

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1478 of 2018**

Arising Out of PS. Case No.-134 Year-2011 Thana- SOHSARAI District- Nalanda

Soni Devi, wife of Lallan Prasad, resident of Village/Mohalla - Asha Nagar,
P.S.- Soh Sarai, District- Nalanda

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant : Mr. Anirudh Kumar Sinha, Advocate
Mr. Santosh Kumar, Advocate
For the Respondent-State: Mr. Ajay Mishra, APP

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)
Date: 15-09-2021**

Heard Mr. Anirudh Kumar Sinha, learned counsel
for the appellant and Mr. Ajay Mishra, learned Additional Public
Prosecutor for the State.

2. This appeal is directed against the judgment of
conviction dated 1st December, 2018 and the consequent order
of sentence dated 5th December, 2018 passed by the learned
Presiding Officer, Fast Track Court-I, Nalanda at Bihar Sharif in
Sessions Trial Case No. 291 of 2012/ C.N.R. No. 0070 of 2012
arising out of Sohsarai P.S. Case No.134 of 2011 whereby and
whereunder the sole appellant has been convicted for the
offences punishable under Sections 302 and 201 of the Indian



Penal Code (for short 'IPC') and sentenced to undergo rigorous imprisonment for life besides a fine of Rs.25,000/- for the offence under Section 302 of the IPC and in default of payment of fine to further undergo rigorous imprisonment for three years and rigorous imprisonment for five years and a fine of Rs.5,000/- for the offence under Section 201 of the IPC and in default of payment of fine to further under rigorous imprisonment for six months. However, both the sentences were directed to run concurrently.

3. The First Information Report (for short 'FIR') of Sohسرائ P.S. Case No.134 of 2011 is based on the *fardbeyan* of one Ram Pravesh Kumar (P.W.3), which was recorded by one Shree Kant Sharma (P.W.9), a Sub-Inspector of Police of Sohسرائ Police Station on 13th December, 2011 at 6:55 PM in the Mohalla- Habibpura.

4. In his *fardbeyan*, the informant stated that on 13th December, 2011 at about 2:45 PM, while he was going to his field, his two years old son, namely, Prashant Kumar started coming behind him. When he reached the *Trimuhani* of his lane and saw his son Prashant Kumar following him, he persuaded him to return to his home and went to his field. His wife came to the field about fifteen minutes after he had reached his field. She



inquired about Prashant Kumar and said that he had not returned to his home. On hearing this, he stopped working in his field and began to inquire about his son's whereabouts near his house and in an adjacent locality. He also arranged for an announcement on the loudspeaker about his missing son in the locality. At about 6:30 PM, when he reached near Mogalkuwan Masjid, he came to know that a dead body of a child is thrown at Habibpura Mohalla besides the shop of one Laddu Sao. On coming to know about the recovery of a dead body of a child, he immediately reached that place and found that a large number of people had assembled there. He also found that the police party had already arrived there. When he moved ahead, he saw that a child rolled in a *gendra* (a locally made mattress of textile in Bihar) and a plastic bag beside him was lying there. On seeing the boy, he identified it to be his son. When he went closer, he found that his son was dead. He started crying. He claimed that some unknown miscreant had killed his son and thrown his body to conceal the evidence.

5. Based on the said *fardebayan*, Sohsarai P.S. Case No. 134 of 2011 dated 13th December, 2011 was registered under Sections 302 and 201/34 of the IPC against an unknown accused person by the aforesaid Shree Kant Sharma and he took



up the investigation of the case himself. He inspected the place of occurrence, recorded the statements of witnesses under Section 161(3) of the Code of Criminal Procedure (for short 'CrPC'), prepared the inquest report and sent the body of the deceased Prashant Kumar to the hospital for postmortem examination.

6. On completion of the investigation, the police submitted its report under Section 173(2) of the CrPC before the court of Chief Judicial Magistrate, Nalanda on 2nd March, 2012.

7. After going through the police report and the materials collected during the investigation, the learned Chief Judicial Magistrate, Nalanda took cognizance of the offences on 2nd March, 2012 itself and summoned the appellant to face trial.

8. The learned Chief Judicial Magistrate, Nalanda, after complying with the statutory requirements of Section 207 of the CrPC committed the case to the Court of Sessions for trial vide order dated 24th May, 2012. The Sessions Court (hereinafter referred to as 'Trial Court') framed charges under Sections 302 and 201 of the IPC against the appellant on 5th July, 2012 to which she pleaded not guilty and claimed to be tried.

9. During the trial, the prosecution examined altogether nine witnesses. They are Sunil Kumar (P.W.1), *fufa* of



the deceased; Bibha Devi (P.W.2), mother of the deceased; Ram Pravesh Kumar (P.W.3), father of the deceased; Nago Mahto (P.W.4), Fudi Paswan (P.W.5), Jitendra Paswan (P.W.6), Anaik Lal (P.W.7), a witness to the *fardbeyan* and the inquest report; Dr. Pramod Kumar Singh (P.W.8), who had conducted the postmortem examination and Shree Kant Sharma (P.W.9), the investigating officer (for short 'I.O.')

10. Apart from the oral testimony of the witnesses, the prosecution also proved certain documents during trial.

11. After the closure of the prosecution case, the circumstances appearing against the appellant were explained to her by the Trial Court and her statement was recorded under Section 313 CrPC.

12. The defence did not examine any witnesses in support of its case.

13. After the closure of the evidence on behalf of the parties, arguments were heard and the Trial Court convicted and sentenced the appellant in the manner stated hereinabove.

14. Being aggrieved and dissatisfied with the judgment of the Trial Court, Mr. Anirudh Kumar Sinha, learned counsel for the appellant submitted that as a matter of fact, it is a case of no evidence. He contended that three independent witnesses,



namely, Nago Mahto (P.W.4), Fudi Paswan (P.W.5) and Jitendra Paswan (P.W.6) did not support the case of the prosecution. He contended that Anaik Lal (P.W.7) is also a formal witness, who has simply proved his signature on the inquest report of the deceased. He further contended that P.W.8 is the doctor, who had conducted the postmortem examination on the body of the deceased and P.W.9 is the I.O. of the case. According to him, the remaining three witnesses are closely related to the deceased. Even they are not witnesses to the actual murder of the victim. He contended that the Trial Court did not appreciate the evidence led before it in correct perspective. He urged that in absence of any direct evidence to the homicide, the Court may convict an accused upon circumstantial evidence, but the circumstantial evidence must be that of the guilt of the accused and incompatible with any other hypothesis. He submitted that in the instant case, there are several missing links in the chain of circumstances. He contended that the Trial Court has convicted the appellant on the evidence of a sniffer dog, which is not admissible in law. According to him, the reliance placed by the Trial Court in this regard is completely erroneous. He also contended that the incriminating circumstances, which have been relied upon by the Trial Court for convicting the appellant



were not even explained to her while she was being examined under Section 313 of the CrPC.

15. On the other hand, Mr. Ajay Mishra, learned Additional Public Prosecutor for the State submitted that it is true that there is no direct evidence in the case, but the prosecution has been able to prove its case from the surrounding and relevant circumstances. He contended that P.Ws.1, 2 and 3 had identified the *gendra* in which the body of the deceased child was rolled and thrown at the place from where it was recovered. They all stated before the Court that the *gendra* belonged to the appellant. He further contended that the witnesses examined during the trial have also stated that the appellant was having animosity with the mother of the deceased. They all have stated that the appellant always used to quarrel with the mother of the deceased on the issue of throwing garbage of her house in the locality. He further admitted that the sniffer dog's evidence would also be relevant and would be treated to be a link in the chain of circumstances proved against the appellant.

16. We have heard learned counsel for the parties and carefully perused the record.

17. From the evidence on record, it emerges that this



case is based upon circumstantial evidence. There is no witness to the actual murder of the victim, two years old Prashant Kumar, at the hands of the appellant, Soni Devi.

18. It is not in dispute that the absence of any eye witness to the homicide cannot come in the way of the conviction of the accused where the crime has to be inferred from the surrounding and relevant circumstances.

19. However, the parameters and principles within which circumstantial evidence is to be assessed by Courts to conclude guilt or otherwise are well established. Precisely, to sustain a conviction on circumstantial evidence, the factual circumstances should be so established that the only inference to the said circumstances must be that of the guilt of the accused, incompatible with any other hypothesis. The circumstances on record should form a complete and consistent chain of events, which rule out every other hypothesis except the guilt of the accused.

20. In *Hanumant Govind Nargundkar & Anr. vs. State of M.P.*, since reported in *AIR 1952 SC 343*, the Supreme Court held:

“10. Assuming that the accused Nargundkar had taken the tenders to his house, the prosecution in order to bring the guilt home



to the accused, has yet to prove the other facts referred to above. No direct evidence was adduced in proof of those facts. Reliance was placed by the prosecution and by the courts below on certain circumstances, and intrinsic evidence contained in the impugned document, Exhibit P-3-A. In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases there is always the danger that conjecture or suspicion may take the place of legal proof and therefore it is right to recall the warning addressed by Baron Alderson to the jury in Reg v. Hodge [(1838) 2 Lew 227] where he said:

“The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete.”

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. In spite of the forceful arguments addressed to us by the learned Advocate-General on behalf of the State we have not been able to discover any such evidence either intrinsic within Exhibit P-3-A or outside and we are constrained to observe that the courts below have just fallen into the error against which warning was uttered by Baron Alderson in the above mentioned case.”

21. In ***Bhagat Ram vs. State of Punjab***, since reported in ***AIR 1954 SC 621*** it was held: “*where the case depends upon the conclusions drawn from circumstances, the cumulative effect of the circumstances must be such as to negative the innocence of the accused and to bring home the offences beyond any reasonable doubt. It has been consistently held by this Court*



that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person.”

22. In ***Sharad Birdhichand Sarda vs. State of Maharashtra***, since reported in ***(1984) 4 SCC 116***, the Supreme Court in paras 153 and 154 held :

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrI LJ 1783] where the observations were made: [SCC



para 19, p. 807: SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

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



23. In *Padala Veera Reddy vs. State of A.P.*, since reported in *1989 Supp (2) SCC 706*, the Supreme Court laid down that in case of circumstantial evidence, the evidence must satisfy the following tests:

“(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, 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 and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

24. Keeping in mind the ratio laid down by the Supreme Court in the aforementioned cases, we would now analyze as to whether there exists a chain of evidence so complete as not to leave any reasonable ground for a conclusion



consistent with the innocence of the appellant and the circumstances show that within all human probabilities the murder of the child must have been done by the appellant.

25. From the evidence on record, we find that **Nago Mahto (P.W.4)**, **Fudi Paswan (P.W.5)** and **Jitendra Paswan (P.W.6)** have not supported the prosecution case at all. At the request of the prosecution, the Trial Court declared them hostile. Their evidence is of no help to the prosecution. We further find that **Anaik Lal (P.W.7)** is a formal witness. He has proved his signature and the signature of the informant Ram Pravesh Kumar on the inquest report which have been marked as Exhibit 2 and 2/1 respectively. He has also proved his signature on the seizure list, which has been marked as Exhibit 2/1. **Shree Kant Sharma (P.W.9)**, who had recorded the *fardebayan*, had proved his signature on the *fardebayan*, which has been marked as Exhibit 4. He proved his signature on the formal FIR, which has been marked as Exhibit 5. He also proved his signature on the inquest report and the seizure list, which have been marked as Exhibit 6 and Exhibit 7.

26. **Dr. Pramod Kumar Singh (P.W.8)** had conducted a postmortem examination on the body of the deceased on 14th December, 2011 at Sadar Hospital, Biharsharif at 6.30 AM. In



his deposition, he stated that the dead body was brought and identified by two Havildars, namely, Rambaran Paswan and Ram Gulam Paswan and the father of the deceased Ram Pravesh Kumar. He described the cause of death of Prashant Kumar to be asphyxia due to suffocation. According to him, the time elapsed since death was 24 hours. He proved his signature on the postmortem report, which was marked as Exhibit 3.

27. So far as the informant **Ram Pravesh Kumar (P.W.3)** is concerned, in his testimony, he has corroborated his statement made in the *fardebayan* in examination-in-chief. He added that he came to know that it was the appellant Soni Devi, who had killed his son. He attributed the motive for killing his son to be a previous dispute between his wife and the appellant over throwing of garbage in the house at a nearby place. He stated that the police brought the sniffer dog. The dog went to the house of the appellant, Soni Devi. In cross-examination, he admitted that neither he nor his wife had gone to the house of the appellant Soni Devi while they were searching for their son. He stated that the body of his son was kept only for about one and a half hours to two hours after it was brought from the place of occurrence as directed by the police and, thereafter, the police took the body to the hospital for postmortem examination. He



admitted that the body of his son was kept in the hospital for the whole night and, in the morning, at 8-9 AM after the postmortem examination was conducted, the body was brought to his house.

28. **Bibha Devi (P.W.2)**, the mother of the deceased and the wife of the informant Ram Pravesh Kumar (P.W.3) also corroborated the prosecution case as narrated in the FIR by the informant in her examination-in-chief. She added that she had seen the *gendra* in which the body of her son was rolled at the house of her neighbour Soni Devi (appellant). She stated that Soni Devi had earlier quarrelled with her because of that she had murdered her son. She further stated that after the initial inquiry, the police seized the *gendra* and she identified the same. According to her, the dead body of her son was kept in her custody in the night and, in the morning, it was taken for postmortem examination. Her statement in this regard is contrary to the statement of her husband, who has stated in his deposition that the dead body of his son was kept for one and a half hours to two hours at his house and, thereafter, the police took the dead body to the hospital for postmortem examination. Bibha Devi (P.W.2) added that, in the morning, a sniffer dog was called by the police. After taking smell of the place where



the body of her deceased son was thrown, the sniffer dog took the police party to the room of the appellant Soni Devi. She also followed the dog. She stated that as the dog entered the room of the appellant, she came to know that the appellant had killed her son in the same room.

29. In cross-examination, she admitted that when the search began for her missing son, nobody had told her that her son was seen going inside the house of the appellant. She further admitted that while she was searching for her son, she had not gone to the house of the appellant. She stated that the police recorded her statement on 14th December, 2011 at the police station. When her attention was drawn towards her previous statement, she stated that she had informed the police that when the dog was released from the place where the dead body of her son was thrown, he entered the house of the appellant, Soni Devi. She also followed the dog. She also stated that she had given her statement before the police that the *gendra* and the plastic bag were identified by her. She denied the defence suggestion that because of the previous animosity, she had falsely implicated the appellant Soni Devi.

30. The I.O. **Shree Kant Sharma (P.W.9)** contradicted P.W.2 in a material particular. In cross-examination, he admitted



that Bibha Devi (P.W.2) had not stated before him in her statement made under Section 161(3) of the CrPC that the sniffer dog after taking smell of the place where the body of the deceased was thrown entered in the house of Soni Devi. She had also not stated that she had followed the dog. He further admitted that she had not stated that as the dog entered in the room of the appellant, she came to know that it was the appellant, who had killed her son.

31. **Sunil Kumar (P.W.1)** stated in his examination-in-chief that when the incident took place on 13th December, 2011 at about 6.30 PM, he was at his house. He came to know that the son of the informant Prashant Kumar was missing. He went to the house of Ram Pravesh Kumar. When he reached there, he saw that his family members were crying because the missing child was killed. He stated that the victim was killed by the appellant Soni Devi because of a pre-existing dispute between the mother of the victim and the appellant due to the throwing of garbage of the house at a nearby place. He further stated that the missing son of the informant was strangled to death and his body was thrown in the lane of Laddu Sao in the Mohalla-Habibpura after being rolled in a *gendra*.

32. In cross-examination, he admitted that he married



the sister of the informant. He admitted that he came to know about the incident of murder of Prashant Kumar after half an hour. He could not disclose the name of the person, who had informed him. He admitted that the mother of Prashant Kumar did not disclose that it was the appellant Soni Devi, who had killed her son. His attention was drawn towards his previous statement. However, he insisted that he had stated before the police that Prashant Kumar was strangulated to death due to the dispute between his mother Bibha Devi and the appellant Soni Devi relating to the throwing of garbage of the house in the locality. He has been contradicted by the I.O. in a material particular. The I.O. (P.W.9) admitted in his cross-examination that Sunil Kumar (P.W.1) had not stated before him that Prashant Kumar was strangulated to death. He further admitted that he had not stated before him in his previous statement that there was any dispute between the appellant Soni Devi and the mother of the victim boy Bibha Devi relating to the throwing of garbage of the house.

33. The I.O. (P.W.9) also admitted in his cross-examination that there is no eye witness to the murder of the deceased. He admitted that he did not seize any objectionable article at the place of occurrence. He stated that he did not see



any sign of injury on the body of the deceased while preparing the inquest report. He stated that in the *fardebayan*, no suspicion was raised against any accused person. He stated that the sniffer dog was first taken to the place from where the body of the deceased was recovered and, thereafter, the dog entered in the house of the appellant and, at that time, it was the son of the appellant Raushan Kumar, who alone was present in the house and he had disclosed that his mother had killed the child. He admitted that Raushan Kumar was arrested on 14th December, 2011 at 9 AM, but no paper of his arrest was prepared. He further admitted that the *gendra*, which was seized by the police was never put before the Magistrate for an identification parade.

34. Thus, from the evidence it emerges that save and except the recovery of *gendra*, the disclosure made by the son of the appellant and the evidence of sniffer dog, there is no other material to connect the appellant with the killing of the son of the informant.

35. So far as the seizure of *gendra* is concerned, the same was never produced before the Trial Court. Admittedly, the *gendra* was never put for identification before the Magistrate. That apart, *gendra* is a common item which is found in every house. There is no cogent evidence to suggest that the *gendra* in



which the body of the deceased was rolled belonged to the appellant.

36. So far as the confession made by the son of the appellant, namely, Raushan Kumar is concerned, the I.O. admitted in his deposition that he had arrested him on 14th December, 2011 and he disclosed that it was his mother (the appellant), who had killed the victim boy. Firstly, it is a settled principle of law that the statement made by an accused before the police which amounts to confession is barred under Section 25 of the Indian Evidence Act. Secondly, an extra-judicial confession by itself is a very weak type of evidence. It is a rule of caution that the Court would generally look for an independent reliable corroboration before placing reliance upon an extra-judicial confession. Thirdly, the confession is hit by Section 24 of the Indian Evidence Act and fourthly, an exculpatory confession is not admissible in evidence.

37. For all these reasons, the confessional statement, if any, of Raushan Kumar, son of the appellant, who has not been examined before the Court during the trial would be of no help to the prosecution.

38. The only other material on which the Trial Court has placed its reliance for concluding the guilt of the appellant is



that the police sniffer dog entered the house of the appellant after smelling the place where the body of the deceased boy was thrown.

39. The moot question would be that can a person be convicted of a crime based on the evidence gathered by the police sniffer dog?

40. In this context, it would be relevant to note that in *Abdul Rajak Murtaza Dafadar vs. State of Maharashtra*, since reported in *AIR 1970 SC 283*, a three-Judge Bench of the Supreme Court declined to express any concluded opinion or to lay down any general rule concerning tracker dog's evidence or its admissibility against the accused. In the said case, the Supreme Court observed :

“... It was argued in that case that the tracker dog's evidence could be likened to the type of evidence accepted from scientific experts describing chemical reactions, blood tests and the actions of bacilli. The comparison does not, however, appear to be sound because the behaviour of chemicals, blood corpuscles and bacilli contains no element of conscious volition or deliberate choice. But dogs are intelligent animals with many thought processes similar to the thought processes of human beings and wherever you have thought processes there is



always the risk of error, deception and even self-deception. For these reasons we are of the opinion that in the present state of scientific knowledge evidence of dog tracking, even if admissible, is not ordinarily of much weight.

(emphasis supplied)

41. In *Surinder Pal Jain vs. Delhi Admn.*, since reported in *1993 Supp (3) SCC 681*, the Supreme opined that “the pointing out by the dogs could as well lead to a misguided suspicion that the appellant had committed the crime, so save their Lordships sidelined that item of evidence from consideration”.

42. In *Gade Lakshmi Mangaraju vs. State of A.P.*, since reported in *(2001) 6 SCC 205*, the Supreme Court observed:

“17. We are of the view that criminal courts need not bother much about the evidence based on sniffer dogs due to the inherent frailties adumbrated above, although we cannot disapprove the investigating agency employing such sniffer dogs for helping the investigation to track down criminals.

18. Investigating exercises can afford to make attempts or forays with the help of canine faculties but judicial exercise can ill afford them.”



43. In *Dinesh Borthakur vs. State of Assam*, since reported in (2008) 5 SCC 697, the Supreme Court held: “*the law in this behalf, therefore, is settled that while the services of a sniffer dog may be taken for the purpose of investigation, its faculties cannot be taken as evidence for the purpose of establishing the guilt of an accused*”.

44. In the instant case, the police may have used the services of a sniffer dog for investigation, but merely because the dog entered the house of the appellant in her absence, the same cannot be treated to be evidence sufficient enough to establish the guilt of the appellant. The appellant cannot be convicted only on the basis of evidence gathered by the police sniffer dog.

45. Moreover, the circumstance that the sniffer dog entered the house of the appellant after smelling the place where the body of the deceased was thrown was not brought to the notice of the appellant while examining her by the Trial Court under Section 313 of the CrPC. Hence, the said circumstance could not have been taken into consideration by the Trial Court for concluding the guilt of the appellant.

46. It is well settled that the object of Section 313 of the CrPC is to enable the accused to explain the circumstances



against him/her in the evidence personally except where the statute provides otherwise.

47. Section 313 of the CrPC provides the accused a fair chance to explain his/her stand about the circumstances in the evidence, which have been collected against him/her and has come on the record during a trial. If the questions on incriminating circumstances have been ignored by the trial court, then it is an illegality and amounts to an abuse of the process of Court.

48. Though the Supreme Court and this Court have been repeatedly impressing upon the Trial Court that questioning of an accused under Section 313 of the CrPC should not be treated as an empty formality as it is an important facet of the trial, unfortunately, the Trial Courts are recording the statement of the accused in the most perfunctory manner. Since no question was asked from the appellant that the sniffer dog gathered any evidence during the investigation and that the *gendra* in which the body of the deceased was rolled belonged to her, she did not have any chance to explain those circumstances. In our view, these circumstances, which were never put to the appellant while examining her under Section 313 of the CrPC could not have been used for convicting and sentencing her.



49. Thus, on consideration of the entire evidence, we are of the opinion that the prosecution has miserably failed to prove each of the links in the chain of circumstances beyond reasonable doubts against the appellant.

50. For the reasons discussed above, appeal is allowed. The impugned judgment of conviction dated 1st December, 2018 and the consequent order of sentence dated 5th December, 2018 passed by the learned Presiding Officer, Fast Track Court-I, Nalanda at Bihar Sharif in Sessions Trial Case No. 291 of 2012/ C.N.R. No. 0070 of 2012 arising out of Sohsarai P.S. Case No.134 of 2011 are, accordingly, set aside.

51. The appellant, namely, Soni Devi is acquitted of the charges levelled against her. She is directed to be released from the jail forthwith unless required in any other case.

(Ashwani Kumar Singh, J)

(Anil Kumar Sinha, J)

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AFR/NAFR	AFR
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