

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal No. 212 of 1998 (DB)

(Against the judgment of conviction dated 22nd April, 1998 and order of sentence dated 24th April, 1998, passed by learned 1st Additional District & Sessions Judge, Godda in Sessions Trial No.33 of 1997/19/1997)

Nandlal Yadav, son of Tilak Yadav, Resident of village-Ghat Jhilwa, (Laxmi) Police Station-Godda (Muffassil), District Godda. **Appellant**

Versus

The State of Bihar **Opp. Party**

P R E S E N T

HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE RAJESH KUMAR

.....
For the Appellants : Mrs. Priyanka Bobby, Advocate
For the State : Mr. Subodh Kumar Dubey, A.P.P.

.....
Dated: 16th July, 2025
Per Sujit Narayan Prasad, J.:

Prayer:

1. The instant appeal has been filed under Section 374 (2) of the Code of Criminal Procedure against the judgment of conviction dated 22nd April, 1998 and order of sentence dated 24th April, 1998, passed by learned 1st Additional District & Sessions Judge, Godda in Sessions Trial No.33 of 1997/19 of 1997, by which the appellant has been convicted and sentenced to imprisonment for life for the offence under Section 302 IPC and further sentenced to under rigorous imprisonment for 7 years under Section 201 IPC. Both the sentences are directed to run concurrently.

Prosecution Case:

2. This Court, before proceeding to examine the legality and propriety of the judgment of conviction and order of sentence, deems it fit and proper to refer the background of institution of prosecution case.
3. The case has been lodged by P.W. 2, Champa Devi [informant] the wife of the deceased. She reported on 04-05-1996 that on 03-05-1996, her she-goat was missing. She made search, but could not find out. In the evening the deceased who was her husband came after labour. She informed him that the she-goat was missing. Then her husband went to search out the said she-goat. When he returned at 8:00 PM in the night, he stated that Jhupara @ Gopal Ram, Mahabir Ram and Shakar Ram killed the she-goat. After taking meal her husband went to the house of Jhupara @ Gopal Ram by saying that he would ask Jhupara as to why he killed his she-goat so he should give money.
4. The informant has further stated that her husband did not return in the night. There was Kirtan [Prayer] going on and also marriage being performed in the night in her village. She thought that her husband might have gone to attend those ceremonies. On the following morning, when her son, namely, Guli Yadav went to search, he saw that the dead body of her husband was thrown in

the north of new house of Jhupara. She went there and she also found the dead body with several injuries.

5. The informant has further stated that at that time, on the alarm Deepnarayan Choudhary of village Jamni and others assembled there. She informed them about the previous incident. At this the leader called on Jhupara near a tree and asked why he did show. At this Jhupara kept mum did not stated anything and showed his evasion to say anything. Then the leader asked to report to the police. Then Jhupara and his sons fled from their house. On the background of above facts, an F.I.R. was instituted.
6. The police, after investigation, submitted Charge-sheet against the accused persons. Accordingly, the learned court framed charge against the accused persons.
7. The prosecution in order to prove the case has adduced evidence, both documentary and oral whereas the defence case is the total denial of the involvement of the accused persons in the case.
8. The trial Court, after recording the evidence of witnesses, examination-in-chief and cross-examination, recorded the statement of the accused persons and found the charges levelled against the appellant-Nandlal Yadav proved beyond all reasonable doubts. Accordingly, the appellant had been found guilty and convicted, as stated

above, which is the subject matter of instant appeal. However, the other charge-sheeted accused persons, namely, Jhupara @ Gopal Ram, Shankar Ram, Mahabir Ram, Manilal Yadav and Deepnarayan @ Bibha Ram were acquitted of the charges leveled against them.

Submission on behalf of appellants:

9. Mrs. Priyanka Bobby, learned counsel appearing for the appellant has assailed the impugned judgment of conviction and order of sentence on the following grounds:

- I. Prosecution has miserably failed in proving the charge leveled against the appellant and learned trial court has committed error of law in evaluating and analyzing the evidence in coming to the conclusion.
- II. Submission has been made that it is a case where there is no eye witness to the occurrence and only on the basis of surmises and conjectures, the appellant has been convicted and sentenced for life imprisonment.
- III. Further submission has been made that the judgment of conviction is based on circumstantial evidence but admittedly there is no complete chain to prove the case of murder by the appellant to the deceased. Even the learned

trial Court after appreciating the testimony of P.W.-1, 2 and 3 the daughter, wife and son-in-law of the deceased respectively has come to the finding that though these witnesses have deposed that the deceased went away stating that he was going to Gopal Ram @ Jhupara but whether he went to Gopal is not clear and no witness stated that the deceased was last seen with Gopal Ram. Furthermore, it is not a case of last seen i.e., the appellant was last seen with the deceased. But even recording such finding the learned trial court has come to the conclusion that it is a case of circumstantial evidence, therefore, the impugned order requires interference by this Court.

IV. In the impugned order itself, it has come that the only evidence which proves the case of the prosecution beyond all reasonable doubt is the statement recorded U/s 164 Cr.P.C. to the effect that the deceased was last seen with Nandlal Yadav and thereafter he was found dead. But solely on this basis the accused/appellant cannot be awarded sentence for life.

10. Learned counsel for the appellant, in the backdrop of aforesaid grounds, has submitted that the judgment of

conviction and order of sentence since is not based upon cogent evidence and as such it cannot be said that the prosecution has been able to prove the charge beyond all reasonable doubt.

Submission of the learned APP for the State:

11. *Per Contra*, learned Additional Public Prosecutor appearing on behalf of State has defended the impugned judgment of conviction and order of sentence taking the ground that the impugned judgment has been passed based upon the testimony of witnesses who have supported the prosecution version.

12. Submission has been made that the hands of appellant-Nandlal Yadav is clear in the murder of the victim Chattar Yadav, as per the testimony available on record. The appellant-Nandlal Yadav intentionally having sufficient reason killed Chattar Yadav in the fateful night and threw the dead body at lonely place to screen himself.

13. Learned State counsel based upon the aforesaid ground has submitted that the prosecution has been able to prove the guilt of the appellant beyond all reasonable doubt.

Analysis

14. We have heard learned counsel for the parties, perused the documents available on record and the

testimony of witnesses as also the finding recorded by learned trial Court in the impugned order.

15. This Court, on the basis of aforesaid factual aspect vis-à-vis argument advanced on behalf of parties, is now proceeding to examine the legality and propriety of impugned judgment of conviction and order of sentence by formulating following questions to be answered by this Court:

(I).Whether the prosecution has proved the guilt of the appellant for the charges leveled against him?

(II).Whether order of conviction can be passed solely on the basis of statement made under Section 164 Cr.P.C. and can such a statement be considered to substantiate evidence to support a conviction on its own?

(III).Whether the trial Court committed any error in convicting the appellants and sentencing them beyond all reasonable doubts?

16. Since all the issues are inter-linked with each other and as such they are being taken together by taking into consideration the facts of the given case including the testimony of witnesses.

17. This Court, in order to answer the issues framed by this Court, first deems it fit and proper to go through the testimony of witnesses examined by prosecution. For ready reference, the extract of their testimony is discussed hereunder as.

18. P.W.-1, Keshiya Devi, the daughter of the deceased.

She has stated that in the night between Friday and Saturday, her father returned after doing labour work from Godda. She told him that the she-goat was missing. He told to give him a lathi, he would go and inquire about the she-goat. He returned after making search and stated that Jhupara had killed the she-goat.

19. After taking meal her father went to the house of Jhupara but he did not return, in the night. On the morning his dead body was found at a tard [barren land]. She believed that her father was killed by Jhupara, Shankar, Mahabir and others. She also stated that prior to this occurrence Nandlal Yadav, Manilal and son of Jhupara had stolen bicycle in which they were fined Rs.5000/- in Panchayati and it was said that if they commit same mistake in future, they would be fined Rs.10000.

20. In cross-examination P.W. 1 has stated that before her father returned the she-goat was missing. She also stated that there was Barat in her village on that night and there was also Kirtan [prayer] going on in her village at the temple. She also stated at paragraph 4 that her brother came and reported that her father was killed and thrown at tard [barren land].

21. P.W.-2, Champa Devi, is the wife of the deceased and also the informant of the case. She has deposed that the occurrence took place one and half years ago. Her she-goat was missing and her husband went to search out the she-goat. He came to know that she-goat was killed in the house of Gopal. She also stated that after taking meal her husband again went to search the she-goat. She also stated that there was marriage in her village and also a Kirtan going on that night.

22. She stated that she and others members of her family thought that her husband was engaged either in Kirtan or marriage. On the following day the dead body of her husband was found. She could gather that her husband was killed by Gopal, Manilal, Mahabir, Shnakr, Nandlal and Dibha. She also stated that she gave report to the police. In para-4 she stated that her son went towards river and saw the dead body.

23. P.W.-3-Tulsi Yadav, has deposed that the deceased was his brother-in-law. He also stated that the Investigating Officer prepared inquest report on which, he gave L.T.I. He also stated that the Investigating Officer seized Baithi (implements to chop off vegetable and meat) and dagger. He also stated that the earth was also taken from the place where the murder was committed. He also stated that from the house of Jhupara the hairs of the

she-goat stucked to plastic sheet, Chhevani (sickle) and Baithi were seized, for which seizure list was prepared over which he also gave his L.T.I. He came to the place of occurrence after he was informed by his Bhagina.

24. P.W.-4 is Bishnu Yadav. He is son of the deceased. He has stated that when his father returned after working, he was informed that the she-goat was missing. Then his father went to search the she-goat. He could gather that the she-goat was killed by Jhupara, Mahabir Ram, and Shankar Ram. After taking meal his father went to the house of Jhupara. In the night he did not return. On the following day, when he went to river side to answer the call of nature, he found the dead body of his father. He found injury on the dead body. He could gather that his father was killed by Jhupara Ram, Manilal, Mahabir Ram, Nandlal Yadav, Jhokar Rai and Dibha. In his cross-examination he has stated that he did not see who killed.

25. P.W.-5 is the brother of the deceased. He also stated that his brother was killed. He also stated that when the wife of his brother stated that the she-goat was missing, he went to search the she-goat. He also stated that his brother came to know whereabouts of the she-goat, then he took meal and went to locate the same, but he did not return and he was found killed.

26. P.W.-6-Dr. K. Choudhary is the doctor, who conducted post-mortem of the deceased. He stated that he did post-mortem examination on 05-05-1996 on the dead body. He found one penetrating injury over epigastric area of abdomen and one lacerated wound over the left shoulder 3.5 cm X 3 c.m. x 3 cm. He also found multiple incised wound 10 in number on the side of neck, chin, left mandibular area and chest. He also found incised wound over left chick. He found all the injuries antemortem in nature.

27. P.W.-7, Sunil Mandal has also stated that the victim was killed. He became hostile to the prosecution. He denied to have stated before the Investigating Officer that he prepared and sold wine. He also denied to have stated to the Investigating Officer that in the night occurrence the deceased Chattar Yadav and Nandlal Yadav had come to him and demanded wine. He also denied to have questioned them why they were moving in such a night on which they stated that the she-goat was missing. He also denied to have stated that after taking wine both left the place. In para-3 he stated that gave statement before Magistrate. He also stated that he was assaulted by Investigating Officer. He stated in his examination-in-chief that he gave statement before Magistrate that in the night of 3-5-96 at 11.00 P.M. the deceased Chattar Yadav

and Nandlal Yadav came to him to search out the she-goat. He also stated before the Magistrate in the court that on the following day he came to know that Chattar Yadav was killed.

28. P.W.-8-is the Investigating Officer of the case, who has stated that at paragraph 7 that Sunil Mandal [PW 7] gave statement before him that he was preparing and selling wine. He also stated that on the occurrence day, the deceased Chattar Yadav and Nandlal Yadav had come to him at 11.00 P.M. in the night and demanded wine and to give wine. When Sunil Mandal inquired the deceased stated that the she-goat missing.

29. Learned counsel for the appellant has made submission that it is a case where there is no eye witness to the occurrence and only on the basis of surmises and conjectures, and even as per the prosecution the only basis of passing of judgment conviction is the statement recorded U/s 164 Cr.P.C. to the effect that the deceased was last seen with Nandlal Yadav and thereafter he was found dead. But, solely on that basis, the appellant cannot be held guilty of the offence punishable under Section 302 IPC. Further submission has been made that the judgment of conviction is neither based on circumstantial evidence nor any chain of circumstances is complete so as to prove the case of murder.

30. While defending the impugned order, learned State counsel has argued that from the testimonies of the witnesses in totality, it is evident that hands of Nandlal Yadav is clear in the murder of the victim Chattar Yadav and thus the prosecution has been able to prove the case beyond all reasonable doubt.

31. This Court on the basis of aforesaid facts, the testimonies of the witnesses and submissions advance by the parties has to see whether order of conviction can be passed solely on the basis of statement made under Section 164 Cr.P.C. and can such a statement be considered to substantiate evidence to support a conviction on its own.

32. This Court deems fit and proper to first referred Section 164 Cr.P.C., which reads as under:

“164. Recording of confessions and statements.

(1)Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial :[Provided that any confession or statement made under this sub-Section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence :Provided further that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.] [Substituted by the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), Section 13, for the Proviso. Prior to its substitution, the proviso read as under :- [Provided that no confession shall be recorded by a police

officer on whom any power of a Magistrate has been conferred under any law for the time being in force].]

(2) The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.

(3) If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorise the detention of such person in police custody.

(4) Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect : "I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make, may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him. (Signed) A.B. Magistrate."

(5) Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.

(5A) [(a) In cases punishable under section 354, section 354A, section 354B, section 354C, section 354D, sub-section (1) or sub-section (2) of section 376, [section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB,] [Inserted by Criminal Law (Amendment) Act, 2013] section 376E or section 509 of the Indian Penal Code, the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-section (5), as soon as the

commission of the offence is brought to the notice of the police: Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement: Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be video-graphed.

(b) A statement recorded under clause (a) of a person, who is temporarily or permanently mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in section 137 of the Indian Evidence Act, 1872 such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial.]

(6) The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried.”

- 33.** Thus, it is evident that Section 164 Cr.P.C outlines the procedure for recording statements and confessions by a Magistrate during the investigation. While a statement recorded under Section 164 Cr.P.C is admissible in court, it is primarily used to evaluate the credibility of the witness who made the statement. Such statement can be used to support or discredit the witness's testimony in court, but it cannot be the sole basis of conviction, rather, to secure a conviction, the prosecution needs to present additional evidence that corroborates the statement and establishes the guilt of the deceased beyond a reasonable doubt.

34. It is now no more res integra that the contents of Section 164 Cr.P.C. statement are not substantive evidence and if the Court has to consider its contents, then the author of the contents, the said prosecution witness, ought to be confronted with it and the provisions of Section 145 of the Evidence Act complied with.

35. The Learned Trial Court was in error on this facet and failed to appreciate the legal perspective and provision correctly. The Court cannot reach an independent conclusion of the contents of any document without proof of its contents, as concluded by the Learned Trial Court in its observation regarding Section 145 of the Evidence Act and Section 164 Cr.P.C. extracted supra. It is an elementary requirement of the Evidence Act that the contents need to be proved in terms of the provisions of the Act.

36. Reference, in this regard be made to the law laid down by Hon'ble Apex Court in the case of ***R. Shaji vs. State of Kerala [(2013) 14 SCC 266]*** wherein it has been held as follows:

“26. Evidence given in a court under oath has great sanctity, which is why the same is called substantive evidence. Statements under Section 161 CrPC can be used only for the purpose of contradiction and statements under Section 164 CrPC can be used for both corroboration and contradiction. In a case where the Magistrate has to

perform the duty of recording a statement under Section 164 CrPC, he is under an obligation to elicit all information which the witness wishes to disclose, as a witness who may be an illiterate, rustic villager may not be aware of the purpose for which he has been brought, and what he must disclose in his statements under Section 164 CrPC. Hence, the Magistrate should ask the witness explanatory questions and obtain all possible information in relation to the said case.

27. So far as the statement of witnesses recorded under Section 164 is concerned, the object is two fold; in the first place, to deter the witness from changing his stand by denying the contents of his previously recorded statement; and secondly, to tide over immunity from prosecution by the witness under Section 164. A proposition to the effect that if a statement of a witness is recorded under Section 164, his evidence in court should be discarded, is not at all warranted.

28. Section 157 of the Evidence Act makes it clear that a statement recorded under Section 164 CrPC can be relied upon for the purpose of corroborating statements made by witnesses in the committal court or even to contradict the same. As the defence had no opportunity to cross-examine the witnesses whose statements are recorded under Section 164 CrPC, such statements cannot be treated as substantive evidence.”

37. Thus, it can safely be said that conviction cannot be solely based on the statement made under Section 164 Cr.P.C. However, such a statement can be used to corroborate or contradict the witness’s testimony in court, but, it is not considered substantive evidence to support a conviction on its own.

38. In essence, Section 164 Cr.P.C. statement can be a valuable piece of evidence but it requires supporting

evidence from other sources to form the basis of conviction.

39. Now coming to the factual aspect of the instant case, admittedly there is no eye witnesses to the occurrence and there is only availability of statement recorded under Section 164 Cr.P.C, wherein it has been stated that deceased was lastly seen with the present appellant in the night.

40. The case is solely based on circumstances evidence and on the last seen theory, over which, the prosecution failed and solely on the basis of statement recorded under Section 164 Cr.P.C, the present appellant has been convicted.

41. In the aforesaid context it requires to refer herein that the law on the last-seen-together evidence is well-settled. In a catena of judgments, the Hon'ble Supreme Court has held that once it is proved that the deceased was seen lastly in the company of the accused and immediately thereafter the dead body is recovered, the law presumes that it was the accused who has committed the crime, but this piece of evidence requires corroboration. There are of course exceptions to this theory and there may be circumstances under which on the basis of the last-seen-together evidence conviction of an accused cannot be recorded; one of such

circumstances is the time-gap between the last-seen-together and recovery of the dead body. In the case of ***Navaneethakrishnan v. State reported in (2018) 16 SCC 161***, the Hon'ble Supreme Court has observed which reads as under:

“22. It is a settled legal position that the law presumes that it is the person, who was last seen with the deceased, would have killed the deceased and the burden to rebut the same lies on the accused to prove that they had departed. Undoubtedly, the last seen theory is an important event in the chain of circumstances that would completely establish and/or could point to the guilt of the accused with some certainty. However, this evidence alone cannot discharge the burden of establishing the guilt of the accused beyond reasonable doubt and requires corroboration.”

42. Further it requires to refer herein that it is well settled that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests. Firstly, the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established. Secondly, these circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused. Thirdly, 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. That is to say, the circumstances should be

incapable of explanation on any reasonable hypothesis save that of the accused's guilt, reference in this regard may be taken from the judgment as rendered by the Hon'ble Apex Court in the case of **Chandmal v. State of Rajasthan, (1976) 1 SCC 621.**

43. It requires to refer herein that the conviction of a person can only be made if the charge has been proved beyond shadow of all reasonable doubts and if there is any doubt in the prosecution version then the benefit must be given to the accused persons. Reference is made to the judgment **Rang Bahadur Singh & Ors. Vrs. State of U.P.,** reported in **(2000) 3 SCC 454**, wherein, at paragraph-22, it has been held as under:-

"22. The amount of doubt which the Court would entertain regarding the complicity of the appellants in this case is much more than the level of reasonable doubt. We are aware that acquitting the accused in a case of this nature is not a matter of satisfaction for all concerned. At the same time we remind ourselves of the time-tested rule that acquittal of a guilty person should be preferred to conviction of an innocent person. Unless the prosecution establishes the guilt of the accused beyond reasonable doubt a conviction cannot be passed on the accused. A criminal court cannot afford to deprive liberty of the appellants, lifelong liberty, without having at least a reasonable level of certainty that the appellants were the real culprits. We really entertain doubt about the involvement of the appellants in the crime."

44. Likewise, the Hon'ble Apex Court in the case of **Krishnegowda & Ors. Vrs. State of Karnataka**, reported in **(2017) 13 SCC 98**, has held at paragraph-26 as under:-

"26. Having gone through the evidence of the prosecution witnesses and the findings recorded by the High Court we feel that the High Court has failed to understand the fact that the guilt of the accused has to be proved beyond reasonable doubt and this is a classic case where at each and every stage of the trial, there were lapses on the part of the investigating agency and the evidence of the witnesses is not trustworthy which can never be a basis for conviction. The basic principle of criminal jurisprudence is that the accused is presumed to be innocent until his guilt is proved beyond reasonable doubt."

45. Further, the principle of 'benefit of doubt' belongs exclusively to criminal jurisprudence. The pristine doctrine of 'benefit of doubt' can be invoked when there is reasonable doubt regarding the guilt of the accused, reference in this regard may be made to the judgment rendered by the Hon'ble Apex Court in the case of **State of Haryana Vrs. Bhagirath & Ors.**, reported in **(1999) 5 SCC 96**, wherein, it has been held at paragraph-7 as under: -

"7. The High Court had failed to consider the implication of the evidence of the two eyewitnesses on the complicity of Bhagirath particularly when the High Court found their evidence reliable. The benefit of doubt was given to Bhagirath "as a matter of abundant caution". Unfortunately, the High Court did not point out

the area where there is such a doubt. Any restraint by way of abundant caution need not be entangled with the concept of the benefit of doubt. Abundant caution is always desirable in all spheres of human activity. But the principle of benefit of doubt belongs exclusively to criminal jurisprudence. The pristine doctrine of benefit of doubt can be invoked when there is reasonable doubt regarding the guilt of the accused. It is the reasonable doubt which a conscientious judicial mind entertains on a conspectus of the entire evidence that the accused might not have committed the offence, which affords the benefit to the accused at the end of the criminal trial. Benefit of doubt is not a legal dosage to be administered at every segment of the evidence, but an advantage to be afforded to the accused at the final end after consideration of the entire evidence, if the Judge conscientiously and reasonably entertains doubt regarding the guilt of the accused."

46. Likewise, the Hon'ble Apex Court in the case of ***Krishnegowda v. State of Karnataka*** (Supra) at paragraph 32 and 33 has held as under:-

"32. --- The minor variations and contradictions in the evidence of the eyewitnesses will not tilt the benefit of doubt in favour of the accused but when the contradictions in the evidence of the prosecution witnesses proves to be fatal to the prosecution case then those contradictions go to the root of the matter and in such cases the accused gets the benefit of doubt.

33. It is the duty of the Court to consider the trustworthiness of evidence on record. As said by Bentham, "witnesses are the eyes and ears of justice.--- -

47. It needs to refer herein that The Hon'ble Apex Court, in the case of ***Allarakha K. Mansuri v. State of Gujarat*** reported in **(2002) 3 SCC 57** has laid down the

principle that the golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted, for reference, paragraph 6 thereof requires to be referred herein which reads hereunder as :-

“6. -----The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. —”

48. It needs to refer herein before laying down the aforesaid view, the Hon’ble Apex Court in the case of ***Sharad Birdhichand Sarda v. State of Maharashtra*** reported in **(1984) 4 SCC 116** has already laid down the same view at paragraph 163 which is required to be referred which read hereunder as:

“163. We then pass on to another important point which seems to have been completely missed by the High Court. It is well settled that where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt.---”

49. Thus, as per law laid down in the case laws, as cited above, and as per the discussion as above, this Court is

of the view that prosecution has not been able to prove the charge said to be beyond reasonable doubt.

50. The circumstances of this case only create suspicion against the present appellant and suspicion, by itself, however strong it may be, is not sufficient to take the place of proof and warrant a finding of guilt of the accused, thus, or paucity of any clear, cogent and unshakeable evidence against aforesaid appellant his conviction and sentence are absolutely unwarranted.

51. Accordingly, the judgment of conviction dated 22nd April, 1998 and order of sentence dated 24th April, 1998, passed by learned 1st Additional District & Sessions Judge, Godda in Sessions Trial No.33 of 1997/19 of 1997 is hereby quashed and set aside.

52. In consequence thereof, the instant appeal stands allowed and the appellant is acquitted from criminal liability and discharged from the liability of bail bonds.

53. Pending Interlocutory Applications, if any, stand disposed of.

(Sujit Narayan Prasad, J.)

(Rajesh Kumar, J.)

Alankar / **A.F.R.**