

2025:PHHC:072092-DB



CRA-D-729-DB-2004 (O & M)

::1::

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-D-729-DB-2004 (O & M)

Reserved on: 23.05.2025

Date of Pronouncement: 27.05.2025

Gajinder alias Lambhu

... Appellant

V/s

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL  
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Harkanwar Jeet Singh, Advocate as Amicus Curiae  
for the appellant.

Mr. Ranvir Singh Arya, Addl.A.G., Haryana.

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**JASJIT SINGH BEDI, J.**

The present appeal has been filed against the judgment of conviction and order of sentence dated 01/03.06.2004 passed by the Additional Sessions Judge (I), Faridabad.

2. The instant FIR came to be registered on 28.12.2002. The accused-appellant/Gajender @ Lambu came to be convicted vide judgment of conviction and order of sentence dated 01/03.06.2004. The present appeal against the judgment of conviction and order of sentence was filed on 03.08.2004. The matter has come up for final hearing now after almost 23 years of the registration of the FIR.

2025:PHHC:072092-DB



CRA-D-729-DB-2004 (O & M)

::2::

3. The prosecution case is that Ramesh-deceased had been a student of 10th standard and on account of his father Amar Singh having gone to his native village in Uttar Pradesh, he was all alone at his house situated near the house of his complainant uncle Bhola Singh who statedly received information at about 10.00 a.m. on 28.12.2002 that the said Ramesh was lying dead at his house. Upon his visiting the house of Ramesh, he noticed the dead body of Ramesh lying on a cot in the *Varandah* with a belt around his neck. He suspected the involvement of the relatives of one Neetu, daughter of accused Lambu alias Gajender with whom Ramesh allegedly had an illicit relationship.

4. During the course of investigation PWs Shiva and Pawan Kumar disclosed to the police that around 1.00 a.m. on the night intervening 27th and 28th of December, 2002, they had noticed the accused Lambu alias Gajender, Bholu and Suraj coming out of the house of Ramesh and the next morning they learnt that Ramesh had been strangled to death.

5. On the basis of allegations as set-forth in the report under Section 173 Cr.P.C. and the accompanying documents, accused Suraj was charged under section 302 IPC whereas his co-accused Gajender alias Lambu and Nand Kishore alias Bholu were charged for the said offence under Section 302 read with Section 34 IPC. All the accused pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution examined as many as thirteen witnesses namely Bhola Singh, Amar Singh, Narender Kumar,

2025:PHHC:072092-DB



CRA-D-729-DB-2004 (O & M)

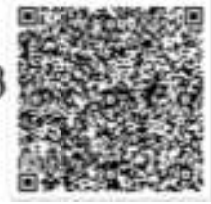
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Shiva, Pawan Kumar, Anoj Kumar-draftsman, EHC-Satyawan, ASI-Satbir, ASI-Rohtas Singh, SI Bijender Kumar, Sanjay, Inspector Randhir Singh and Dr. Subhash as PWs 1 to 13 respectively.

7. The gist of the prosecution evidence is as under:-

Bhola Singh was examined as PW-1. He stated that Ramesh (since deceased) was his nephew. On 28.12.2002, he had gone to the room of Ramesh and found him dead. A leather belt was found around the neck. A blood-stained towel was lying there. Nostrils of the deceased were bleeding. A sketch of a photo made with the help of a pencil on plain paper was also lying near the dead body of the Ramesh. A diary and *danda* were also found lying there. A letter Ex.P-1 was in the diary which was lying there. The photo sketch was Ex.P-2. On seeing the letter, Ex.P-1, he raised a suspicion upon Lambu whom he did not recognize and had not seen till that date. He raised a suspicion about Lambu because name of a girl named Neetu was there in the letter. He did not know about the relation between Ramesh and Neetu and his statement Ex.PA bore his signatures. A *gadda* and towel stained with blood were taken into possession vide memo Ex.PC which bore his signatures. He identified the body of Ramesh. In cross-examination, he stated that Amar Singh had gone to U.P. one month prior to the incident. The photo sketch in pencil, a *danda*, a pencil and a diary were lying there. He did not know about the contents of the diary as the police party was holding the same. A police man had told him that the name of Neetu was written in the letter. On confrontation, it was found that the letter Ex.P-

2025:PHHC:072092-DB



CRA-D-729-DB-2004 (O & M)

::4::

I did not refer to the name of Neetu. He did not know as to whose daughter she was.

Amar Singh was examined as PW-2. He stated that Ramesh (deceased) was his son. In November 2002, he had gone to his native village U.P. leaving Ramesh behind. On 28.12.2002, he received a message regarding the murder of his son and returned back on 29.12.2002. The police came to their *jhuggi* and took them to the police post from where they took him to Annagpur for arresting the father of Neetu. In his presence, Gajender, father of Neetu was arrested. He was brought to the police post and on interrogation, made a disclosure statement that in the evening his daughter had gone to the *jhuggi* of Ramesh. He alongwith his brother Suraj and brother's brother-in-law Nand Kishore accused followed his daughter. They saw Neetu and Ramesh in a compromising condition. Then, Suraj put a belt around the neck of Ramesh, he (Gajender) caught the legs and Nand Kishore caught his head, thus, committing the murder of Ramesh. He (Lambu @ Gajender) got recovered a diary from his *jhuggi* which was taken into possession vide a memo Ex.PE and the diary was Ex.P-3. In cross-examination, he stated that he knew about the relation between Neetu and Ramesh about a month prior to him going to his village. Pawan and Shiva had met him on 29.12.2002 at about 11.00 a.m., in the *jhuggis* before he went to B.K. Hospital, Faridabad and met the police. He did not disclose the factum of meeting Pawan and Shiva to the police.

2025:PHHC:072092-DB



CRA-D-729-DB-2004 (O & M)

::5::

Narender Kumar was examined as PW-3. He stated that he was a Teacher in Bharat Public School, Dabua Colony, NIT Faridabad. In 2002, he was the Class Teacher of Ramesh son of Amar Singh. On 28.01.2003, the police had come to him and had shown him a diary Ex.P-3 which he identified to be in the hand writing of Ramesh. He had also handed over an answer-sheet of Ramesh Ex.P-5 on the same date to the police consisting of 12 pages in the hand writing of Ramesh. In cross-examination, he stated that Ramesh had not written the contents of the diary or the answer-sheet in his presence and he was not an expert in the science of hand writing.

Shiva was examined as PW-4. He stated that he knew Ramesh (deceased). He, however, did not know about any relations between Ramesh and Neetu. He had not seen the accused present in the Court on the night intervening 27/28.12.2002 near the *jhuggi* of deceased-Ramesh. As he did not support the prosecution case, the public prosecutor cross-examined him wherein he denied that he had made a statement before the police that Ramesh had relations with Neetu daughter of Gajender and that the family members of Neetu had come to know about this fact. He also denied the suggestion that on the night intervening 27/28.12.2002 at about 1.00 a.m., he and Pawan Kumar had seen the accused-Gajender, Suraj and Daflu coming from the *jhuggi* of Ramesh alongwith Neetu.

Pawan Kumar was examined as PW-5. He stated that he did not know anything about the case. He was cross-examined by the Public Prosecutor and denied his earlier statement made during the course of

2025:PHHC:072092-DB



CRA-D-729-DB-2004 (O & M)

::6::

investigation regarding the illicit relations between Ramesh and Neetu and the fact that he had seen the accused coming out of the *jhuggi* of the deceased-Ramesh.

Anoj Kumar-draftsman was examined as PW-6. He stated that he had prepared the scaled site plan Ex.PJ on the demarcations of Bhola Singh. In cross-examination, he stated that *jhuggi* of the deceased-Ramesh was surrounded by other *jhuggis*.

EHC Satyavan (PW-7) and ASI Balbir Singh (PW-8) tendered their affidavits (Ex.PK and Ex.PL) in their evidence.

PW-Rohtas Singh-ASI was examined as PW-9. He stated that on 28.12.2002 at about 11.30 a.m., Bhola Singh met him and made a statement Ex.PA with regard to the incident. He made his endorsement Ex.PA/1 and forwarded the said statement through Constable Ram Dutt for registration of a case on which a formal FIR No.1342 was recorded at Police Station NIT Faridabad under Section 302 IPC by Sh. Girraj Singh-ASI. A copy thereof is Ex.PA/2. Thereafter, endorsement Ex.PA/3 was made by ASI Girraj Singh.

Bijender Kumar SI was examined as PW-10. He stated that on 06.02.2003, he was posted as Incharge, Police Post No.3, NIT Faridabad. On that date, he had gone to the police station and had recorded the statement of MMHC-Balbir Singh and EHC Satyavan. Then, on 11.02.2003, he collected the scaled site plan from the draftsman-Anoj

2025:PHHC:072092-DB



CRA-D-729-DB-2004 (O & M)

::7::

Kumar and also recorded his statement. He also collected some photographs from Sanjay Kumar and recorded his statement as well.

Sanjay-Photographer was examined as PW-11 and stated that he visited the place of incident and took snaps Ex.P-6 to P-9 and their negatives were Ex.P10 to P-13.

Randhir Singh-Inspector Police/SHO, Police Station NIT Faridabad was examined as PW-12. He stated that on 28.12.2002, on receipt of information that Ramesh had been murdered, he reached the spot and conducted inquest proceedings Ex.PM. He forwarded the dead body for post mortem examination. He inspected the spot and prepared a rough site plan Ex.PN. A towel, a tehmad and a *danda* were lying found at the spot which are Ex.P-14 to P-16 and were seized under memo Ex.PC which bore his signatures. He also recovered a pencil sketch photo of a girl lying near the dead body which was on the back side of a question paper. He collected a love letter vide Ex.PB which bore his signatures and was attested by Bhola Singh and Shiv Parshad. The love letter was Ex.P-1 and the pencil sketch of the girl was Ex.P-2. On 29.12.2002, he took into possession the leather belt Ex.P-14. On 31.12.2002, in the presence of Amar Singh and Shiv Parshad, he apprehended the accused Lambu @ Gajender. On interrogation, he suffered a discoloration statement Ex.PD in which he stated that diary containing the reference of the affair between the deceased and Neetu was placed on the bed of his *jhuggi* and he could get the same recovered. Thereafter, the diary Ex.P-3 was recovered and taken into possession vide

2025:PHHC:072092-DB



CRA-D-729-DB-2004 (O & M)

::8::

memo Ex.PE. On 08.01.2003, he went to Bharat Public School where, on showing the diary Ex.P-3 to his (deceased-Ramesh's) Class Teacher-Narender and a class-fellow/Ravi Kant, the writing was identified as that of the deceased. He also collected an answer-sheet Ex.P-5 of the deceased and recorded the statements of Narender and Ravi Kant. On 23.01.2003, Suraj and Bholu @ Nand Kishore were arrested. Suraj and Bholu @ Nand Kishore identified the place of the occurrence. On completion of the investigation, a report under Section 173 Cr.P.C. was submitted. In cross-examination, he stated that he did not interrogate Neetu at any stage nor did he get her medico legally examined. The diary had been sent to the FSL on 28.01.2003.

Dr. Subhash Manchanda was examined as PW-13. He stated that he alongwith two medical officers constituted a Board for conducting the post-mortem examination of the deceased-Ramesh. As per their report Ex.PU, they found the following injuries:-

*There was a ligature mark of about 12 inches x 1-1/2 encircling around the neck extending from 1" below the left angle of mandible on the neck all around involving fracture of cricoid thyroid and tracheal rings. Skin over the ligature mark was shining. On dissection, muscles below the marking were ecchymosed and ruptured. Clotted blood was also present on the scalp on the right parietal region. Peripheral synosis was also present. Bleeding from the nose was there. Tongue was bitten between teeth. Post mortem staining and the rigor mortis was present. Lungs, pleura were health and congested. Right*



*ventricle was containing little blood. There was no other specific finding.*

*In our opinion, the cause of death was due to asphyxia as a result of strangulation which was antemortem in nature and was sufficient to cause death in the ordinary course of nature. Police request is Ex.PU/1. The Inquest report is Ex.PN consisting of four pages and each page bears the initials of Dr.Sangeeta Khurana whose initials I identify.*

FSL report Ex.PH was tendered in evidence.

8. When examined under Section 313 Cr.P.C. accused Lambu alias Gajender pleaded innocence. He claimed that the case in hand was a blind murder case. He had been falsely implicated because the complainant party suspected illicit relations between his own daughter Neetu and Ramesh, since deceased. Similarly his co-accused Nand Kishore and Suraj alias Saurabh pleaded their innocence and false implication on account of the complainant party suspecting illicit relationship between the deceased Ramesh and Neetu, daughter of their co-accused Lambu @ Gajender.

9. Based on the evidence led, while acquitting the co-accused, namely, Nand Kishore @ Bholu and Suraj @ Saurabh, the accused-appellant, namely, Gajender @ Lambu came to be convicted and sentenced by the Court of the Additional Sessions Judge (I), Faridabad, vide judgment of conviction and order of sentence dated 01/03.06.2004 as under:-

Name of the accused	Offence U/S	Sentence	Fine	In default of payment of fine
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Gajender Lambu	@	302 IPC	Life Imprisonment	Rs.5,000/-	--
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10. The aforementioned judgment of conviction and order of sentence dated 01/03.06.2004 passed by the Additional Sessions Judge (I), Faridabad is under challenge before this Court.

11. During the pendency of this appeal, the sentence of the accused-appellant, namely, Gajender @ Lambu was suspended by this Court vide order dated 30.09.2004.

12. The learned Amicus Curiae for the appellant contends that it is a case of circumstantial evidence. As per the prosecution case, Neetu-daughter of Gajender @ Lambu was in a relationship with the deceased-Ramesh because of which Gajender @ Lambu, Suraj and Bholu @ Nand Kishore allegedly committed his murder. From the house of the deceased, a letter Ex.P-1 was recovered which has been found to be in the writing of the deceased in which the deceased-Ramesh is purportedly writing to the elders of Neetu to get her married to him. Similarly, a diary Ex.P-3 containing references of the relationship between the deceased-Ramesh and Neetu has been shown to have been recovered from his *jhuggi* on the basis of the disclosure statement of the accused/appellant Gajender @ Lambu. The two prosecution witnesses, namely, Shiva (PW-4) and Pawan Kumar (PW-5) who are stated to have seen the present accused and the two acquitted accused, namely, Suraj and Nand Kishore @ Bholu coming out of the *jhuggi* of Ramesh (deceased) have turned hostile. Taking the case of the prosecution



::11::

to be correct, the evidence would suggest motive on the part of the accused to have committed the offence without anything more. He, thus, contends that as the chain of circumstantial evidence is not complete, the impugned judgment is liable to be set aside and the accused be acquitted of the charges framed against him.

13. The learned counsel for the State, on the other hand, contends that there is sufficient evidence on record to establish that it was the accused who had committed the murder of the deceased as he had seen him (deceased-Ramesh) in a compromising position with his daughter-Neetu. The affair between the deceased and the daughter of the accused-appellant Neetu is apparent from letter Ex.P-1 and the diary Ex.P-3. He, thus, contends that the present appeal is liable to be dismissed.

14. We have heard the learned counsel for the parties.

15. The present case is based on circumstantial evidence and in the context of circumstantial evidence, the Hon'ble Supreme Court in the case of **Sharad Biridhichand Sarda Vs. State of Maharashtra, 1984 AIR Supreme Court 1622** held as under:-

*“152. 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*



::12::

*'must be or should be proved' as was held by this Court in Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 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.*

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

*(emphasis supplied)*

The Hon'ble Supreme Court in the case of **Anjlu Dumdung Versus State of Jharkhand, 2006(4) RCR (Criminal)** has held that suspicion howsoever strong cannot take the place of proof. The relevant para is as under:-

*"12. Thus, from the aforesaid discussion, it would be clear that out of the five circumstances, the prosecution has failed to prove the recovery of bloodstained balwa and tangi upon the*



*disclosure statement of accused Rajesh Yadav @ Raju Gowala by credible evidence. The circumstance that the appellant came to his village from Punjab four to five days before the date of the alleged occurrence and was seen by PW18 in village Simdega cannot be said to be an unnatural conduct on the part of the appellant, as such the same cannot be taken as a circumstance against him. Recovery of one torch cell and knife from the pocket of appellant after the date of alleged occurrence cannot be used as a circumstance against him, especially when neither there is any case nor evidence that the knife recovered was stained with blood. The other circumstances which remain are motive and letter written by the appellant giving false information to his brother that he was dead. These two circumstances raise strong suspicion against the appellant, but it is well settled that suspicion howsoever strong it may be cannot take the place of proof. In any view of the matter, on the basis of these circumstances, it is not possible to draw an irresistible conclusion which is incompatible with innocence of the appellant so as to complete the chain. It is well settled that in a case of circumstantial evidence, the chain of circumstances must be complete and in case there is any missing link therein, the same cannot form the basis of conviction. For the foregoing reasons, we are of the opinion that prosecution has failed to prove its case beyond reasonable doubt against all the accused persons, much less the appellant.”*

(Emphasis supplied)

In *Ramanand @ Nandlal Bharti Versus State of Uttar Pradesh, 2022 AIR Supreme Court 5273*, in the context of circumstantial evidence, the Hon'ble Supreme Court held as under:-



::14::

*“46. Although there can be no straight jacket formula for appreciation of circumstantial evidence, yet to convict an accused on the basis of circumstantial evidence, the Court must follow certain tests which are broadly as follows:*

*1. Circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;*

*2. Those circumstances must be of a definite tendency unerringly pointing towards guilt of the accused and must be conclusive in nature;*

*3. The circumstances, if taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and*

*4. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused but should be inconsistent with his innocence. In other words, the circumstances should exclude every possible hypothesis except the one to be proved.”*

*47. There cannot be any dispute to the fact that the case on hand is one of the circumstantial evidence as there was no eye witness of the occurrence. It is settled principle of law that an accused can be punished if he is found guilty even in cases of circumstantial evidence provided, the prosecution is able to prove beyond reasonable doubt the complete chain of events and circumstances which definitely points towards the involvement and guilty of the suspect or accused, as the case may be. The accused will not be entitled to acquittal merely because there is no eye witness in the case. It is*



*also equally true that an accused can be convicted on the basis of circumstantial evidence subject to satisfaction of the expected principles in that regard.”*

(Emphasis supplied)

In the recent judgment of '**Karakattu Muhammed Basheer versus The State of Kerala 2024(10) SCC 813**', the Hon'ble Supreme Court in the context of circumstantial evidence has held as under:-

*11. Thereafter, the above principles have been reiterated in the subsequent judgments of this Court and hold the field till date. Thus, these basic established principles can be summarized in the following terms that the chain of events needs to be so established that the court has no option but to come to one and only one conclusion i.e. the guilt of the accused person. If an iota of doubt creeps in at any stage in the sequence of events, the benefit thereof should flow to the accused. Mere suspicion alone, irrespective of the fact that it is very strong, cannot be a substitute for a proof. The chain of circumstances must be so complete that they lead to only one conclusion that is the guilt of the accused. Even in the case of a conviction where in an appeal the chain of evidence is found to be not complete or the courts could reach to any another hypothesis other than the guilt of the accused, the accused person must be given the benefit of doubt which obviously would lead to his acquittal. Meaning thereby, when there is a missing link, a finding of guilt cannot be recorded. In other words, the onus on the prosecution is to produce such evidence which conclusively establishes the truth and the only truth with regard to guilt of an accused for the charges framed against him or her, and such evidence should establish a chain of events so complete as to not leave any reasonable ground for the conclusion consistent with the innocence of accused.*



16. As regards the law laid down by the Hon'ble Supreme Court with respect to the evidentiary value of motive:-

In *N.J. Suraj Versus State represented by Inspector of Police, 2004(11) SCC 346*, it was held as under:-

*“4. Now, the only circumstance which remains is that the accused has a motive for the commission of the offence which alone cannot form the basis for conviction as it is well settled that in a case of circumstantial evidence, the circumstances should be such so as to lead to only one irresistible conclusion, which is incompatible with the innocence of the accused. This being the position, we are of the view that the prosecution has failed to prove its case beyond reasonable doubt and the High Court was not justified in upholding the convictions of the appellant.”*

(emphasis supplied)

In *Sampath Kumar Versus Inspector of Police, Krishnagiri, 2012(2) RCR (Criminal)*, it was held as under:

*“14. In the present case the testimony cannot be wholly reliable or wholly unreliable. He is not a chance witness who had no reason to be found near the deceased at the time of the occurrence. There is evidence to show that Palani (PW7) used to sleep with the deceased-Senthil in the verandah of the house. What makes it suspect is that the witness has, despite being a natural witness, made a substantial improvement in the version without their being any acceptable explanation for his silence in regard to the fact and matters which was in his knowledge and which would make all the difference in the case. The Court would, therefore, look for independent corroboration to his version, which corroboration is not forthcoming. All that is brought on record by the prosecution is the presence of a strong*



*motive but that by itself is not enough to support a conviction especially in a case where the sentence can be capital punishment. In N.J. Suraj v. State represented by Inspector of Police, (2004)11 SCC 346, the prosecution case was based entirely upon circumstantial evidence and a motive. Having discussed the circumstances relied upon by the prosecution, this Court rejected motive which was the only remaining circumstance relied upon by the prosecution stating that the presence of a motive was not enough for supporting a conviction, for it is well-settled that the chain of circumstances should be such as to lead to an irresistible conclusion, that is incompatible with the innocence of the accused. To the same effect is the decision of this Court in Santosh Kumar Singh v. State through CBI., 2010(4) RCR (Criminal) 593 : 2010(5) Recent Apex Judgments (R.A.J.) 518 : (2010)9 SCC 747 and Rukia Begum v. State of Karnataka, 2011(3) RCR (Criminal) 745 : 2011(4) Recent Apex Judgments (R.A.J.) 306 where this Court held that motive alone in the absence of any other circumstantial evidence would not be sufficient to convict the appellant. Reference may also be made to the decision of this Court in Sunil Rai @ Paua and Ors. v. Union Territory, Chandigarh, 2011(3) RCR (Criminal) 636 : 2011(4) Recent Apex Judgments (R.A.J.) 164 . This Court explained the legal position as follows :*

*"In any event, motive alone can hardly be a ground for conviction. On the materials on record, there may be some suspicion against the accused but as is often said suspicion, howsoever, strong cannot take the place of proof."*

15. Suffice it to say although, according to the appellants the question of the appellant-Velu having the motive to harm the deceased-Senthil for falling in love with his sister, Usha did not survive once the family had decided to offer Usha in matrimony to the deceased-Senthil. Yet even assuming that the appellant-Velu



*had not reconciled to the idea of Usha getting married to the deceased-Senthil, all that can be said was that the appellant-Velu had a motive for physically harming the deceased. That may be an important circumstance in a case based on circumstantial evidence but cannot take the place of conclusive proof that the person concerned was the author of the crime. One could even say that the presence of motive in the facts and circumstances of the case creates a strong suspicion against the appellant but suspicion, howsoever strong, also cannot be a substitute for proof of the guilt of the accused beyond a reasonable doubt.”*

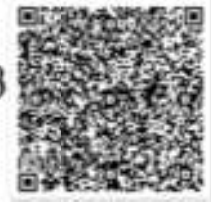
(emphasis supplied)

In **Ramanand @ Nandlal Bharti Versus State of Uttar**

**Pradesh, 2022 AIR Supreme Court 5273**, it was held as under:

*“87. It is a settled principle of criminal jurisprudence that in a case based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. This Court in various decisions has laid down the principles holding that motive for commission of offence no doubt assumes greater importance in cases resting on circumstantial evidence than those in which direct evidence regarding commission of offence is available. It is equally true that failure to prove motive in cases resting on circumstantial evidence is not fatal by itself. However, it is also well settled and it is trite in law that absence of motive could be a missing link of incriminating circumstances, but once the prosecution has established the other incriminating circumstances to its entirety, absence of motive will not give any benefit to the accused.*

*88. Having regard to the nature of the evidence on record, there is something to indicate that the accused appellant had illicit relationship with Manju and wanted to settle in life marrying Manju. As noted above, in the past accused appellant had got*



*engaged with Manju and was on the verge of getting married. At the relevant point of time when the accused appellant got engaged with Manju, it appears that one and all including the deceased Sangeeta were consenting parties. There is nothing on record to indicate that at the time of engagement of accused appellant with Manju, the deceased Sangeeta had raised hue and cry or had opposed such decision of her husband. Of course, this is something which is very personal. If at all we believe the illicit relationship of the accused appellant with Manju, then it is possible that the deceased Sangeeta might be an absolutely helpless lady and could not have done anything in that regard. However, the moot question is should this motive by alone be held sufficient to convict the accused appellant for the alleged crime and sentence him to death.*

89. *In the case of Sampath Kumar v. Inspector of Police Krishnagiri, (2012) 4 SCC 124, decided on 02.03.2012, this Court held as under:*

*"29. In N.J. Suraj v. State [(2004) 11 SCC 346 : 2004 SCC (Cri) Supp 85] the prosecution case was based entirely upon circumstantial evidence and a motive. Having discussed the circumstances relied upon by the prosecution, this Court rejected the motive which was the only remaining circumstance relied upon by the prosecution stating that the presence of a motive was not enough for supporting a conviction, for it is well settled that the chain of circumstances should be such as to lead to an irresistible conclusion, that is incompatible with the innocence of the accused.*

*30. To the same effect is the decision of this Court in Santosh Kumar Singh v. State [(2010) 9 SCC 747 : (2010) 3 SCC (Cri) 1469] and Rukia Begum v. State of Karnataka [(2011) 4 SCC 779 : (2011) 2 SCC (Cri) 488 : AIR 2011 SC 1585] where this Court held that motive alone in the absence of any other*



::20::

*circumstantial evidence would not be sufficient to convict the appellant. Reference may also be made to the decision of this Court in Sunil Rai v. UT, Chandigarh [(2011) 12 SCC 258 : (2012) 1 SCC (Cri) 543 : AIR 2011 SC 2545] . This Court explained the legal position as follows: (Sunil Rai case [(2011) 12 SCC 258 : (2012) 1 SCC (Cri) 543 : AIR 2011 SC 2545] , SCC p. 266, paras 3132)*

*"31. ... In any event, motive alone can hardly be a ground for conviction.*

*32. On the materials on record, there may be some suspicion against the accused, but as is often said, suspicion, howsoever strong, cannot take the place of proof."*

*31. Suffice it to say although, according to the appellants the question of the appellant Velu having the motive to harm the deceased Senthil for falling in love with his sister, Usha did not survive once the family had decided to offer Usha in matrimony to the deceased Senthil. Yet even assuming that the appellant Velu had not reconciled to the idea of Usha getting married to the deceased Senthil, all that can be said was that the appellant Velu had a motive for physically harming the deceased. That may be an important circumstance in a case based on circumstantial evidence but cannot take the place of conclusive proof that the person concerned was the author of the crime. One could even say that the presence of motive in the facts and circumstances of the case creates a strong suspicion against the appellant but suspicion, howsoever strong, also cannot be a substitute for proof of the guilt of the accused beyond reasonable doubt."*

*[Emphasis supplied]*

*90. Thus, even if it is believed that the accused appellant had a motive to commit the crime, the same may be an important*



*circumstance in a case based on circumstantial evidence but cannot take the place as a conclusive proof that the person concerned was the author of the crime. One could even say that the presence of motive in the facts and circumstances of the case creates a strong suspicion against the accused appellant but suspicion, howsoever strong, cannot be a substitute for proof of the guilt of the accused beyond reasonable doubt.*

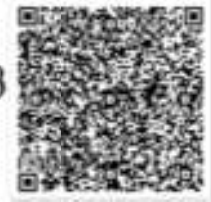
*91. The fact that we have ruled out the circumstances relating to the making of an extra judicial confession and the discovery of the weapon of offence as not having been established, the chain of circumstantial evidence snaps so badly that to consider any other circumstance, even like motive, would not be necessary.”*

(Emphasis supplied)

17. A perusal of the law as laid down by the Hon'ble Supreme Court is that in a case based on circumstantial evidence, motive is an essential plank of evidence and the absence of motive would certainly create a doubt in the prosecution case. However, it is also a settled proposition of law that motive in itself, without any other substantial evidence, even if strong is not sufficient to establish the guilt of an accused.

18. Coming back to the facts of the instant case, PW-4/Shiva and PW-5/Pawan Kumar, both of whom are said to have made statements during the course of investigation that they had seen the accused coming out of the *jhuggi* of the deceased-Ramesh have since turned hostile. The only remaining evidence against the accused-appellant is that of the recovery of a letter Ex.P-1 purportedly addressed to the elders of Neetu wherein he states that even if her family was to marry her else where she will not forget him

2025:PHHC:072092-DB



CRA-D-729-DB-2004 (O & M)

::22::

(deceased). Similarly, there is a diary Ex.P-3 which as per the FSL report Ex.PH is stated to have been written by the deceased-Ramesh and is shown to have been recovered from the accused which contains reference to the relationship between the deceased-Ramesh and Neetu-daughter of Gajender @ Lambu. The said evidence of motive, even if believable is insufficient to affix the guilt of the accused. In fact, it can be stated without hesitation that the chain of circumstantial evidence is not so complete so as to establish beyond doubt that it is the accused-appellant alone who must have committed the offence.

19. In view of the aforementioned discussion, we find that the prosecution has failed to establish it's case beyond reasonable doubt and therefore, the instant appeal is allowed. The impugned judgment dated 01/03.06.2004 passed by the Additional Sessions Judge (I), Faridabad, is set aside and the accused-appellant is acquitted of the charges framed against him.

20. The pending applications, if any, shall stands disposed of accordingly.

**( GURVINDER SINGH GILL )  
JUDGE**

**27.05.2025**  
sukhpreet

**( JASJIT SINGH BEDI )  
JUDGE**

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No