

<u>IN THE COURT OF ADDITIONAL SESSIONS JUDGE-IV, SAHARSA</u>	
Present:- Avinash Kumar-I, Additional Sessions Judge-IV, Saharsa	
<u>Date of the Judgment:- 07.04.2026</u>	
<u>Case No.- Sessions Trial Case No- 283 of 2024</u>	
(Arising out of Saharsa Sadar P.S. Case No. 246/2024)	
(U/S- 302, 201, 34 IPC.)	
Informant	State of Bihar (through the informant Shambhu Yadav S/O Kailu Yadav R/o- Vill. Agwanpur , P.S.- Saharsa Sadar, Dist- Saharsa)
REPRESENTED BY	Ld. Additional Public Prosecutor
<i>Versus</i>	
ACCUSED PERSONS	Rajiv Kumar S/o Lalan Yadav R/o- Vill. Agwanpur P.S.- Saharsa Sadar Dist- SAharsa (A1)
	Prince Kumar s/o Bakil Yadav R/o- Vill. Agwanpur P.S.- Saharsa Sadar Dist- SAharsa (A2)
REPRESENTED BY	Lalan Kishor Jha, Ld. Advocate

Statement of History of Proceedings

Date of Offence	08.03.2024
Date of F.I.R.	11.03.2024
Date of filing of Charge-sheet	12.06.2024
Date of Cognizance	15.06.2024
Date of commitment	13.08.2024
Date of initiation of Session	22.08.2024
Date of Framing of Charges	27.08.2024
Date of commencement of evidence	27.08.2024
Date of closure of evidence	28.07.2025
Statement under section 313 of Cr.P.C	22.08.2025
Date on which the judgment is reserved	

Date of Judgment	07.04.2026
Date of the Sentencing Order, if any	N.A*

ACCUSED DETAILS (Form-B)

Rank of Accused	Name of the Accused	Date of Arrest	Date of Release on Bail	Offences Charged with	Whether Acquitted or Convicted	Sentence Impose	Period of Detention Undergone during trial for purpose of section 482, Cr.P.C
A-1	Rajiv Kumar	15.03.2024	N/A	302, 201, 34 IPC.	Acquitted	NA	--
A-2	Prince Kumar	18.02.2024	N/A	302, 201, 34 IPC.	Acquitted	NA	--

LIST OF PROSECUTION/DEFENCE/COURT WITNESSESA. Prosecution Witnesses

RANK	NAME	NATURE OF EVIDENCE(EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCHWITNESS, OTHER WITNESS)
PW1	Sharul Yadav	<i>Private Witness</i>
PW2	Bachan Yadav	<i>Private Witness</i>
PW3	Shambhu Yadav	<i>Informant of this case</i>
PW4	Sri Ram Singh	<i>IO</i>
PW5	Dr. Shivam Kumar	<i>Doctor</i>

DOCUMENTARY EVIDENCELIST OF PROSECUTION/DEFENCE/COURT EXHIBITSA. Prosecution Exhibits

Sr. No.	Exhibit Number	Description
1	Exhibit P-1/PW-3	<i>Application written by PW 3</i>
2	Exhibit P-1/1PW-4	<i>Signature on FIR of PW4</i>
3	Exhibit P-2/PW-4	<i>Signature on FIR of PW 4</i>
4	Exhibit P-3/PW-4	<i>Signature on Post Mortem Report of PW4</i>

5	Exhibit P-4/PW-4	<i>Signature on Charege-sheet of PW4</i>
6	Exhibit P-5/PW-5	<i>Signature on Post Mortem Report of PW 5</i>

Date of Judgement: 07.04.2026

Present: Sri Avinash Kumar I

District Addl. Sessions Judge IV

Saharsa

BRIEF FACTS

1. The FIR bearing Saharsa Sadar P.S. case no. 246 of 2024 was registered on 11.03.2024, on the written report of Shambhu Yadav S/o Kailu Yadav against the 3 accused persons namely Prince Kumar, Rajiv Kumar and Rajan Kumar as u/s 302, 34 of IPC.
2. The factual matrix of case in brief as per informant Shambhu Yadav is that on 08.03.2024 at about 03:00 PM, accused Rajiv Kumar, Prince Kumar and Rajan Kumar came to his door and took Jyotish Kumar on their motorcycle. He further alleged that from approx 100 meter from his house, near the bridge the above mentioned name people took his son away on their motorcycle. On 11.03.2024 at 7:00 AM, the dead body of his son was found lying on the bank of the canal. It was further alleged that the informant found that his son has been shot on the left side of the nose and was killed.
3. On the basis of above said written statement, the FIR was lodged as Saharsa SAdar P.S. Case No. 246 of 2024 for the offences u/s 302 and 34 of IPC against accused Prince Kumar, Rajiv Kumar and Rajan Kumar.
4. The investigation of the present case was done by I.O Sri Ram Singh and charge-sheet no. 333/2024 dated 12.06.2024 under section 302, 201 and 34 of IPC against the accused person namely Rajiv Kumar and Prince Kumar was submitted by I.O.

5. **Cognizance was taken** for the offence under section 302, 201, 34 of IPC vide order dated 15.06.2024 against the accused person namely **Rajiv Kumar and Prince Kumar**.
6. After compliance of provisions of section 207 of the code of Criminal Procedure (hereinafter referred to as Cr.P.C) charge was framed against them on 27.08.2024 under section 302, 201 r/w 34 of IPC to which they denied and claimed to be tried.
7. The prosecution produced 05 witnesses to support its case after which the statement of the accused persons under section 313 of Cr.P.C was recorded on 22.08.2025 in which they pleaded their innocence.
8. The point for determination in this case is that whether the prosecution has been able to bring home the guilt of the accused persons beyond the shadow of all reasonable doubts. To prove this case, the prosecution must establish the following point against the court.
 - (1) Whether the prosecution has proved the charge leveled against the accused persons for the offence punishable under section 302, 201, 34 of IPC beyond the shadows of reasonable doubts.

Evidence

9. EVIDENCE ADDUCED IN THIS CASE

1) Evidence of prosecution:

i) Oral Evidence

- a) PW-1:- Sharul Yadav
- b) PW-2:- Bachan Yadav
- c) PW-3:- Shambhu Kumar Yadav (**Informant**)
- d) PW-4:- Sri Ram Singh (**IO**)
- e) PW-5:- Dr. Shivam Kumar (**Doctor**)

2) Evidence of defence:-

No evidence, oral and documentary, has been adduced by the accused person in his defence.

APPRECIATION OF EVIDENCE

10. अभियोजन साक्षी संख्या 01 सरूल यादव अपने मुख्य परीक्षण में कहते हैं कि मृतक ज्योतिश कुमार चचेरा भाई लगते हैं। वह केरल में मजदूरी करते थे।

दिनांक 08.03.2024 को राजीव कुमार, प्रिंस कुमार, राजन कुमार, सचिन कुमार दो मोटरसाईकिल पे आकर ज्योतिश को लेकर चला गया। उसके बाद नहीं देखा कि कहां गया।

मैं और मेरे चाचा, राजीव कुमार के घर पर गए। राजीव घर पर नहीं था। प्रिंस के घर गए वह भी घर पर नहीं था।

राजन के घर पर गए वह भी घर पर नहीं था और सचिन के घर पर गए वह भी नहीं था।

रंजू देवी बताई की राजीव कुमार, प्रिंस कुमार, राजन कुमार, सचिन कुमार, वकील यादव, मनोहर यादव, रमण यादव और ज्योतिश कुमार के साथ कहीं गया है।

दिनांक 11 तारीख को सुबह सात बजे नहर के किनारे लाश मिला तो लाश को निकाले तो देखा कि लाश ज्योतिश कुमार का है।

राजीव कुमार, प्रिंस कुमार, राजन कुमार, सचिन कुमार, वकील यादव, मनोहर यादव, रमण यादव ये लोग घटना स्थल पर नहीं आये। मुझे विश्वास है कि ये लोग ही मिलकर हत्या किया है।

सरूल यादव अपने प्रतिपरीक्षण में कहते हैं कि मेरा और ज्योतिश का घर का दरवाजा एक ही जगह है।

08 तारीख के विवाह में प्रिंस, राजीव, सचिन मौजूद नहीं थें।

अभियुक्तों से ज्योतिश या उसके परिवार से किसी प्रकार का विवाद नहीं था।

08 तारीख से लाश मिलने तक के बीच में पुलिस को कोई सूचना नहीं दिया गया ।

सरूल यादव अपने पुनः प्रतिपरीक्षण में कहते हैं कि दिनांक 05.03.2024 को ज्योतिश कुमार घर आया। दिनांक 08.03.2024 को राजीव कुमार, प्रिंस कुमार, राजन कुमार, सचिन कुमार दो मोटरसाईकिल पे आकर ज्योतिश को लेकर चला गया।

मैं और मेरे चाचा राजीव कुमार, के घर पर गए। राजीव घर पर नहीं था। प्रिंस के घर गए वह भी घर पर नहीं था। राजन के घर पर गए वह भी घर पर नहीं था और सचिन के घर पर गए वह भी नहीं था।

राजीव, ललन यादव का लड़का है।

उमेश यादव की लड़की प्रियंका की शादी 08.03.2024 को अगवानपूर में घर पर ही हुई थीं।

लाश मैं देखा था सिर पर चाकू से चोट का निशान था। बांह पर भी छिलने का जख्म था, कपड़ा फटा नहीं था।

ऐसी बात नहीं है कि मैंने सरासर झूठी गवाही दिया हूँ और हमलोग जानते थे कि ज्योतिश की मृत्यु दुर्घटना में हुई और पैसा उगाही के लिए झूठा मुकदमा किया गया जिसमें निर्दोष लोगों को फंसा दिया गया।

11. अभियोजन साक्षी संख्या 02 बच्चन यादव उर्फ बेचन यादव अपने मुख्य परीक्षण में कहते हैं कि

दिनांक 08.03.2024 को तीन बजे दिन में राजीव कुमार, प्रिंस कुमार, राजन कुमार मोटरसाईकिल से बुलाने आया ६ गुमने के लिए। मोटरसाईकिल पर ज्योतिश को बैठाकर ले गया।

ज्योतिश के घर के किधर ले गया हमलोग को दिखाई नहीं दिया।

राजीव और प्रिंस, राजन के घर गए।

रंजू देवी बताई कि राजीव कुमार, प्रिंस कुमार, राजन कुमार, वकील यादव, रबन यादव, मनोहर यादव, सचिन कुमार ये सब लोग जो गए हैं अभी तक लौट कर नहीं आए हैं पता नहीं कहाँ गए हैं।

9 तारीख को भी खोजबीन किए लेकिन कोई व्यक्ति घर पर नहीं मिला।

11.03.2024 को 7:30 बजे सुबह में एक लाश दिखाई दिया। हमलोग भी वहाँ जाकर लाश को देखे और मिलकर लाश को बाहर निकाले और देखे कि ज्योतिश कुमार का लाश है।

सभी ग्रामीण आकर देखे अभियुक्तगण लाश देखने नहीं आए और घर पर नहीं थें।

बच्चन यादव उर्फ बेचन यादव अपने प्रतिपरीक्षण में कहते हैं कि

मैं आठ तारीख को अगवानपुर में था। वहाँ कोई कार्यक्रम नहीं था।

अभियुक्तगण मोटरसाईकिल से शंभू के दरवाजे पर आया था।

अभियुक्त और ज्योतिश को जाते हुए देखा।

प्रिंस कुमार या उसके परिवार से इस मुकदमा के पूर्व कोई मुकदमा नहीं था।

जमीन जायदाद से संबंधित कोई मुकदमा नहीं था।

ऐसी बात नहीं है कि मैं और मेरा साला साजिश के तहत अभियुक्तगण से पैसा लेने के लिए यह मुकदमा किया है और मैं 08.03.2024 को अगवानपुर नहीं गया था। मैंने कोई घटना नहीं देखा है।

बच्चन यादव उर्फ बेचन यादव अपने पुनः प्रतिपरीक्षण में कहते हैं कि

ऐसी बात नहीं है कि पुलिस को मैंने कहा था कि जैसा लोगों ने बताया वही बयान दिया था।

अभियुक्तों का मृतक से बात-चीत हुई थी क्या बात हुई नहीं बता सकता, मैं आंगन में ही था।

ज्योतिश का शव देखा था शव पर जखम आंख के नीचे और सिर में था।

ऐसी बात नहीं है कि सूचक के बहनोई होने के नाते झूठी गवाही दे रहा हूँ और अभियुक्तों से पैसा वसूलने के लिए शंभू यादव से झूठा केस करवाया हूँ।

12. अभियोजन साक्षी संख्या 03 शम्भू कुमार यादव अपने मुख्य परीक्षण में कहते हैं कि सचिन ने ज्योतिश कुमार को कहा कि तुम मेरे शादी में आओ। दिनांक 05.03.2024 को केरल से ज्योतिश कुमार घर आया।

जैसे ही वह घर पहुंचा राजीव, प्रिंस एवं राजन बारी-बारी से 8 से 10 बार ज्योतिश कुमार को फोन किया।

राजीव, प्रिंस एवं राजन ने दो मोटरसाईकिल से मेरे(गवाह) के दरवाजे पर पहुंचे और आंगन से बुलाकर राजन, प्रिंस एवं राजीव तीनों ज्योतिश को लेकर चला गया।

मैं रंजू देवी (प्रिंस की मां) से पूछा कि राजीव, प्रिंस एवं राजन घूमने जो गया था लौट कर आया ? तो उसने बताई कि अभी तक नहीं लौटा है।

दिनांक 11.03.2024 को नहर किनारे 07:30 बजे सुबह में पेटकुनिया पड़ा हुआ लाश देखे तथा ग्रामीण लोगों की मदद से लाश को उपर किये तो पाया कि लाश ज्योतिश कुमार का था।

शम्भू कुमार यादव अपने प्रतिपरीक्षण में कहते हैं कि अभियुक्त की तरफ से पहले से केस मुकदमा नहीं है।

मेरे दरवाजे के सामने के किनारे में लाश था। दरवाजा और नहर के किनारे जहां लाश था, वह सटा हुआ था।

नहर में कमर भर पानी था।

लाश देखने से लगता था चार से पांच घंटा पहले उसको मारकर फेंक दिया था।

शरीर पर कोई जख्म नहीं था। सिर्फ बायाँ आँख में जख्म था। बायाँ आँख निकल गया था या नहीं हमने नहीं देखा।

प्रिंस और राजीव दोनों चचेरे भाई हैं।

कैसे हत्या हुई मैंने आँख से नहीं देखा है और न ही नहर में डुबाते ही देखा।

ऐसी बात नहीं है कि फर्द ब्यान और पुर्नब्यान में नहीं कहा था कि बाद में मैं, राजन, प्रिंस और राजीव के घर गए थे।

जब लाश को मैंने देखा था तो उस समय बहुत से लोग जुटे थे। उसमें से कौन लोग थे नहीं बता सकते।

शम्भू कुमार यादव अपने प्रतिपरीक्षण में पुनः कहते हैं कि

जहां ज्योतिश का लाश मिला, मेरे घर से लगभग 100-150 मीटर पूरब में नहर है।

मेरे घर और नहर के बीच में प्रदीप यादव, विद्यानन्द यादव, मनोहर यादव, रामजी यादव, वकील यादव एवं शम्भू यादव इनलोगों का घर है।

मैं पुत्र के शोक संतप्त में था इसलिए मेरी किसी से बातचीत नहीं हुई।

आने जाने वाले लोगों का कोई ब्योरा नहीं रखें। कौन-कौन आया नहीं बता सकते हैं।

मेरा बेटा ज्योतिश मोटरसाईकिल चलाता था।

13. अभियोजन साक्षी संख्या 04 श्री राम सिंह (I/O) अपने मुख्य परीक्षण में कहते हैं कि उक्त फर्द ब्यान पर पृष्ठांकन है जो पु0अ0नि0 सुजाता रानी के लिखावट में है जिसमें हस्ताक्षर मेरा है। जो प्रदर्श- पी 01/01/पीडब्ल्यू 04 अंकित किया गया है।

औपचारिक प्राथमिकी तैयार किया गया जिसपर मेरा हस्ताक्षर है। जिसे गवाह के पहचान पर प्रदर्श पी.02/पीडब्ल्यू 04 अंकित किया जाता है।

मृत्यु समीक्षा रिपोर्ट मेरे कथनानुसार पु0अ0नि0 सुजाता रानी के द्वारा तैयार किया गया। जिसपर सुजाता रानी का हस्ताक्षर है, सुजाता रानी के हस्ताक्षर को पहचानता हूं। पहचान पर मृत्यु समीक्षा रिपोर्ट को प्रदर्श- पी 03/ पीडब्ल्यू 04 अंकित किया गया है।

अनुसंधान के क्रम में घटनास्थल पर ग्राम – अगवानपुर, टोला- पनटोलिया, नहर से सटे पूरब नहर का कचीफ लाईन है जिसका रूख उत्तर-दक्षिण है नहर से सटे पूर्वी किनारे से करीब दो फीट बहता पानी से मृतक का शव निकालकर मिट्टी फलेंक पर रखा गया घटनास्थल के उत्तर में अगवानपुर चौक सिसई होते हुए सत्तर कटैया तरफ जाने वाली नहर तथा दक्षिण में साहपुर नदिया जाने वाली नहर, पूरब में प्रदीप यादव, पिता- छककनती यादव, गेहूं लगा खेत तथा पश्चिम में नहर बाद मिथलेश यादव, पिता- मुंगीलाल यादव का घर है।

श्री राम सिंह अपने प्रतिपरीक्षण में कहते हैं कि उपरोक्त किसी भी साक्षी का बयान आपस में मेल नहीं खाता है ऐसा पर्यवेक्षण रिपोर्ट में अंकित है।

दिनांक 11.03.2024 को 9 बजे तक खुन का रिशाव हो रहा था।

शरीर पर छिद्र था लेकिन गोली का निशान स्पष्ट नहीं हो रहा था।

शरीर पर गोली का चॉद मार्क या बारूद का कोई निशान नहीं पाया।

पोस्टमार्टम के बाद कोई प्लेट का कोई स्प्रीन्टर नहीं पाया गया।

गवाह बच्चन यादव उर्फ बेचन यादव ने ऐसा बयान दिया था कि आज सुबह करीब साढ़े सात बजे लोगों द्वारा सुने कि अगुवानपुर नहर के पास एक युवक का शव देखा गया है जो मेरे साला शम्भू का पुत्र ज्योतिश का है सूचना पाकर मैं भी वहां गया।

पुनः फर्द ब्यान में सूचक शम्भू यादव ने यह नहीं कहा है कि जैसे ही पांच बजे जैसे ही घर आया वह राजीव, प्रिंस, बारी-बारी से 8-10 बार ज्योतिश कुमार को फोन किया ज्योतिश कुमार ने अंत में फोन उठाया तो राजीव, प्रिंस एवं राजन ने पूछा कि तुम कहां हो इस पर ज्योतिश ने बोला हम घर पर हैं राजीव, प्रिंस एवं राजन ने दो मोटरसाईकिल से मेरे दरवाजे पर पहुंचे और आंगन से बुलाकर राजन, प्रिंस एवं राजीव तीनों ज्योतिश को लेकर चला गया।

घटना में प्रयुक्त तथाकथित मोटरसाईकिल का जिक्र अनुसंधान में नहीं मिला।

श्री राम सिंह अपने प्रतिपरीक्षण में पुनः कहते हैं कि सरूल कुमार ने अपने बयान में यह भी नहीं कहा कि मृतक को किसी अभियुक्त के साथ जाते देखा है और यह भी नहीं बतलाया था कि राजीव के घर गये थें।

सरूल ने कहा था कि उसको शम्भू से घटना की जानकारी मिली थी। पर्यवेक्षण टिप्पणी में अंकित किसी गवाह का बयान नहीं लिया।

इस बात का पता नहीं लगाया कि राजीव के पास कोई मोटरसाईकिल है या नहीं।

मैंने अनुसंधान के क्रम में दुर्घटनाग्रस्त एक मोटरसाईकिल बरामद किया था। जिसका इस कांड से कोई लेना देना नहीं है।

ऐसी बात नहीं है कि दुर्घटना ग्रस्त मोटरसाईकिल बरामद किया और उसपर परमानेंट मार्कर से कांड संख्या [246/24](#) लिखा जो अभी भी सहरसा सदर थाना परिसर में है।

14. **PW-05, Dr Shivam Kumar (Doctor)**, has stated in his examination in chief that External Appearance Rigor Mortis/Decomposition etc. Body was swollen. There was foul smell coming from whole body. Eye and mouth was closed. Blood present in nasal cavity. Whole body swollen with sign of putrefaction is present. There is multiple patchy pleated of skin present over the chest, neck and abdomen. Present of maggots over the body. Whole body was wet, edematous & presence of dirt & mud over the body. Lip was edematous & swollen. Rigor mortise absent in all four limbs.

External Injuries (1) there was a lacerated penetrating inverted wound present over left side maxillary region of face (2) almost whole face was stained with thick clotted blood (3) The nose was depressed on left side and deviated towards right side on further deep dissection through the wound present over the face as described above there was a rent in the antero-inferior wall of left maxillary sinus bony deep (4) there was scalp hematoma on occipital region of skull. On external Examination of opening of skull – there was a huge intracranial hematoma present. Diffuse contusion present in the occipital part of brain. Meninges intact and edematous.

Cause of Death- in our opinion is due to **head injury as a result of external trauma**. After P.M examination dead body with its belongings handed over to the concerned Chaukidar and the inquest & the challan are cancelled and signed by me and attached with P.M report. The postmortem report is typed by me and bears my signature along with Dr. Muttaka and Dr. S.P Bishwash and marked as **exhibit P-5/PW 5**.

In his cross examination by the defence this witness has stated that I read the inquest and according to it **I did not find any firearms injury**, and I have not written in the postmortem report which weapons was used to cause the injury. He further states that details description of the postmortem examination external and internal injuries **may be caused by falling on the road or falling down from the pool** or

being hit by a vehicles and head injury can also occur due to falling. I have not mentioned the colour or size of any of the wounds in the postmortem report.

ARGUMENTS

15. Ld. APP while arguing the case on behalf of the prosecution submits that PW-1 namely Sharul Yadav and PW-2 Bachan Yadav and PW-3 Shambhu Kumar Yadav, informant, have deposed in their evidence that on 08.03.2024, the deceased Jyotish Kumar was taken by Rajiv Kumar, Prince Kumar who are accused in this case and one other accused Rajan Kumar on **two motorcycle** in the evening at about 6:00 PM and after then deceased Jyotish Kumar had gone missing and finally on 11.03.2024 at about 7:30 AM, the dead body of the deceased Jyotish Kumar was found and recovered at near by canal which is closed to the house of the informant. It has been argued by Ld. APP that during these 3 days the accused persons Rajiv Kumar and Prince Kumar were also missing from their house and when the dead body was found, then non of these accused persons came to see the dead body, which creates strong suspicion.

Ld. APP also argues that it is a case of **last seen theory** where the deceased was lastly seen with accused Rajiv Kumar and Prince Kumar and one another accused Rajan Kumar.

Ld. Defence counsel for accused Rajiv Kumar submitted and relied upon the contradiction and discrepancy of first informant given by informant Shambhu Yadav and in his deposition as PW-3 before the court. He states that the **informant has not stated regarding two motorcycle in his first information**, while in his deposition he has deposed and stated that deceased Jyotish Kumar was taken by accused Rajiv and Prince and co-accused Rajan Kumar **on two motorcycle**. He further states that IO of this case in his cross-examination in para 30 has stated that witness **Sharul Yadav had given the statement before the police that he got information regarding the incident from Shambhu Yadav**, while the same person Sharul Yadav **in his deposition as PW-1**

has stated to have seen that deceased Jyotish Kumar was taken by accused persons, which is a strong contradiction and therefore this witness is non reliable. He further submits that PW-2 Bachan Yadav, who is uncle (Fufa) of the deceased has stated that **he got the information about the incident on the day when the dead body was found while in his deposition as PW-2 has stated that he had seen accused persons taking the deceased and therefore this witness is also no reliable.**

He further submits that all the witnesses are relatives of the informant and therefore not impartial. He further submits that Sharul Yadav is the brother of the deceased, while Bachan Yadav is the brother-in-law of the informant and informant is the father of the deceased and **there is no independent witness** in this case and therefore all the private witness are related witness and therefore cannot be relied upon.

Ld. Defence counsel for accused Prince Kumar argued and submitted that **there is a delay in lodging of FIR.** He further submits that as per FIR, the deceased went missing from 08.03.2024, but after then neither the police was informed nor the FIR was lodged and FIR got lodged only on the day, when dead body was found. He further submits that in the present FIR, the fardbayan was recorded by SHO, Saharsa Sadar at 9:30 AM on 11.03.2024, while in the FIR the time of receiving the information has been mentioned as 14:05 PM on 11.03.2024 and **no explanation has been given by the prosecution for such delay.**

He further submits that **as far as offence u/s 201 IPC is concerned no material has come in the entire evidence against the accused person.**

He further submits that PW-5, Dr. Shivam Kumar in his cross examination has clearly stated that the **time of death was within 24 hours of postmortem and he has further categorically stated that the injury was of or after 12:00 PM, on 10.03.2024.**

Ld. Defence counsel further submits that PW-5 i.e doctor has stated in his cross examination that **no firearms injury was found in the dead body, while the informant in FIR has stated that deceased was killed by firearms.** He further submits that the doctor

has further stated that in his deposition that the injury was caused by which weapon is not mentioned in the postmortem report and **injury no. 3 may or can be caused by accident.**

Ld. Defence counsel further submits that the informant has lodged the present FIR and deposed only on the basis of merely on suspicion.

FINDINGS

16. After going through the evidence on record and arguments heard on behalf of Ld. APP assisted by counsel for the informant and arguments on behalf of defence counsel.

First finding of this court is that **motive on the part of both the accused has not been established by the prosecution.** It is important to mention here that PW-1 in para 7 of his deposition and PW-2 in para 6 of his deposition and PW-3 Shambhu Yadav i.e informant in para 5 of his deposition has stated that there was no previous enmity between the informant and accused persons.

Since Ld. APP assisted by counsel for informant relied upon circumstantial evidence or last seen theory, therefore it is important to deal with this principal of evidence. While dealing with circumstantial evidence and last seen theory, it is important to mention and discuss the land mark judgment of Hon'ble Apex Court titled as **Prakash Vs. State of Rajasthan (2013)** in which Hon'ble Supreme court has applied a established **five golden principal** deried from land mark case of **Sharad Birdhichand Sarda Vs. State of Maharsashtra.** The Hon'ble Supreme Court in said Sharad Birdhichand Sarda Vs. State of Maharsashtra has stated that the five golden principles serve as to sustain that prosecution must satisfy to secure a conviction.

FIVE GOLDEN PRINCIPLE, the basis on circumstantial evidence are as follows:-

1. **complete establishment of circumstances:-** there is a circumstance from which the conclusion of guilt is to be drawn must be fully and cogently established by prosecution.

2. **Exclusivity to the accused's guilt:-** The fact established should be consistent only with the hypothesis of the guilt of the accused's guilt and evidence explainable of any other reasonable hypothesis.

3. **Conclusive Nature of evidence :-** The circumstances should be of the conclusive nature of tendency unerringly pointing towards the guilt of the accused.

4. **Exclusive of Other Hypothesis:-** The circumstance must exclude every possible hypothesis except the one to be proved that the accused has committed crime.

5. **Complete chain of evidence:-** There must be chain of evidence so complete as to not leave any reasonable ground for a conclusion consistent with the innocence of the accused, showing that within all human probability the act was done by the accused.

The supreme Court has further clarified that the **last-seen theory is not a conclusive proof of guilt on its own and following elements are essential.**

(1)(a) **Time Gap is Critical:-** The supreme Court has stated that time gap between the last seen moment and the death must be extremely small or proximate so that no third party could have intervened.

(b) **Need for corroboration:-** The supreme Court has further clarified that last seen theory must be supported by other evidence, such as motive, recovery of the weapon or the accused absconding.

It is important to mention here that Ld. APP being assisted by counsel for the informant is relied on last seen theory on the basis of the fact that deceased Jyotish Kumar was taken or was accompanied with accused Rajiv Kumar and Prince Kumar on 08.03.2024, but **in the evidence there are many contradiction.**

In FIR the informant has stated that deceased Jyotish was called, taken and accompanied by Rajiv Kumar, Prince Kumar and Rajan Kumar at 6:00 PM from and near bridge situated near the informant's house.

While the witness Shambhu Yadav i.e informant in his deposition has stated that **deceased Jyotish was taken and called from courtyard** of the informant's house on two motorcycle.

While PW-1 Sharul Yadav, who is cousin brother of the deceased stated that the deceased was taken by Rajiv Kumar, Prince Kumar, Rajan Kumar and Sachin Kumar all together 4 persons.

While other witness PW-2 Bachan Yadav has stated that the deceased Jyotish was taken by Rajiv Kumar, Prince Kumar and Rajan Kumar at 03:00 PM.

The Hon'ble Supreme Court in its judgment passed in **Criminal Appeal no. 928 of 2009 title as Rishipal Vs. State of Uttarakhand**, has held that it is fairly well-settled that while **motive does not have a major role to play in cases based on eye-witness, however it assumes importance in cases that rest entirely on circumstantial evidence**. The reliance has been placed **Sukhram Vs. State of Maharashtra** (2007) 7 SSC 502, and **Sunil Clifford Daniel Vs. State of Punjab** (2012) 8 SCALE 670, it has been further held in the above said judgment that absence of strong motive in the present cases as circumstantial evidence, it something that cannot be lightly brushed aside.

That the Hon'ble Supreme Court in **Mohibur Rahman and Another Vs. State of Assam (2002) 6 SSC 715**, held that the circumstance of last seen does not by itself necessarily lead to the interference that it was the accused who committed the crime.

The Hon'ble Supreme Court in **Arjun Marik and Others Vs. State of Bihar 1994 Supp (2) SSC 372**, the Hon'ble Supreme Court has reiterated that solitary circumstance of the accused and victim being last seen will not complete the chain of circumstance for the court to record a finding that it is consistent only with the hypothesis of the guilt of the accused. No conviction on that basis alone can, therefore, be founded.

In **Godabarish Mishra Vs. Kuntala Mishra and Another (1996) 11 SSC 264**, the Hon'ble Supreme Court held that theory of last seen together is not of universal application and may not always be sufficient to sustain a conviction unless supported by other links in the chain of circumstances.

In **the state of Goa Vs. Sanjay Thakran and Another (2007), 3 SSC 755**, the Hon'ble Supreme Court held that in the absence of any other corroborative piece of evidence to complete the chain

of circumstance it is not possible to fasten the guilt on the accused on the solitary circumstance of the two being seen together.

In **Bodh Raj @ Bodha and Others Vs. State of Jammu and Kashmir (2002) 8 SSC 45**, the Hon'ble Supreme Court held that the last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.

In **Padman Bibhar Vs. State of Odisha**, the Hon'ble Supreme Court held that it is settled law that in a cases based on circumstantial evidence, the prosecution is obliged to prove each circumstance, taken cumulatively to form a chain so complete that there is no escape from the conclusion that within all human probabilities, crime was committed by the accused and none else. Further, the facts so proved should unerringly point towards the guilt of the accused.

In **Kanhaiya Lal Vs. State of Rajasthan**, the Hon'ble Supreme Court held that evidence on 'last seen together' is a weak piece of evidence and conviction only on the basis of 'last seen together' without there being any other corroborative evidence against the accused, is not sufficient to convict the accused for an offence under section 302 IPC.

The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant.

In **Rambraksh @ Jalim Vs. State of Chhattisgarh**, the Hon'ble Supreme Court held that it is trite law that a conviction cannot be recorded against the accused merely on the ground that the

accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would be sufficient and the prosecution has to complete the chain of circumstance to bring home the guilt of the accused.

In **Sujit Biswas Vs. State of Assam**, the Hon'ble Supreme Court held that suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof.

Conclusion

17. Considering the five golden principle established by Hon'ble Apex Court, in case titled as **Sharad Birdhichand Sarda Vs. State of Maharashtra** and **Rishipal Vs. State of Uttarakhand**, where in apex court has said that **motive is important in case of circumstantial evidence** and

in Bodh Raj @ Bodha Vs. State of J & K, Hon'ble Supreme Court has stated that **time gap between the last seen and death of deceased must be so small that possibility of any person other than the accused being the author of the crime becomes impossible** and

in Padman Bibhar Vs. State of Odisha, wherein Hon'ble Supreme Court has held that the **chain of circumstance must be so complete that there is no escape from the conclusion that within all human probabilities, crime was committed by the accused and non-else**, this court is of the opinion that the present case does not fall and pass the test of last seen theory and circumstantial evidence. Therefore the prosecution has not been able to prove the last seen theory and

circumstantial evidence against the accused persons and therefore they have failed to establish the case against the accused persons beyond the shadow of reasonable doubt.

ORDER

18. Since the prosecution has failed to establish its case against both the **accused persons namely Rajiv Kumar and Prince Kumar** and therefore they are **acquitted** from all the charges and guilt.

Since both the accused persons are in custody, office is directed to issue release order immediately.

The judgment dictated, corrected,
signed, dated and pronounced
today in the open court by me.

Sd/-

Avinash Kumar-I
District Sessions Judge-IV
Saharsa
07.04.2026

Sd/-

Avinash Kumar-I
District Sessions Judge-IV
Saharsa
07.04.2026