



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D.B. Criminal Appeal No. 740/2017

Badari Lal S/o Ram Singh, R/o Kholi, Police Station Bakani,
District Jhalawar. (At Present In District Jail, Jhalawar).

---Accused-Appellant

Versus

State Of Rajasthan Through P.P.

----Respondent

Connected With

D.B. Criminal Appeal No. 249/2017

1. Sujan Singh @ Gatiya S/o Shri Shiv Singh, R/o Kholi, Police
Station Bakani, Distt. Jhalawar Raj. (At Present In Distt. Jail,
Jhalawar)

2. Ghanshyam S/o Lalchand, R/o Kholi, Police Station Bakani,
Distt. Jhalawar Raj. (At Present In Distt. Jail, Jhalawar)

....Accused-Appellants

Versus

State Of Rajasthan Through PP

----Respondent

For Appellant(s) : Mr. Rinesh Gupta with
Mr. Sarwat Alam

For Respondent(s) : Mr. Amit Kumar Punia, PP

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL

HON'BLE MR. JUSTICE BHUWAN GOYAL

Judgment

17/03/2026

Per Hon'ble Mahendar Kumar Goyal, J.

Under challenge in these appeals is the judgment dated
18.01.2017 passed by the learned Additional Sessions Judge,
Jhalawar (Rajasthan) (for short, 'the learned trial Court') in



Sessions Case No.28/2016 whereby, the accused-appellants (for short, 'appellants') have been convicted and sentenced as under:

Accused-appellant Badari Lal:-

Section 302 IPC:- Life imprisonment and fine of Rs.10,000/-; in default whereof, 1 year's additional rigorous imprisonment.

Section 201 IPC:- 7 years' rigorous imprisonment and fine of Rs.3,000/-; in default whereof, three months' additional rigorous imprisonment.

Sentences to run concurrently.

Accused-appellants-Sujan Singh @ Gatiya and Ghanshyam:-

Section 302 read with Section 120B IPC:- Life imprisonment and fine of Rs.10,000/-; in default whereof, 1 year's additional rigorous imprisonment.

Section 201 IPC:- 7 years' rigorous imprisonment and fine of Rs.3,000/-; in default whereof, 3 months' additional rigorous imprisonment.

Sentences to run concurrently.

The relevant facts in brief are that Shri Shafiq Mohammad (PW3) lodged a written report (Ex. P2) with the SHO, Police Station Bakani on 01.06.2014 at about 10:00 am wherein, it was averred that at about 3:30 pm on 31.05.2014, his daughter Parveen had taken the goats for grazing to forest but, did not return by evening. It was further stated that despite intense search by the family members and villagers during whole night, she could not be traced but, in the morning, her dead body with a chunri noosed around her neck was found about a kilometer away from village near 'Nakaliya Anicut'. It was alleged that there were injury marks on her face, cigarette burn marks on her body with a



hand broken and stone in her mouth. It was alleged that Pappu Tanwar, Shyam Lal and Lal Chand, with whom he has had previous enmity, have murdered her after subjecting her to gang rape. Based thereupon, an FIR No.215 dated 01.06.2014 came to be registered under Sections 302, 376D IPC and Section 3/4 of the Protection of Children from Sexual Offences (POCSO) Act, 2012. After investigation, the appellants were charge-sheeted along with co-accused Pappu @ Dwarka Lal and Radhey Shyam @ Shyam. Charges under Sections 376, 302 read with Section 120B, Section 201 IPC read with Section 120B IPC were framed against the appellant-Badari Lal, charges under Section 302 IPC read with Section 120B and Section 201 IPC read with Section 120B were framed against the appellants-Sujan Singh @ Gatiya and Ghanshyam. Charge under Section 376(D) IPC was framed against the co-accused- Pappu @ Dwarka Lal and Radhey Shyam @ Shyam. After trial, while, co-accused Pappu @ Dwarka, Radhey Shyam @ Shyam as also the appellant-Badari Lal were acquitted of the charge framed against them under Sections 376(D) IPC and 376 IPC respectively, the appellants have been convicted and sentenced, as supra.

Assailing the impugned judgment, learned counsel for the appellants submitted that finding of the learned trial Court are based on conjectures and surmises and there was no legally admissible evidence available on record to connect them with the alleged offence. He contended that it was a case based on circumstantial evidence but, the learned trial Court failed to appreciate that the prosecution could not establish a complete



chain of events leading to only conclusion of his guilt. Inviting attention of this Court towards the findings recorded by the learned trial Court, he would contend that without recording a specific finding as to who were the witnesses of 'last seen', it was held that the prosecution was able to establish that the deceased was seen 'last' in the company of the appellants. Learned counsel submitted that the appellant-Badari Lal has been connected with the alleged offence on the strength of recovery of a shirt allegedly worn by him at the time of incident and a piece of cloth-stated to be torn part of the pocket of the shirt, recovered on his disclosure statement from the place of incident; however, the learned trial Court did not appreciate that the alleged recovery of the torn piece of pocket was made after 19 days from the date of incident that too from the place which was already searched twice; for the first time, on 1st June, 2014 and again on 6th June, 2014 but, it was not found there. He submitted that so far as the conspiracy on their part is concerned, learned trial Court has heavily relied upon their alleged mobile conversation based on the call details record but, the same was inadmissible in evidence in absence of the certificate under Section 65B, Evidence Act. He, therefore, prayed that the appeals be allowed, the judgment impugned dated 18.01.2017 be quashed and set aside and they may be acquitted of the charges framed against them.

Per contra, learned Public Prosecutor, opposing the submissions, stated that the learned trial Court has recorded the findings of the guilt of the appellants based on appreciation of cogent evidence available on record. He contended that the



prosecution was able to establish, beyond a reasonable doubt, that the appellants had committed murder of the deceased by strangulation. He, therefore, prayed that the appeals be dismissed.

Heard. Considered.

Indisputably, it was a case based on circumstantial evidence and the learned trial Court has relied upon following circumstances to connect the appellants with the offence:-

- (i) last seen evidence;
- (ii) recovery of incriminating evidence;
- (iii) call details of the appellants and
- (iv) motive

(i) Evidence of last seen:- So far as evidence of last seen is concerned, a perusal of the judgement impugned reflects that the learned trial Court has referred to the testimony of Shafiq Mohammad (PW3), Sharif Mohammad (PW1), Shakir (PW2), Smt. Heena (PW6), Firoza (PW8), Rukhasana (PW9), Ali (PW11), Saddam (PW12), Mahaveer (PW16), Smt. Jinnat Bai (PW27), Shri Akida Bai (PW39), Dr. Manish Kumar Bhardwaj (PW24), Dr. Mrityunjay Mandal (PW33), Dr Arsh Mehboob (PW36) and Khushal Singh (PW43)-the Investigating Officer but, without appreciating as to how the same was the evidence of 'last seen', recorded a finding that the same established that the deceased was seen last in the company of the appellants and was found dead near well of the appellant-Ghanshyam. We have scanned the evidence available on record with the assistance of the learned counsel for the appellants as also of the learned Public Prosecutor and find



that the prosecution has relied upon the testimony of Shakir (PW2) and Kalu Lal (PW34) as the witnesses of 'last seen'.

So far as deposition of Shakir is concerned, he has stated that he had gone along with deceased-Parveen upto some distance on the fateful day for grazing the goats whereafter, he returned back. He claimed that he had seen the appellants going towards well of Ghanshyam which was situated near Nakaliya Anicut (where the dead body was found) and at that time, Parveen was grazing the goats at a distance a little away from the well of Ghanshyam. However, in his cross-examination, he admitted that these averments were absent in his police statement-Ex.D1. Thus, there was improvement in his statement as to material aspects of the case impeaching his credibility. Further, neither in the site plan prepared by the prosecution nor, by way of any other evidence, the distance in between the well of Ghanshyam and the place of incident is disclosed. Therefore, his testimony does not inspire confidence as to him being the witness of 'last seen'.

So far as testimony of Kalu Lal (PW34) is concerned, he has been declared hostile and has not supported the prosecution story even during his cross-examination by the learned Special Public Prosecutor.

In view of the aforesaid evidence, we are not convinced that the prosecution has been able to establish that the deceased was 'seen last' in the company of the appellants.

(ii) Recovery of incriminating evidence:- Another circumstance relied upon by the learned trial Court for convicting the appellants, is recovery of a shirt and a piece of cloth



representing its torn pocket on the disclosure statement of appellant-Badari Lal. While, the shirt was recovered vide Ex.P39 on 20.06.2014 from the residence of the appellant-Badari Lal, the piece of cloth representing its torn pocket was recovered vide Ex.P55 on 19.06.2014 from the place of incident. However, the place of incident was searched, for the first time, on 01.06.2014 whereupon, the blood smeared soil and the control soil were picked up as is reflected from the seizure memo (Ex.P5) dated 02.06.2014 and site plan (Ex.P6) dated 01.06.2014. Further, the place of incident was again inspected on 06.06.2014 vide Ex.P27 on the disclosure statement of co-accused. Shri Manoj Singh (PW28), the then SHO, Police Station Jhalrapatan and one of the witnesses to seizure memo and the recovery site plan has, during his cross-examination, admitted that the cloth piece of the pocket was lying in open without any stone over it and it could be swept by air. The aforesaid circumstances create a doubt as to recovery of a piece of cloth-the torn part of pocket of the shirt as late as on 19.06.2014 from an open place accessible to all as admitted by Shri Manoj Singh (PW28) during his cross-examination.

(iii) Call details of the appellants:- So far as call details of the appellants are concerned, suffice it to say that the call details record was inadmissible in evidence in absence of the certificate as warranted under Section 65B of the Evidence Act. Indisputably, the call details record was in the nature of secondary evidence and could not have been read in evidence in absence of requisite certificate. Moreover, the prosecution has failed to establish that the subject mobile phone/number belonged to the appellants or



the deceased. Therefore, in our considered view, the learned trial Court erred in connecting the appellants with the offence on the theory of conspiracy based on mobile conversation in between themselves or with the deceased or the witness Firoza.

(iv) Motive:- In this regard, the learned trial Court has held, on the basis of DNA report, that biological father of the fetus in the womb of the deceased was appellant-Badari Lal but, while acquitting him of the charge framed under Section 376 IPC, it was held that the deceased must have blamed the appellant-Sujan @ Gatiya with whom she was in love relationship, resulting into her brutal murder. To substantiate this finding, the learned trial Court has relied upon the call details which, we have already held, to be inadmissible in evidence for want of the certificate under Section 65B, Evidence Act. Therefore, findings of the learned trial Court based on motive are not sustainable.

Their Lordships have, in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra: (1984) 4 Supreme Court Cases 116**, laid down that satisfaction of following golden principles is necessary before convicting an accused based on circumstantial evidence:-

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 MANU/SC/0167/1973: 1973 CriLJ 1783 where the following observations were made:

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

(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.

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

As already held, in the instant case, the prosecution has miserably failed to establish any circumstance against the appellants to connect them with the alleged offence. Neither it could be established that they were seen last in the company of the deceased nor, there was recovery of any incriminating evidence from them nor, any motive could be established. In view thereof, the appeals deserve to be allowed.



Resultantly, the appeals are allowed. The judgement impugned dated 18.01.2017 passed by the learned Additional Sessions Judge, Jhalawar (Rajasthan) in Sessions Case No.28/2016 is quashed and set aside. The appellants are acquitted of the charges framed against them. The appellant-Badari Lal be set at liberty forthwith if not required to be detained in any other case. Since, the appellants-Sujan Singh and Ghanshyam are on bail, their bail bonds are discharged.

In view of the provisions of Section 437-A CrPC (Section 481 Bharatiya Nagarik Suraksha Sanhita, 2023), the appellants namely **Badari Lal S/o Ram Singh, Sujan Singh @ Gatiya S/o Shri Shiv Singh and Ghanshyam S/o Lalchand** are directed to furnish a personal bond each in the sum of Rs.25,000/- and a surety in the like amount within four weeks before the Registrar (Judl.) of this Court which shall be effective for a period of six months with the stipulation that in the event of Special Leave Petition being filed against the judgement or on grant of leave, the appellant aforesaid, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

Pending application(s), if any, also stands disposed of accordingly.

(BHUWAN GOYAL),J

(MAHENDAR KUMAR GOYAL),J