

RESERVED

AFR

Court No. - 45

Case :- CAPITAL CASES No. - 7 of 2020

Appellant :- Ram Pratap @ Tillu

Respondent :- State of U.P.

**Counsel for Appellant :- From Jail, Agnivesh, Arimardan
Yadav, Jadu Nandan Yadav**

Counsel for Respondent :- A.G.A., Ram Naresh Singh

With

REFERENCE NO.05 OF 2020

Hon'ble Manoj Misra, J.

Hon'ble Sameer Jain, J.

(Delivered by Sameer Jain, J.)

1. The present appeal has been preferred by the appellant, Ram Pratap @ Tillu, against the judgment and order dated 21.3.2020 and 21.5.2020 passed by 8th Additional Sessions Judge, Etawah by which the trial court convicted the appellant under Section 302 IPC and awarded death sentence to him with fine of Rs.5 Lacs and in default two years R.I.

2. As death sentence was awarded, a reference, i.e., Reference No.5 of 2020 was made to the High Court under Section 366 Cr.P.C. for confirmation of death penalty.

INTRODUCTORY FACTS

3. In the present case, six persons of a family, namely, Suresh Chandra, deceased no.1 (in short D-1), Vimla Devi, deceased no.2 (in short D-2), Avnish, deceased no.3(in short D-3), Rashmi, deceased no.4 (in short D-4), Surabhi, deceased no.5 (in short D-5) and Shweta, deceased no.6 (in short D-6), were brutally murdered. Suresh Chandra (D-1) and Vimla Devi (D-2) were husband and wife whereas Avnish (D-3), Rashmi (D-4), Surabhi (D-5) and Shweta (D-6) were their son and daughters.

4. The FIR of the present case was lodged by Hom Singh (PW-1) on 28.5.2012 at about 7.45 AM. As per FIR, Vimla Devi (D-2), sister of informant (PW-1), was married to Suresh Chandra Yadav (D-1). The appellant, Ram Pratap @ Tillu is the brother of Suresh Chandra Yadav (D-1). Both the brothers resided separately and their properties stood divided. The appellant was a criminal minded person. He had disposed of his entire property and was pressurising his brother Suresh Chandra Yadav (D-1) and Vimla Devi (D-2) for additional property and money.

5. According to the FIR, the above circumstances were conveyed by Suresh Chandra Yadav (D-1) to the informant (PW-1) and his brother Suresh (PW-2). Consequently, both PW-1 and PW-2 went to village Pilkhar to pacify the

appellant but the appellant continued to pressurise Suresh Chandra Yadav (D-1) for money. On 15.6.2012 the marriage of Avnish (D-3), nephew of the informant (PW-1), was to take place. Due to all these reasons, appellant used to be annoyed with D-1 and kept an evil eye on the property of D-1. It is alleged that with that motive, in the night of 27/28.5.2012, appellant with the help of his associates committed the murder of Suresh Chandra Yadav (D-1), Vimla Devi (D-2), Avnish (D-3), Rashmi (D-4), Surabhi (D-5) and Shweta (D-6) thereby eliminating the entire family of Suresh Chandra Yadav (D-1).

6. The FIR of the present case was registered at Police Station Ikdil, District Etawah as Case Crime No.261 of 2012, under Section 302 IPC. After registration of the case, on 28.5.2012 the Investigating Officer recovered bloodstained and plain soil from the spot. He also recovered bloodstained pieces of clothes and gold earring from the spot and prepared a recovery memo (Ext.Ka-8) in respect thereof. On the same day, Investigating Officer recovered from the spot a piece of bread (Roti), 'Laddoo', 'Kachauri', three empty quarter bottle of wine, bowl containing Dal and potato vegetables in respect of which a recovery memo (Ext.Ka-9) was prepared. Thereafter, from the house of appellant, one bloodstained lock and one piece of bloodstained towel was recovered in respect

whereof, a recovery memo Ext.Ka-10 was prepared. Next day, on 29.5.2012, from the spot, bloodstained piece of bedsheets, bloodstained pieces of cots and bloodstained and plain pieces of bricks were also recovered in respect whereof, a recovery memo (Ext.Ka-48) was prepared. During investigation inquest reports were prepared and autopsy of the bodies were conducted. Autopsy reports Ext.42 to Ext.47 revealed as follows:-

Ante mortem injuries found on the body of Smt. Vimla Devi (Ext.Ka-42):-

1. Incised wound 14 cm x 08cm x through and through right side and back of neck, neck only attached anteriorly by skin and sub-cutaneous tissues with part of muscles, underlying C3 and C4 vertebra, spinal cord and major blood vessels on both sides of neck are cut.

Cause of death is shock and haemorrhage as a result of A/M injury mentioned above.

Ante-mortem injuries found on the body of Avneesh Yadav(Ext.Ka.43):

1. Incised wound 15 cm x 10 cm x bone deep in front side, underlying Trachea, major blood vessels of both sides, oesophagus, 3rd cervical vertebra with spinal cord are cut.

2.Incised wound 8 cm x 3 cm x bone deep on back of

lower part of right forearm wrist, underlying lower end of radius and ulna bones cut.

3. Incised wound 18 cm x 5 cm x through and through on left hand between IIIrd and IVth fingers left wrist and lower part of lower forearm, underlying left IVth metacarpal and lower part of left ulna cut.

Cause of death is shock and haemorrhage as a result of A/M injury mentioned above.

Ante mortem injuries found on the body of Km. Surabhi (Ext.44):

1. Incised wound 12 cm x 4 cm x bone deep on left side of face and left ear pinna, underlying mandible maxilla, temporal are cut.

2. Incised wound 8 cm x 3 cm x bone deep on front and left side of neck, Trachea, oesophagus, major blood vessels of both sides of neck., C4 and C5 vertebra cut with spinal cord cut.

Cause of death is shock and haemorrhage as a result of A/M injury mentioned above.

Ante mortem injuries found on the body of Suresh Chandra (Ext.Ka-45):

1. Incised wound 11cm x 5 cm x cavity deep on front and lower part of neck and adjacent part of left side of chest, underlying collar bone, sternum, left Ist Rib cut,

Trachea, oesophagus, left major blood vessel cut.

Cause of death is shock and haemorrhage as a result of A/M injury mentioned above.

Ante mortem injuries found on the body of Km. Shewta (Ext.Ka-46):

1. Incised wound 12cm x 8 cm x cavity deep on front and right side of neck lower part and right side upper chest, underlying cervical fractured; vertebra cut and incised.

Trachea, oesophagus, major blood vessels of right side cut.

Cause of death is shock and haemorrhage as a result of A/M injury mentioned above.

Ante mortem injuries found on the body of Km. Rashmi (Ext.Ka-47):

Incised wound 16 cm x 6cm x bone deep on front and right side of neck underlying trachea, oesophagus, major blood vessels of both sides of neck C3 and C4 cut.

Incised wound 6cm x 3cm x muscle deep on front of left shoulder.

Cause of death is shock and haemorrhage as a result of A/M injury mentioned.”

7. During investigation, on 19.11.2021 appellant was arrested and at his instance an axe was recovered. Investigating Officer prepared recovery memo of the axe as Ext.Ka-2.

8. After investigation, charge sheet was submitted against the appellant and co-accused Varun Raj. The case was committed to the court of Session and on 12.4.2013 charges under Section 302 read with Section 34 IPC were framed against the appellant and co-accused Varun Raj. The appellant and accused Varun Raj denied the charges and claimed trial.

9. During trial, prosecution examined Hom Singh (PW-1), Suresh (PW-2), Malkhan Singh (PW-3), Shiv Raj Singh (PW-4), Ashok Chandra Dubey (PW-5), Vinod Kumar Pandey (PW-6), Devendra Kumar Dwivedi (PW-7), Sudhakar Singh (PW-8), Sanjay Dubey (PW-9), Manish Jaat (PW-10) and Padamakant Dubey (PW-11). Nahne Ram has been examined as CW-1. Out of 11 prosecution witnesses, PW-1, PW-2, PW-3 and PW-4 are witnesses of facts. Rest of the prosecution witnesses are formal witnesses. CW-1, Nahne Ram, the Tehsildar, is a Court witness.

10. After recording the statement of prosecution witnesses, on 14.10.2019 and 26.10.2019 the trial court recorded the statement of accused-appellant under Section 313 Cr.P.C. In the meantime, on 21.11.2019 public prosecutor filed certified copy of FSL report dated 5.3.2013. On 25.11.2019 learned defence counsel made endorsement "No objection" on the application filed by the public prosecutor and FSL report dated 5.3.2013 was taken on record. Thereafter, on

29.11.2019, 3rd statement of appellant under Section 313 Cr.P.C. was recorded and after that Nanhe Ram, the Tehsildar, was examined as CW-1. Thereafter, on 20.1.2020, fourth statement of appellant under Section 313 Cr.P.C. was recorded.

11. On 16.12.2019, certified copy of the FSL report dated 29.8.2013 was filed and after perusing the entire evidence on record, trial court convicted the appellant under Section 302 IPC and awarded him death penalty. Co-accused Varun Raj was acquitted.

12. As according to the trial court the case fell in the category of the rarest of rare cases, trial court awarded death penalty to the appellant.

13. We have heard Sri Yadu Nandan Yadav, learned counsel for the appellant, Sri S.D.Yadav, Advocate holding brief of Sri Ram Naresh Singh, learned counsel for the informant and Sri Amit Sinha, learned AGA, for the State and have perused the record.

SUBMISSIONS MADE ON BEHALF OF APPELLANT

14. Learned counsel for the appellant submitted that the trial court committed grave error in convicting the appellant as it is a case of no admissible evidence. He submitted that there is no eye witness account of the incident. The prosecution

case is based on circumstantial evidence but prosecution has miserably failed to prove the incriminating circumstances and the chain of circumstance could not be proved.

15. Learned counsel for the appellant submitted that the trial court heavily relied upon motive for the crime and subsequent abscondence of the appellant as incriminating circumstances but they by themselves cannot form basis of conviction. He submitted that the motive shown that after eliminating his brother and his family, the appellant would inherit the property is misconceived because upon conviction for murder of the deceased no one can succeed to the estate of the deceased. Sri Jadu Nandan Yadav, learned counsel for the appellant, submitted that the recovery of bloodstained lock and bloodstained towel is rendered doubtful as one of the independent witnesses of the recovery, namely, Ashok Kumar, was not examined by the prosecution. He contended that as recovery of bloodstained towel is doubtful, serological report is of no value. Even if recovery of bloodstained towel is accepted, it cannot be said that the blood found on the piece of towel is of the deceased persons inasmuch as there is no serological report to indicate that the blood group of the deceased matched with the blood found on the towel. Moreover, there is no report on record regarding the blood group of any of the deceased persons. Therefore, mere

presence of blood on the recovered piece of towel is of no consequence and cannot be taken as an incriminating circumstance to hold the appellant guilty.

16. Learned counsel for the appellant also submitted that the incriminating circumstances, that is of abscondence of the appellant and recovery of bloodstained towel and lock from the house of the appellant, were not put to the appellant while recording his statement under Section 313 Cr.P.C. which caused prejudice to him therefore, those circumstances were to be eschewed. Hence, the appellant is entitled to be acquitted.

17. In the alternative, learned counsel for the appellant submitted that the facts of the case and the nature of evidence led do not warrant a death penalty.

SUBMISSIONS MADE ON BEHALF OF THE STATE AND THE INFORMANT

18. Learned AGA as well as the informant's counsel submitted that the prosecution has successfully proved the guilt of appellant beyond reasonable doubt and the trial court rightly convicted the appellant in the present case.

19. Learned AGA submitted that the appellant is the real brother of Suresh Chandra Yadav (D-1) and immediately after the crime, he absconded and could only be arrested after six months. His conduct shows he was guilty. Moreover, he

eliminated the entire family of his brother only to grab his property and after the incident, property of his brother, Suresh Chandra Yadav (D-1), came to the appellant and appellant executed a Power of Attorney in favour of his wife Smt. Manju to enable transfer of the property in favour of his daughter (Diksha). Thereafter, Diksha disposed off the entire property for Rs. Five crores. Thus, the motive for the crime stands duly proved as against the appellant.

20. Learned AGA also submitted that the appellant offered no explanation in respect of blood stained towel recovered from his house. Even the recovery was not challenged during cross-examination of the witnesses. The serological report was also not challenged. In fact, the defence counsel endorsed 'no objection' on the application through which the FSL report was filed. It was submitted that in the present case as many as six person including small children were brutally murdered, therefore, trial court rightly awarded death penalty to the appellant.

21. Having noticed the rival submissions and having perused the entire record of the case, before evaluating the prosecution evidence it would be appropriate to notice in brief the deposition of the prosecution witnesses.

Prosecution witnesses:-

22. **Hom Singh PW-1** is the informant, who lodged the FIR

of the present case. This witness stated that his sister Vimla Devi (D-2) was married to Suresh Chandra (D-1). Appellant was the sole brother of Suresh Chandra (D-1). Property of both the brothers had already been divided between them. Appellant disposed of his entire property and was eyeing the property of his brother. PW-1 stated that appellant is a criminal minded person and use to pressurize PW-1's sister (D-2) and Suresh Chandra (D-1) for money and property and also use to threaten them. PW-1 further stated that his brother-in-law (D-1) and his sister (D-2) conveyed all these facts to him, as a result, PW-1 and Suresh (PW-2) had gone to village-Pilkhar to settle the matter but in spite of their effort, the appellant continued to harass D-1 and D-2. PW-1 stated that the marriage of Avinash (D-3), his nephew, was fixed for 15.6.2015. Due to that, appellant was annoyed. On 27.5.2012, at about 6:00 pm, his brother-in-law, Suresh Chandra (D-1), informed PW-1 on mobile phone that appellant and co-accused Varun Raj, Kallu, Rajveer, Satyaveer, Dutt Singh and Suresh Chandra have threatened him that as, till date, land has not been transferred in the name of appellant, they will eliminate his entire family in the night itself. As per PW-1, he assured his brother-in-law (D-1) that he will come in the morning. But, in the morning, PW-1 received information that his brother-in-law and his entire family has been killed. PW-1 proved the written report as Ext. Ka 1. PW-1 also

stated that associates of appellant have threatened him that if he does not compromise the matter then his entire family will also be eliminated.

23. In his cross-examination, PW-1 stated that two-three times he participated in a panchayat held to settle the property dispute between the appellant and Suresh Chandra (D-1). PW-1 also stated that the mobile on which he received the phone call from Suresh Chandra (D-1) has been lost and, therefore, he could not provide its number as he is illiterate. He denied the suggestion that deceased No. 1 did not give him a phone call.

24. **Suresh has been examined as PW-2.** He is brother of Hom Singh (PW-1). In his statement PW-2 stated that his sister Vimla Devi (D-2) was married to Suresh Chandra Yadav (D-1). PW-2 stated that the brother of Suresh Chandra Yadav (D-1), namely, Rampratap @ Tillu (appellant), lived separately and the property had been divided between brothers. PW-2 reiterated that the appellant is a criminal type of a person and as he had disposed of his entire property, he was pressurizing his brother (D-1) and D-1's wife (D-2) for money and property. PW-2 stated that one day before the incident, he alongwith his brother Hom Singh (PW-1) went to settle the matter but all their efforts were in vain. PW-2 stated that 15.6.2012 was the date fixed for the marriage of

his nephew Avnish (D-3), invitation cards had also been distributed but, in the night of 27/28.5.2012, appellant along with his associates, namely, Varun and Dileep, killed his brother-in-law Suresh Chandra(D-1); his sister Vimla Devi (D-2); his nephew Avnish (D-3); his neices Rashmi (D-4), Shweta (D-5) and Surbhi (D-6). In his cross-examination, PW-2 admitted that the appellant had a separate residence in the village where his brother-in-law Suresh Chandra (D-1) resided.

25. Malkhan Singh has been examined as PW-3. This witness stated that on 28.5.2012, after receiving information about the murder of Suresh Chandra (D-1) and his family members, he arrived at village-Pilkhar. In his presence, from the spot, blood stained soil and other materials were recovered. PW-3 stated that Investigating Officer prepared recovery memo i.e. Paper No. 8Ka/1, 8Ka/2, 8 Ka/3 and 8Ka/4 which were read over to him and after hearing the contents of these recovery memos, he had put his signatures. In his cross-examination, this witness denied the suggestion that recovery memo was not prepared before him and that he put his signature on plain papers. PW-3 also denied the suggestion that the entire paper work was done at the police station. Interestingly, PW-3 did not specifically state that recovery of blood stained towel and lock was made from the house of appellant. He only stated that paper No.8Ka/3

(Ext.Ka.10) was read over to him and was signed by him.

26. Shivraj Singh was examined as PW-4. According to this witness, he and alongwith Rajesh @ Pappu (not examined) had gone to Barthana for some work on 10.11.2012. At the outskirts of Barthana, he met the appellant on a motor cycle. At that time, there were two more persons with the appellant who disclosed their name as Dilip and Vikas @ Varun. They stated that Hom Singh (PW-1), who comes from PW-4's family, has lodged an FIR against the appellant in respect of murder of his brother and his brother's family, therefore, he should ensure that the matter is settled. In this way, PW-4 tried to prove that the appellant had confessed his guilt. In his cross-examination, PW-4 stated that he went to Barthana to buy items for domestic use. He, however, could not disclose either the location of the shop or the name of the shopkeeper. PW-4 also stated that the day when he met the accused persons, the Sub Inspector had recorded his statement at about 10.00 AM. Interesting, PW-4 stated that he went to the market at around 12 pm and was there till 4-5 pm. In these circumstances, it be noted the trial court discarded the testimony of this witness.

27. Ashok Chandra Dubey is PW-5. This witness stated that he prepared parcha No. 4 of the case diary and perused the investigation parchas prepared earlier by the earlier Investigating Officer and started investigation of the case on

28.10.2012. On 30.10.2012 he recorded another statement of Hom Singh (PW-1) as also the statements of witnesses of recovery, namely, Ashok Kumar (not examined) and Malkhan Singh (PW-3). On 19.11.2012, he arrested appellant-Rampratap @ Tillu and, at his pointing out, recovered country-made pistol, empty cartridge and two motor cycles. He also stated that at the pointing out of the appellant, an axe, allegedly used in the crime, was recovered on 19.11.2012 in respect whereof, he prepared recovery memo (Ext.Ka-2). PW-5 also proved the site plan including its index (Ext. Ka-3) and proved submission of charge sheet (Ext. Ka-4) on 17.1.2013. In his cross-examination, PW-5 stated that after the arrest of appellant he did not record his statement at the spot. However, according to PW-5, on 19.11.2012 axe was recovered on the pointing out of the appellant from roof of the shop of Rajveer (not examined). PW-5 admitted that recovery of the axe was made after about six months of the incident.

28. Vinod Kumar Pandey has been examined as PW-6.

This witness is the first Investigating Officer of the case. PW-6 stated that on 28.5.2012, he was posted as Station House Officer at P.S. Ikdil, Etawah and on that day, Hom Singh (PW-1) handed over a written report against appellant and his associates in respect of murder of six persons of the family of his brother-in-law. He recorded the statement of PW-1 and inspected the spot and recovered blood-stained and plain soil

from the spot alongwith blood stained golden earring and prepared recovery memo (Ext.Ka-8). He also prepared the site plan (Ext. Ka-6) of the spot. PW-6 also prepared the site plan (Ext. Ka 7) of the house of appellant; and recovery memo (Ext.Ka-9) of food items including empty quarter bottles of wine found in the house of the deceased. PW-6 stated that he recovered a blood stained lock and blood stained towel from the house of the appellant. He proved the recovery memo of the same as Ext. Ka 10. PW-6 also produced these items in Court as material Ext. ka-2 to ka-16. In his cross-examination, PW-6 stated that Parcha No. 1 of the case diary is not in his hand writing. He also stated that details of both the site plans i.e. Ext. Ka-6 and Ka-7 were not in his writing. PW-6 stated that the site plan Ex. Ka-6 and Ex. Ka-7 were prepared on the instructions of the informant and at his pointing out. PW-6 admitted that the sample seal of material exhibits is not available on record as it was sent to the Forensic Laboratory. PW-6 denied the suggestion that he did not inspect the spot and that he completed the investigation exercise sitting at the police station.

29. Devendra Kumar Dwivedi has been examined as PW-7. He is the 3rd Investigating Officer of the case. He stated that on 5.8.2012, he was posted at Police Station-Ikdil and during investigation of the case, he prepared Parcha No. 20 of the case Diary. On 17.8.2012, he prepared parcha No.

21. He disclosed about his attempts to arrest the appellant-Rampratap @ Tillu. In his cross-examination, PW-7 stated that parcha Nos. 20 and 21 of the case diary were not in his hand writing and that those were in the hand writing of Head Constable. Likewise, parcha Nos. 22 and 23 of the case diary was also not in his hand writing.

30. S.I. Sudhakar Singh has been examined as PW-8. He was a Sub Inspector posted at Police Station Ikdil. On 28.5.2012, he prepared the inquest report of Suresh Chandra (D-1) (Ext.Ka-11) and his wife Smt. Vimla Devi (D-2) (Ext.Ka-16). PW-8 proved the inquest reports of Suresh Chandra (D-1) and Smt. Vimla Devi (D-2) as Ext.Ka-11 and Ka-16. He also proved preparation of other documents, like, Challan Nash, Photo Nash etc. which were marked as Ext. Ka-11 to Ka-20. PW-8 stated that inquest report of Avnish Chandra (D-3) and Km. Surabhi (D-4) was prepared by HCP Amar Singh, who has since retired. He stated that inquest report of Km. Rashmi (D-5) and Km. Shweta (D-6) was prepared by SI Babu Lal Dohre, who has since expired. PW-8 proved the inquest report of Avnish Chandra (D-3), Km. Surabhi (D-4), Km. Rashmi (D-5) and Km. Shweta (D-6) which were marked as Ka-21, Ka-26, Ka-32 and Ka-37, respectively He also proved other documents, like, Challan Nash, Photo Nash etc.

31. PW-9 Sanjay Dube, Nursing Assistant, CHC

Jashwant Nagar, Etawah. According to this witness, on 28.5.2012 he was posted as Nursing Assistant at Police Hospital, Etawah and he was present along with Dr. D.P.Singh at the post mortem house. He stated that on that day autopsy of all the six deceased persons was conducted by Dr. D.P.Singh. PW-9 proved the post mortem reports of all the six deceased persons as Ext.Ka.42 to Ka-47. This witness identified/proved the signature of Dr. D.P.Singh on the post mortem reports.

32. In his cross-examination PW-9, Sanjay Dubey, stated that he was not assigned duty in the post mortem house. He denied the suggestion that Dr. D.P.Singh did not prepare the post mortem report in his presence. He also stated that his job is to note the name of the dead body. He stated that in the post mortem house only the Doctor who conducts the post mortem and Sweeper are present. PW-9 admitted that he was not in the post mortem house at the time of autopsy. He also admitted that the entries in autopsy reports Ext.Ka-42 to Ka-47 were not made in his presence. He stated that he cannot state about the contents of the autopsy reports. PW-9, however, denied the suggestion that he wrongly verified the signature of Dr. D.P.Singh who conducted the autopsy of the bodies.

33. The prosecution examined Manish Jaat as PW-10.

He is the second Investigating Officer of the case. He stated that on 29.5.2012 he was assigned investigation of the present case. On 29.8.2012 he prepared CD Parcha No. 2 and recorded the clarificatory statement of the informant. On 30.5.2012 he prepared CD ParchaNo. 3 and made copy of inquest report and autopsy reports. On 29.5.2012 prepared the recovery memo (Ext. Ka-48) of all bloodstained items recovered from the spot. He deposed about attempts to arrest the appellant. On 7.6.2012 he prepared CD Parcha No.8 in respect of obtaining the process under Section 82 Cr.P.C. against the appellant. In CD Parcha no.15 of the case diary, dated 29.6.2012, he entered his efforts to arrest the appellant, He also conducted raids on the house of appellant and his sister to arrest the appellant, which was entered in CD Parcha No. 17, dated 8.7.2012, and in Parcha no. 18, dated 11.7.2012. He also copied the list of the items seized from the house of the appellant under Section 83 Cr.P.C. He stated that after making entry in CD parcha no. 19, dated 3.8.2012, he was transferred.

34. In his cross-examination PW-10 stated that parcha nos. 2 to 18 of the case diary are in one writing but they are not in his handwriting. PW-10 stated that informant is a resident of village Bandhana; he was not a witness of the incident; and that he arrived at the place of the incident on receipt of information from the villagers. He also stated that the previous Investigating Officer did not lift any item from the

spot even though it was there and it was PW-10 who prepared the memo Ext.Ka.48. He further stated that witnesses of recovery memo (Ext.Ka-48) were not from that village but from a place falling under other Police Stations. PW-10 stated that he did not prepare site plan of the spot. He also stated that during investigation he did not record statement of any witness of fact or of any formal witness. He, however, denied the suggestion that he did not inspect the spot or had completed the investigation sitting at home.

35. Head Constable, Padamkant Dubey, has been examined as PW-11. He proved the chik FIR (Ext.Ka-49) and G.D.entry (Ext.Ka-50) in respect thereof. PW-11 stated that Sushil Kumar, who prepared chik FIR (Ext.Ka-49) and G.D.entry (Ext.Ka-50) had died. He proved the entries by recognizing his handwriting and signature.

36. Nahne Ram, Tehsildar, has been examined as CW-1. This witness stated that Ram Sanahi (father of the appellant) died on 10.11.1997 and after his death his agricultural land was equally divided between his two sons, namely, Suresh Chandra (D-1) and Ram Pratap (appellant). He stated that the appellant disposed of his entire agricultural land between the year 2004 and 2011 through six sale deeds. CW-1 stated that half of the ancestral land of Suresh Chandra (D-1) was inherited by the appellant vide entry dated 25.7.2015. On

7.2.2016, appellant executed a power of attorney in favour of his wife, Manju. On 12.4.2016, Manju executed a sale deed of the property in favour of her minor daughter, Km. Diksha Yadav @ Aaradhya and for 22 plots of different sizes, she executed sale deeds in favour of several persons. Later, in the year 2019, Km. Diksha Yadav, daughter of the appellant, after attainment of majority, executed six sale deeds in favour of different persons of the property which came to her on transfer from her mother. According to CW-1, these properties were located on National Highways No.2 and were extremely valuable with a going rate of about Rs. Two Crores per hectare. He stated that the properties sold using power of attorney would be of the value of about Rs. Five Crores.

37. In his cross-examination, CW-1 stated that, during investigation, the Investigating Officer did not record his statement. CW-1 admitted that the appellant inherited the property of Suresh Chandra (D-1) and being the owner had all the rights to transfer the property.

38. After statements of the prosecution witnesses were recorded, trial court recorded the statement of appellant under Section 313 Cr.P.C. on 14.10.2019, 26.10.2019 and 29.11.2019. After the statement of CW-1 was recorded an additional statement of the appellant was recorded on 20.1.2020.

39. On 21.11.2019 the prosecution filed a certified copy of the FSL report through an application on which, on 25.11.2019, defence counsel endorsed “No objection” as a consequence whereof, the same was taken on record.

40. The trial court convicted and sentenced the appellant as above.

Analysis:-

41. The present case is based on circumstantial evidence. There is no eye witness account of the murders/incident. As to when conviction can be recorded in a case based on circumstantial evidence, the law is well settled. For the sake of brevity, instead of noticing multiple legal pronouncements in that regard, we deem it appropriate to notice a recent decision of a three-Judge Bench of the Apex Court in the case of ***Shatrughna Baban Meshram Vs. State of Maharashtra (2021) 1 SCC 596***, where, in paragraph 42, legal principles to be followed in a case based on circumstantial are crystallised as follows :-

“.....42. Before we deal with the second submission on sentence, it must be observed that as laid down by this Court in Sharad Birdhichand Sarda v. State of Maharashtra [(1984) 4 SCC 116], a case based on circumstantial evidence has to face strict scrutiny. Every circumstance from which conclusion of guilt is to be drawn must be fully established; the circumstances should be conclusive in nature and tendency; they must

form a chain of evidence so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused; and such chain of circumstances must be consistent only with the hypothesis of the guilt of the accused and must exclude every possible hypothesis except the one sought to be proved by the prosecution. The decision in Sharad Birdhichand Sarda V. State of Maharashtra [(1984) 4 SCC 116] had noted the consistent view on the point including the decision of this Court in Hanumant v. State of M.P. [1952 SCR 1091] in which a bench of three judges of this Court had ruled (AIR pp 345-46, para 10):-

“10. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

42. Keeping the aforesaid legal principles in mind, we shall evaluate the prosecution evidence. In the present case, prosecution had relied upon following **circumstances**:-

(A) Motive;

(B) Long abscondence of appellant Ram Pratap @ Tillu;

(C) Receipt of phone call by the informant-Hom Singh (PW-1) from Suresh Chandra (D-1) in the evening, preceding the night of the incident, that the appellant has threatened to kill D-1 and his family.

(D) Recovery of blood stained lock and blood stained towel from the house of the appellant;

(E) Extra judicial confession of the appellant before Shiv Raj Singh (PW 4);

(F) Recovery of blood stained axe on the pointing out of appellant;

(G) The serologist report which indicated presence of blood on the towel recovered from the house of appellant.

Motive:-

43. In the present case the motive set up by the prosecution is that the appellant who is the brother of Suresh Chandra Yadav (D-1) wanted to grab D-1's property as the appellant had already disposed off his entire property. Hom Singh, the informant (PW-1), and Suresh PW-2 stated that several times they participated in a Panchayat held to resolve the dispute between the appellant and the deceased No. 1 (Suresh Chandra). As per their testimony, appellant had already

disposed of his entire property therefore he use to pressurize Suresh Chandra (D-1) and his wife Vimla (D-2) for money and property and to grab D-1's property, appellant committed the murder of his brother (D-1) and of his entire family. Tehsildar-Nanhey Ram (CW-1) stated that after death of D-1's father, the entire property equally devolved upon Suresh Chandra (D-1) and Ram Pratap (appellant) but appellant disposed of his entire property by executing registered deeds between the year 2004 and 2011. CW-1 further proved that after the death of Suresh Chandra (deceased No. 1), half of the property was inherited by the appellant on 25.7.2015 regarding which, on 7.2.2016, appellant executed power of attorney in favour of his wife, Manju and, on 12.4.2016, Manju, executed a sale deed in favour of her daughter Km. Diksha Yadav @ Aradhya. In addition to that she executed sale deeds in favour of different persons of 22 plots and, later, after attaining majority, Diksha (daughter of appellant), in the year 2019, executed sale deeds of the properties in favour of different persons. CW-1 proved that the property of Suresh Chandra (D-1) was very valuable and the property transferred through several sale deeds would be worth Rs. Five crores.

44. Thus, from the statement of Hom Singh (informant) PW-1, Suresh (PW-2) and Nanhey Ram-Tehsildar (CW-1), it is

proved that appellant was a beneficiary of his brother's murder and could, therefore, be said to have motive to wipe out his brother Suresh Chandra (D-1) and his entire family to grab his property.

No doubt, in a case based on circumstantial evidence, motive has a role, particularly in assessing the probative value of the incriminating circumstances and it may serve as a vital link to the chain of circumstances but motive by itself is not sufficient to hold the accused guilty.

The Apex Court in the case of ***Ramesh Baburao Devaskar and others Vs. State of Maharashtra*** reported in ***[(2007) 13 SCC (501)]*** observed as follows:-

“.....26. Proof of motive by itself may not be a ground to hold the accused guilty. Enmity, as is well-known, is a double edged weapon. Whereas existence of a motive on the part of an accused may be held to be the reason for committing crime, the same may also lead to false implication. Suspicion against the accused on the basis of their motive to commit the crime cannot by itself lead to a judgment of conviction.”

Long abscondence of the appellant-

45. According to the prosecution, after the incident, appellant absconded and in spite of best efforts, he could not be promptly arrested. The statement of Sub Inspector-Ashok Chandra Dubey (PW-5) shows that appellant was arrested on

19.11.2012 i.e. after about five and a half months of the incident. Sub Inspector- Manish Jaat (PW-10), one of the Investigating Officers of the case, stated that on 7.6.2012, he approached the Court to obtain process under Section 82 Cr.P.C. against the appellant and on 8.6.2012, he got a news item published in news paper for the arrest of the appellant and thereafter, he tried to obtain a proclamation against the appellant under Section 83 Cr.P.C. Later, on 11.7.2012, in Parcha No. 18, PW-10 entered the list of the articles attached from the house of appellant. Thus, the testimony of Sub Inspector- Manish Jaat (PW-10), one of the Investigating Officers, reveals that efforts were made to arrest the appellant and as the appellant made himself scarce coercive processes under Sections 82 & 83 Cr.P.C. were undertaken to secure his arrest. From this it can be held that the prosecution has been successful in proving that the appellant-Ram Pratap @ Tillu was not available at his last known residence and could only be arrested after about more than five and a half months despite issuance of coercive steps in between. This circumstance is reflective of the conduct of the appellant of making himself scarce soon after the incident, which is relevant under Section 8 of Indian Evidence Act. Illustration (i) to Section 8 Evidence Act says:-

“(i) A is accused of a crime. The facts that, after the

commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.”

46. The Supreme Court in the case of ***Sujit Biswas Vs. State of Assam*** [2013 (12) SCC 406] observed in paragraph 23, as follows:-

“23..... the mere abscondence of an accused does not lead to a firm conclusion of his guilty mind. An innocent man may also abscond in order to evade arrest, as in light of such a situation, such an action may be part of the natural conduct of the accused. Abscondence is in fact relevant evidence, but its evidentiary value depends upon the surrounding circumstances, and hence, the same must only be taken as a minor item in evidence for sustaining conviction. (See: Paramjeet Singh V. State of Uttarakhand, (2010) 10 SCC 439; and S.K. Yusuf v. State of W.B., (2011) 11 SCC 754.”

Thus, no doubt, abscondence of an accused is a relevant fact and is admissible under Section 8 of the Indian Evidence Act but abscondance by itself is not a circumstance on the basis of which an accused may be convicted though, in conjunction with other surrounding circumstances, it may serve as a vital link to the chain of incriminating circumstances.

CALL OF D-1 To PW-1 ON THE EVE OF THE INCIDENT:

47. Hom Singh (PW 1) stated that on the eve of the incident, at about 6 pm, he received a phone call from his brother-in-

law Suresh Chandra (D-1) that appellant has threatened him that D-1's entire family will be killed in the night. In his cross examination, PW-1 neither disclosed the mobile number on which the call was received nor mobile number of D-1 from which the alleged call was made. Interestingly, PW-1, to avoid close cross-examination, stated that the mobile on which he received the call from Suresh Chandra (D-1) has been lost. In these circumstances, the statement of PW-1 in respect of receipt of phone call from the deceased on the eve of the incident does not inspire our confidence. We are therefore of the view that prosecution cannot take help of this alleged circumstance, inasmuch as, prosecution has failed to prove the said circumstance beyond reasonable doubt.

Recovery of blood stained lock and blood stained towel from the house of the appellant-

48. The fourth circumstance relied by the prosecution is recovery of blood stained lock and towel from the house of the appellant on 28.5.2012, i.e. on the day, FIR of the present case was lodged. PW-6, Sub Inspector- Vinod Kumar Pandey, first Investigating Officer of the case, stated that on 28.5.2012 he recovered a blood stained lock and blood stained piece of towel from the house of appellant and he prepared a seizure memo (Ext. Ka-10). Perusal of the seizure memo dated 28.5.2012 reveals that on 28.5.2012, Vinod Kumar Pandey (PW-6) in the presence of two witnesses, namely, Malkhan Singh (PW-3)

and Ashok Kumar (not examined), recovered/seized a blood stained lock and blood stained towel from the house of the appellant. Strangely enough, in the seizure memo (Ext. Ka-10), dated 28.5.2012, no time is mentioned and except the signature of Vinod Kumar Pandey (PW-6), the Investigating Officer, there is no signature of any other police personnel who was in the team of Policemen headed by Vinod Kumar Pandey (PW-6) at the time the house of the appellant was searched. If PW-6 alone carried out the search then it creates a serious doubt about the whole exercise as to why he did not involve the other team members in the exercise. Further, it is also not clear from the seizure memo (Ext. Ka 10), dated 28.5.2012, as to whet the verandah from where the blood stained towel was recovered could be accessed from outside or not. If that verandah was accessible from outside, the presence of towel would not be of much significance. Notably, the towel was not recovered on the basis of a disclosure statement but in a search operation. Therefore, it was necessary for the prosecution to establish that the place from where recovery of the towel was made was not accessible to all and sundry but only to the accused by showing that he had been in exclusive control or possession of that house. It is also not mentioned in the seizure memo (Ext. Ka-10), dated 28.5.2012, as to how witnesses Malkhan Singh (PW-3) and Ashok Kumar (not examined) were present at the time of

search even though they were residents of different village.

49. Site plan (Ext. Ka-7) shows that the blood stained towel was recovered from place-'B' which is an inner portion of the house. A careful scrutiny of the site plan (Ex.Ka-7) would reflect that the lock was recovered from the main door (Point no.A) which opens in the front verandah. In this front verandah there is opening of two more rooms. One is of appellant's wife Manju and the other is towards east. Both these rooms have entry to other portions of the house including the inner verandah as well as point 'B' from where the alleged towel was recovered. Neither the seizure memo (Ext.Ka-10) nor the site plan shows that those two rooms were found locked. Hence, there is no clinching evidence that the inner verandah where 'Point B' is located was not accessible from outside. Interestingly, in his cross examination, PW-6 (Vinod Kumar Pandey) stated that he prepared the site plan (Ext.Ka-7) of the house of the appellant on the instructions of informant-(Hom Singh)(PW-1). He also stated that he prepared the site plan (Ext. ka-7) of the house of appellant exactly as narrated by Hom Singh (PW-1). This is strange because perusal of seizure memo (Ext. Ka-10) dated 28.5.2012 would show that search and seizure was made in the presence of witnesses Malkhan Singh (PW-3) and Ashok Kumar (not examined) but not Hom Singh (PW-1) i.e.informant. It is not even mentioned in

seizure memo dated 28.5.2012 (Ext. Ka-10) that at the time of search and seizure, PW-1 was present. In fact, there is no signature of PW-1 on Ext. Ka-10.

50. Further, PW-3 Malkhan Singh does not state that the blood stained lock and blood stained towel was recovered in his presence from the house of appellant. He only stated that paper No. 8 Ka/3 (Ext. Ka-10) was prepared before him and read over to him and thereafter, he put his signature thereon. The testimony of PW-3 therefore does not support the recovery of lock and towel although it supports the preparation of recovery memo. The other witness of the recovery, namely, Ashok Kumar has not been examined.

51. In addition to above, PW-6 Vinod Pandey, the Investigating Officer, stated that he did not himself prepare parcha No. 1 of the case diary dated 28.5.2012 and that it is not mentioned in the case diary as to who has written Parcha No. 1. He also admitted that Parcha No. 1 to 16 of the case diary are in one handwriting. If parcha No.1 of the case diary dated 28.5.2012 has not been written by PW-6, the Investigating Officer, who allegedly made recovery of blood stained towel and lock from the house of appellant on 28.5.2012, and it is not known as to who wrote parcha No.1, then the entire exercise of recovery of blood stained items from the house of appellant is rendered doubtful. Similar statements have been given by other Investigating Officers.

Sub Inspector Devendra Kr. Dwivedi (PW 7), in his cross examination, stated that parcha Nos. 20 and 21 of the case diary are not in his hand writing. He also admitted that parcha Nos. 22 and 23 are not in his handwriting. In fact, he could not disclose as to who had written parcha Nos. 22 and 23 of the case diary. Further, PW-10, Sub Inspector, Manish Jaat, in his cross examination, stated that parcha Nos. 2 to 18 are in one handwriting but those were not in his handwriting.

52. In our opinion, these circumstances suggest that investigation of the present case was not conducted properly. Rather, it appears tainted. As per Section 172 of Cr.P.C. it is the duty of the investigating Officer to maintain a case diary of the case and note down all the steps of investigation in the case diary on a daily basis. Ordinarily, the lapses on the part of Investigating Officer do not affect the outcome of a criminal trial based on ocular account but in a case based on circumstantial evidence, these lapses assume importance and where the prosecution relies heavily upon recovery/ seizure of incriminating articles from the house of the accused then such recovery/seizure has to be proved beyond the pale of doubt therefore, here, such lapses on the part of Investigating Officer are fatal to the prosecution case.

53. Thus, on the basis of the discussion above, we are of the view that the alleged recovery of blood stained lock and

bloodstained towel from the house of the appellant on 28.5.2012 has not been proved beyond reasonable doubt and it has also not been established beyond reasonable doubt that the place from where the towel was recovered was not accessible without removal of the lock allegedly put on the main door.

Extra Judicial Confession-

54. The fifth circumstance relied by the prosecution is extra judicial confession alleged to have been made by appellant before Shivraj Singh (PW-4). The law in respect of the value of an extra judicial confession is settled by a catena of decisions of the Apex Court. The Apex Court in the case of ***Sahadevan Vs. State of Tamil Nadu*** reported in [2012 (6) SCC 403] observed as follows:-

“14. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the Court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra- judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra- judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.”

The case of ***Sahadevan (supra)*** has been discussed and approved by a three Judges Bench of Supreme Court in the

case of *Shailendra Rajdev Pasvan Vs. State of Gujarat etc.* reported in (2020) 14 SCC 750.

In the instant case, as per Shivraj Singh (PW 4), on 10.11.2012, when he alongwith Rajesh @ Pappu (not examined) had gone to village-Bharthana, the appellant alongwith two other co-accused, Dileep and Vikku@Varun, had contacted him and had informed him about the existence of FIR against the appellant in respect of the murder and had requested PW-4 to ensure a settlement at any cost. In his cross examination, Shivraj Singh (PW-4) stated that on 10.11.2012 i.e., the date when he met the appellant, his statement was recorded by the police at 10:00 am. He stated that he had gone to market at about 12:00 noon and remained there till 4-5 pm. PW-4 could not disclose the location of the shop which he had visited that date. Thus, if the statement of Shivraj Singh (PW-4) was recorded at about 10.00 AM how could he have made a disclosure about the meeting with the appellant when he had allegedly met him after noon. Thus, the statement of PW-4 does not inspire our confidence. Moreover, the statement of PW-4 is not in respect of any specific statement made by the appellant by way of confession of his guilt but it is in respect of the knowledge of the FIR being lodged against him and for settlement of the matter. We are, therefore, in agreement with the finding of the trial court that the testimony of PW-4 (Shivraj Singh) is not

worthy of credit. We therefore discard the circumstance of extra judicial confession alleged to have been made by the appellant.

Recovery of blood stained axe on the pointing out of the appellant-

55. According to the prosecution, on 19.11.2012 appellant was arrested and on his pointing out a bloodstained axe was recovered. S.I. Ashok Chandra Dubey (PW-5) stated about the recovery of axe at the instance of the appellant. Recovery memo of axe (Ext. Ka-2) shows that on 19.11.2012 at the instance of the appellant from the roof of a shop of Rajbeer Singh (not examined) a bloodstained axe was recovered. Learned AGA submitted that recovery of axe is admissible under Section 27 of Indian Evidence Act and is therefore an incriminating circumstance against the appellant. Notably, the alleged axe was recovered after about five and half months of the incident and that too, from an open place which is not proven to be inaccessible or concealed. Rather, it is an open roof, therefore, in our view, it has hardly any relevance more so, when there is no evidence on record to show that the axe was sent for forensic examination to find out whether there was presence of human blood on it. Thus, in our view, recovery of the axe cannot be treated as an incriminating circumstance to convict the appellant for the murder of the

deceased.

Serological Report-

56. As, we have already disbelieved the recovery of bloodstained lock and bloodstained towel from the house of appellant, the report of the serologist loses its relevance. Even otherwise though the serologist report dated 05.03.2013 (paper no. 122 ka/2) shows presence of blood on the towel but its origin is not ascertained. Report of the serologist shows that the sample quantity on the lock was so small that it could not be ascertained whether it was bloodstained or not. The note of serologist on the report suggests that in respect of the origin and classification of the blood, a separate report was awaited. Order-sheet of the case dated 16.12.2019 shows that Pairokar of Police Station Ikdil filed a supplementary case diary, alongwith certified copy of FSL report dated 29.8.2013. FSL report dated 29.8.2013 shows that origin of the blood on the piece of towel (recovered from the house of appellant) could not be ascertained as it got disintegrated. Thus, there is no clinching evidence that the blood found on the towel was human blood much less of the group of the deceased.

57. In the case of **Raghav Prapanna Tripathi Vs. State of U.P. AIR 1963 SC 74** the issue was whether the two missing persons were killed or not because their bodies were not

traced out though some blood-stains were found. In that context, in absence of serologist's report that the blood was of human origin, by a majority view, the Supreme Court observed, in paragraph no. 21, as follows:-

“In this connection, reference may also be made to circumstances 9 and 10, relating to the recovery of the bloodstained earth from the house. The blood-stained earth has not been proved to be stained with human blood, Again we are of opinion that it would be far-fetched to conclude from the mere presence of blood-stained earth that earth was stained with human blood and that the human blood was of Kamla and Madhusudhan. These circumstances have, therefore, no evidentiary value.”

58. In **Balwan Singh Vs. State of Chhattisgarh and another (2019) 7 SCC 781** a three judges Bench of the Apex Court after discussing several earlier judgments of the Supreme Court including the judgment in **Raghav Prapanna Tripathi (supra)**, in paragraph no. 23, held as under:-

“From the aforementioned discussion, we can summarise that if the recovery of bloodstained articles is proved beyond reasonable doubt by the prosecution, and if the investigation was not found to be tainted, then it may be sufficient if the prosecution shows that the blood found on the articles is of human origin though, even though the blood group is not proved because of disintegration of blood. The Court will have to come to the conclusion based on the facts and circumstances of each case, and there cannot be any fixed formula that the prosecution has to prove, or need not prove, that the blood groups match.”

59. Recently, the Apex Court after discussing all the relevant judgments this regard, in the case of **Madhav Vs. State of Madhya Pradesh AIR 2021 SC 4031** observed, in paragraph no. 32, as follows:-

“Therefore, as pointed out by this Court in Balwan Singh Vs. State of Chhattisgarh (2019) 7 SCC 781, there cannot be any fixed formula that the prosecution has to prove, or need not prove that the blood groups match. But the judicial conscience of the Court should be satisfied both about the recovery and about the origin of the human blood.”

60. From the above noted judgments of Supreme Court, what emerges is that though it cannot be laid as a rule that wherever prosecution has failed to prove the origin of blood found on the article, the recovery is to be held not incriminating but in any case the recovery has to be proved beyond reasonable doubts. In the instant case, we have already doubted the recovery of blood-stained towel and the lock. Moreover, this alleged recovery is not on the basis of a disclosure statement. In these circumstances, when the recovery was made in absentia (i.e. when appellant was not even present in the house) of articles, which are not proved to be bearing human blood much less of the relevant group, in our view, the recovery, firstly, is not duly proved, and secondly, is not to be taken as a clinching circumstance to hold the appellant guilty.

61. That apart, we also notice that the serologist report dated

29.8.2013 was not even put to appellant u/s 313 Cr.P.C. However, as there is nothing incriminating in it against the appellant, we do not propose to remand the matter to trial court on that ground.

62. In view of the discussion above, we find that although prosecution might have been successful in proving the motive for the crime against the appellant and also that the appellant made himself scarce after the incident, but except these two circumstances prosecution failed to prove beyond reasonable doubt any other incriminating circumstance on the basis of which we may hold the appellant guilty. Merely on the basis of motive and abscondence, though it may give rise to strong suspicion, the accused cannot be held guilty. The Apex Court in case of **The State of Odisha Vs. Banabihari Mohapatra and another** AIR 2021 SC 1375, in paragraph no. 38, observed:-

“It is well settled by a plethora of judicial pronouncement of this Court that suspicion, howsoever strong cannot take the place of proof. An accused is presumed to be innocent unless proved guilty beyond reasonable doubt. This proposition has been reiterated in Sujit Biswas v. State of Assam reported in AIR 2013 SC 3817.”

Recently, a three judges bench of Apex Court in the case of **Shailendra Rajdev Paswan** (supra), in paragraph 16, observed as follows:-

“16. It is well settled by now that in a case based on circumstantial evidence the Courts ought to have a

conscientious approach and conviction ought to be recorded only in case all the links of the chain are complete pointing to the guilt of the accused. Each link unless connected together to form a chain may suggest suspicion but the same in itself cannot take place of proof and will not be sufficient to convict the accused.”

63. In the case at hand, the chain of circumstances pointing to the guilt of appellant could not be completed. Therefore, in our view, the appellant is entitled to be acquitted.

64. For all the reasons recorded above, the judgment of the trial court in our opinion cannot be sustained and is liable to be set aside. The appeal is **allowed**. The reference to confirm the death penalty is answered in negative and reference to confirm the death penalty awarded to accused-appellant Ram Pratap @ Tillu is rejected. The judgment and order of the trial court is set aside. The appellant Ram Pratap @ Tillu is acquitted of all the charges for which he has been tried. The appellant shall be released forthwith, unless wanted in any other case, subject to compliance of the provisions of Section 437-A Cr.P.C. to the satisfaction of the court below.

65. Let a copy of the judgment be sent to the court below for information and compliance.

Order Date :- 8.7.2022

SKM