can a concatenation of incriminating facts suffice to convict a man. Short of that is insufficient.'

7. The question then is whether the cumulative effect of the circumstances relied upon by the trial Court in the present case is such that the Court can conclude not that the accused may be guilty, but that he must be guilty. When conviction is solely based on circumstantial evidence, the law requires that the prosecution must prove each of the circumstance, having been definite tendency pointing towards the guilt of the accused and though each of the circumstance by itself may not be conclusive, but the cumulative effect of the proved circumstances must be so complete that it would exclude every other hypothesis and unequivocally point to the guilt of the accused. The circumstances must be established by reliable evidence. The evidence adduced by the prosecution in this case is prove the circumstances on which the Additional Sessions Judge reached a conclusion is qualitatively and quantitatively insufficient to record the conviction of the accused. The trial Court has misappreciated and misquoted the evidence and, consequently, resulted into a conclusion legally erroneous and factually frail.

8. The trial Court, in our view, seems to have been obsessed by mere conjectures and surmises; the evidence of the witnesses adulterating the truth, the motive untrue and inadequate, and without adverting to the maybe in the case excluding the accused's culpability, besides the test of incompatibility with the innocence of the accused having not been fulfilled at all here. The trial Court has also not taken practical view of the legitimate inferences flowing from the evidence circumstantial in nature and, therefore, reached a conclusion in holding the accused guilty and recording their sentence, which is patently erroneous both on facts and law.

9. Thus, on an analytical appreciation, evaluation and estimation of the evidence on record, we find that circumstances from which conclusions of guilt of the accused have to be drawn have not been established by legal, cogent and positive evidence. There are missing links in the chain of circumstances and, thus, cannot be termed to be of conclusive in nature. Prosecution has failed to discharge its burden of proof of guilt of the accused beyond any pale of doubt.

10. In the result, we are clearly of the view that the reference for confirmation of the sentence of imprisonment for life awarded to the accused under Section 302 read with Section 34, RPC, does not merit to be sustained and is accordingly rejected. The judgment of the trial Court dated 28-7-1999 in recording conviction of the accused in proof of offence under Section 302/34, RPC is also set aside accordingly as a consequence thereof and the accused stand acquitted. The accused shall be set at large forthwith. Inform the trial Court of the decision, Remit the record.

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