

A.F.R.

Reserved on 18.11.2025

Delivered on 16.01.2026



2026:AHC:11052-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**CRIMINAL APPEAL No. - 2480 of 1987**

Om Prakash

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

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Counsel for Appellant(s) : Krishna Kant Dubey(ac), A. Rathore,  
Mahendra Pratap Singh

Counsel for Respondent(s) : A.G.A.

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**In Chamber**

**HON'BLE SIDDHARTH, J.  
HON'BLE PRASHANT MISHRA-I, J.**

**(Delivered by Hon'ble Siddharth, J.)**

1. Heard Sri Krishna Kant Dubey, learned Amicus Curiae for appellant; Mrs. Manju Thakur, learned AGA-Ist for State-respondents and perused the trial court record.
2. The above noted criminal appeal has been preferred against the judgment and order dated 12.10.1987 passed by Sessions Judge, Kanpur Dehat, in Sessions Trial No.71 of 1987 convicting and sentencing the

appellant for offence under Section 302 IPC to life imprisonment and under Section 376 IPC to 7 years rigorous imprisonment. All the sentences have been directed to run concurrently.

3. The facts of the case are that one, Raj Kumar, s/o Narain, lives in village Tarbiatpur, P.S. Bilhaur, Kanpur Mehat. The complainant, Sheo Kumar, is the real brother of Raj Kumar and he lives in village Chaubegahi P.S. Bilhaur. According to the statement of the complainant, Sheo Kumar, the distance between Tarbiatpur and Chaubegahi is about 2 km. The deceased, Km. Sudha, aged about 19 years, was the daughter of sister of Raj Kumar and Sheo Kumar. She was a resident of village Nekpur, P.S. Fatehgarh, Distt. Farrukhabad.. Raj Kumar, his wife Roop Rani, their son Rameshwar and his wife live in the house at Tarbiatpur. The occurrence took place on 15.2.87. It is alleged that Manorama, daughter of Raj Kumar, who was married in Mahmoodpur Deoria, P.S. Jahanabad, Distt. Farrukhabad, was ill, and Raj Kumar and his wife had gone to see her on 12.2.87. It is alleged that an operation of the eyes of Raj Kumar's wife had taken place and the wife of Rameshwar was shortly expected to deliver a child. For these reasons, Sudha was called to Tarbiatpur and was staying there in the house of Raj Kumar.

4. It is further alleged that on 15.2.87, at about 9 a.m., Rameshwar's wife developed labour pains and had to be taken to Bilhaur hospital. When Sheo Kumar heard about this, he also went to Bilhaur from Chaubegahi along with his wife. There, Rameshwar told Sheo Kumar that Sudha was alone in the house at Tarbiatpur and that he, therefore, had to return

home early. Sheo Kumar said that he would also accompany him and would also see the fields on the way. Consequently Rameshwar and Sheo Kumar left for Tarbiatpur and when they reached near their house at about 2 p.m., they saw the accused, Om Prakash alias Nanhey s/o Baburam r/o village Tarbiatpur and one unknown person rushing out of their (Raj Kumar's) house. Sheo Kumar and Rameshwar immediately entered the house and saw that Sudha was lying dead on the *Palang*. There was a wound on her neck, and it appeared to them that rape had also been committed on Sudha. Sheo Kumar came to the conclusion that Om Prakash alias Nanhey and his associate had first committed rape on Sudha and thereafter committed her murder.

5. Sheo Kumar scribed a report regarding this occurrence and lodged it at P.S. Bilhaur on the same day at 16 hours. On the basis of this report, a case was registered under Section 302 and 376 I.P.C., and the investigation was entrusted to S.I. R.D. S. Yadav.

6. The Investigating Officer, after recording copies of the report etc., in the case diary, proceeded to the spot where he first recorded the statement of the complainant, Sheo Kumar, at 4.50 p.m. He then inspected the place of occurrence and prepared a site-plan, Ex. Ka 4. Thereafter, he prepared the *Panchayatnama* of the dead body of Sudha at 5.15 p.m. After preparing the challan lash, photo lash and necessary letters, the dead body of Sudha was handed over in sealed condition, to constables, Brij Kishore and Mahabir, for being carried for post mortem examination.

7. The Investigating Officer also recovered from the place of occurrence one book and one post-card. The title of the book was "Black Tiger" and the post card was placed in this novel. This post-card was addressed to the accused Om Prakash by the Pradhancharya, Vidya Bhawan College, Araul.

8. The Investigating Officer thereafter prepared a Fard Ex.Ka11 in respect of the blood stained *Razai, chadar, Takia* and *chappal*. He also prepared a Fard of the *Palang* and *Galeecha*, Ex. Ka12. The Investigating Officer then conducted a search of the house of the accused, but nothing was found. The proceedings of investigation on 15.2.87 were closed at 11.15 p.m.

9. On 16.2.87 the Investigating Officer recorded the statement of P.W.-3 Lakshmi Shanker and some other witnesses. The statement of the head moharrir was recorded on 17.2.87.

10. The accused surrendered himself on 18.2.87. The statement of the accused was recorded by the Investigating Officer on 24.2.87. After completing the investigation, charge sheet was submitted on 17.3.87.

11. the post mortem on the dead body of Km. Sudha was conducted by Dr. H.C. Prasad on 16.2.87 at about 1:00 p.m.

12. The body of Sudha was of average height. The eyes were closed. Mouth was closed. Rigor mortis was present all over the body. Post-mortem staining was present on the back and buttocks. Abdomen was slightly distended.

13. Following ante-mortem injuries were founds:-

I. Incised wound 12 cm x 3.5 cm. x bone deep on right side neck 6.5 cm. below right ear. Margins were clean cut. Dried blood present round the wound and upper part of the chest. Wound was extending from just right side of mid line upto 8 cm. behind mastoid, trachea, sterno mastoid muscles, right carotid artery and jugular veins were clean cut and were visible through the wound.

II. Contusion 3 cm. x 2 cm. on horizontal ramus of right mandible.

III. Multiple abrasions on left side of the chest and left breast area in an area of 12 cm x 8 cm.

IV. Spots of dried semen present on the front of left thigh, perinium and medial side of right thigh. Pubic hair had been shaved.

V. White discharge present in the vagina was taken out and slide was prepared. One small about 1/2 cm. long abrasion, present on lateral wall of the right side vagina. Hymen was already ruptured and old tags were present.

#### **Internal examination.**

Trachea, right sterno mastoid were clean cut and haematoma was present around them.

Heart weighing 210 gms both chambers were empty.

Right Carotid artery and jugular veins were clean cut and haematoma was present around them.

Right lung had collapsed and left lung was normal. Time since death was about a day.

14. The doctor, who conducted the post-mortem, handed over 11 police papers, slides of vaginal discharge, semen spotted petticoat and other clothes etc., to the constables who had brought the dead body. According to the statement of P.W.1, Dr. H.C.Prasad, the death of Km. Sudha could have taken place on 15.2.87 at about 2 p.m. and injury no.1 was sufficient in ordinary course to cause death. He further stated that before the death of the deceased rape had been committed on her.

15. The case of accused, Om Prakash, was committed to the court of Session by the Chief Judicial Magistrate, Kanpur Dehat, on 26.5.87. Charges under Sections 376 and 302 I.P.C. were framed against the accused, Om Prakash on 6.7.87.

16. The prosecution in order to prove its case examined Dr. H. C. Prasad as P.W.-1; complainant, Sheo Kumar as P.W.-2; Laxmi Narain as P.W.-3; constable Brij Kishore as P.W.-4; R.D.S. Yadav as P.W.-5 and head constable, Babu Ram Awasthi as P.W.6.

17. P.W.1, Dr.H.C. Prasad stated about the post-mortem on the dead body of Sudha and proved the post-mortem report Ex.1.

18. P.W-2, Sheo Kumar, who is the complainant in this case, stated the entire prosecution case and proved the written report Ex. Ka2. He stated how he came to the place of occurrence along with his nephew Rameshwar and how he saw the accused and one other person coming

out of the house of Raj Kumar. He stated further that he and Rameshwar then went into their house and saw that Sudha was lying dead and it appeared that her murder was committed after subjecting her to rape. He further stated that when he and Rameshwar raised an alarm, Soney Lal, Laxmi Shanker, Ram Sewak and many other persons of the village arrived there.

19. P.W.-3, Laxmi Shanker, stated that the murder of Sudha, Bhanji of Raj Kumar, had been committed on 15.2.87 at about 2 p.m. He stated that at that time he was in the room at the roof of his house and Ram Sewak and Soney Lal were also present with him. They were talking regarding the storage of potatoes in cold storage. He further stated that the roofs of his house and that of the house of Raj Kumar are adjoining. They heard shrieks coming from the house of Raj Kumar and rushed to the roof of the *verandah* of the house of Raj Kumar. From the roof of the *verandah* of the house of Raj Kumar, they saw that the accused Om Prakash and one unknown youngman, came out of the northern room of the house of Raj Kumar, the door of which opens towards south. They went out through the Sadar Darwaza and then escaped towards north. He also stated that both, Om Prakash and his associate, had knives in their hands. He further stated that immediately thereafter, Sheo Kumar and Rameshwar came into the *verandah* and stated that Sudha was lying dead. Laxmi Shanker stated further that they then came down from the roof and saw that there was a wound on the neck of Sudha and her knees were bent and it appeared that she was subjected to rape and was

thereafter murdered. He also stated that he was a witness of the Panchayatnama and he proved the Panchayatnama Ex. Ka3.

20. P.W.4, constable Brij Kishore, stated that he had brought the dead body for post-mortem in a sealed condition.

21. The Investigating Officer, Ram Dularey Singh Yadav, stated about the investigation of the case and proved the site-plan Ex.Ka4; challan Lash Ex. Ka5, photo Lash Ex. ab, letter to the R.I. for post-mortem Ex. Ka7, letter to the C.M.O. for post-mortem Ex. Kab and sample of the seal Ex. Ka9. He further proved the book. I and post-card Ex. II, which were recovered at the place of occurrence. He also proved the Fard Ex. Ka10 relating to the recovery of the book I and post-card Ex. II. He further proved the blood stained articles Ex. Ka11 and Fard of the Palang and Galeecha Ex. a12. He also proved fard relating to the search of the house of the accused which is Ex. Ka13. He also submitted the charge-sheet Ex.Ka14 and the chik F.I.R. Ex Ka15.

22. P.W-6, head constable, Babu Ram Awasthi, was the scribe of the general diary by which the case was registered and he proved its copy Ex. Ka16. He also stated that the supplementary report of this case was sent through constable, Krishna Murari and that an entry about this was made in the general diary at report No.29. He proved the copy of this report which is Ex. Ka17.

23. The accused was examined under Sec. 313 Cr.P.C. He pleaded not guilty. He alleged that although his house is situated in Tarbiatpur but it is not located in front of the house of Rameshwar and it is at some

distance therefrom. He alleged that he had been falsely implicated on account of enmity. No evidence was adduced in defence.

24. Learned Amicus Curiae appearing for the appellant submitted that the circumstances of the case do not show that the murder of Sudha had been committed by Om Prakash. It was contended that Sudha was used to sexual intercourse as clear from her medico-legal examination report. Earlier, she used to live in Chaubegahi with Shiv Kumar for her studies but her studies had to be discontinued because of her character, and she was thereafter sent back to her parents' place. Sheo Kumar accepted in his statement that Sudha used to live with him and was then shifted to her parents' place. P.W.-1, Dr. H.C. Prasad, accepted in his statement that the hymen of Sudha was already ruptured and old tags were present, and as such, the deceased was used to sexual intercourse. It is not probable that Raj Kumar and his wife would have left the village in such a manner to see their daughter, particularly when the wife of Rameshwar was expected to deliver a child at any time. The departure of Raj Kumar and his wife from the house seems to have been shown only for the purposes of this case. Rameshwar had a son, and even that son was not left at the house and was shown to have gone to Bilhaur with his mother, who had gone there for delivery. It is not probable that the son of Rameshwar would also have left the house in the manner alleged by the prosecution. Everything seems to have taken place just by coincidence and even the complainant, Sheo Kumar, has been shown to have arrived at the place of occurrence just by coincidence. Sheo Kumar belongs to Chaubegahi, and he came to the place of occurrence only after the information was

sent to him regarding the death of Sudha. It is likely that some paramour of Sudha went away after committing sexual intercourse with her and when this was discovered by Rameshwar, he seems to have committed the murder of Sudha in anger; Sheo Kumar has stated that Raj Kumar had come back to the village the next day, on 16.2.87 after receiving information about the murder of Sudha. On the other hand, P.W.4, constable, Brij Kishore, has admitted in his statement that Raj Kumar was present in the village on 15.2.87 itself, and had also come to G. T. Road, where he had met him. He further stated that *Sapurdiginama*, Ex. Ka12 bears the signature of Raj Kumar thereby showing his presence in the village on 15.2.87. Thus, the statement of Sheo Kumar that Raj Kumar had come back the next day is incorrect. The prosecution has unnecessarily tried to remove the presence of all the inmates of the house from the place of occurrence, and it is likely that the male members of the house committed the murder of Sudha after having become disgusted with her conduct. It is also likely that P.W.3, Laxmi Shanker, may have committed this murder as his house adjoins the house of Raj Kumar and he was in a position to come down into the house of Raj Kumar from the roof of his house. It is not probable that Sheo Kumar and Rameshwar would have returned to the village after 2 p.m. after leaving Rameshwar's wife in hospital in Bilhaur who was to deliver child, and till then delivery had not taken place. It is also not probable that they would have stopped in the fields on the way. The conduct of P.W-2, Sheo Kumar and Rameshwar was stated to be unnatural. If they had seen Om Prakash coming out of their house, they would have

immediately asked him wherefrom he was coming and why he had gone inside. Omission of putting such questions to Om Prakash clearly goes to show that the conduct of Sheo Kumar and Rameshwar was not natural; it has not been indicated in the F.I.R. that the complainant and Rameshwar had seen knife in the hands of the accused and his associate; the fact of presence of knife was introduced subsequently on 16.2.87 in the statement of Laxmi Shanker. (PW-3). If there would have been any knife in the hand of Om Prakash, it would have been seen by Sheo Kumar and he must have made a mention about it in the F.I.R. The conduct of none of the witnesses can be said to be natural and the case seems to have been fabricated and concocted by introducing chance witnesses. The house of Chaukidar is very close to the house of Raj Kumar but Chaukidar was not informed and the Chaukidar had himself come after sometime; Laxmi Shanker was present at the time of Panchayatnama. If he would have seen the accused with a knife in his hand, he would have told about it to the Investigating Officer on 15.2.87 itself at the time of Panchayatnama. Statement of Laxmi Shanker was recorded after a considerable delay on 16.2.87 and the theory of knife seems to have been developed on 16.2.87 when the statement of Laxmi Shanker was recorded. This also shows that the conduct of Laxmi Shanker was not natural. If he would have seen the knife in the hand of the accused, he would have told about it to the Inspector at the time of Panchayatnama itself, and there was no question of delaying disclosure of this fact on the next day. In any case, the delay in recording the statement of Laxmi Shanker is fatal to the prosecution case. The injury no.1 caused to the

deceased cannot be caused by a knife; such deep and wide injury could have been caused by a heavy cutting weapon and not by a knife. If force would have been used for committing rape on Sudha, injuries would have been found at other parts of her body and not on the breast. It was argued that no bangle was found to have been broken; there seems to be no evidence of resistance by Sudha, and absence of resistance from her side suggests that she was not subjected to rape but she entered into a sexual intercourse with some other person. There could be no reason for the person who entered into sexual intercourse with her to have committed her murder, Murder of Sudha was committed in anger by the inmates of the house after they discovered that she had entered into sexual intercourse with some one. The statement of Sheo Kumar does not go on to suggest that rape was committed on Sudha. Her legs were covered and her blouse was not torn. Laxmi Shanker (PW-3) had not stated that the body of Sudha was lying in a naked condition and his statement appears to be incorrect. The time has been changed in the Panchayatnama; there is cutting and overwriting in the time of Panchayatnama; the name of the accused has also not been mentioned in the Panchayatnama. It was made much after the time indicated in it and the papers seem to be ante-timed. Absence of the name of the accused in the Panchayatnama shows that the name of the accused was not known till Panchayatnama was prepared. F.I.R. and all other documents are ante-dated and ante-timed; it could not be decided upto 16.2.87 as to who should be implicated and that is why the statement of Laxmi Shanker was not recorded on 15.2.87, though he was, in fact, available

on 15.2.87 as Panchayatnama is alleged to have been executed on that day. The statement of Sheo Shanker was recorded on 15.2.87, and the name of Laxmi Shanker had come to the knowledge of the Investigating Officer on 15.2.87 itself. If the Investigating Officer had come to know about the name of Laxmi Shanker, then why was his statement was not recorded on 15.2.87 itself. This delay in recording the statement of Laxmi Shanker is fatal to the prosecution's case. This delay shows that the investigation has not been fair. In the Panchayatnama the residence of Sheo Kumar was shown as Tarbiatpur but it was later changed to Chaubegahi after making cuts. There are many cuttings and overwriting in the Panchayatnama which indicate that the investigation has not been fair. The copy of the F.I.R. was sent to the S.D.M. and C.O. on the third day, even though their offices are situated inside the campus of the police station itself. In this case even the complainant Sheo Kumar is a chance witness and his testimony should be looked into with caution. The book Ex. I and post-card Ex. II do not bear the signature of any witness. The signatures of witnesses were also not obtained on the packet of these articles. These articles seem to have been planted by the prosecution in order to implicate the accused; these articles do not establish the presence of the accused at the place of occurrence. There were serious discrepancies in the conduct of the investigation, preparation of the Panchayatnama and the noting in the general diary. There was considerable delay in removing the dead body also. These defects indicate serious lapse in investigation and are fatal to the prosecution case. No explanation has been offered by the prosecution for

the delay in sending the F.I.R. to the Magistrate and this suggests that the F.I.R. was lodged after a considerable time. No reliance should be placed on the testimony of chance witnesses, such as the complainant, Sheo Kumar. There was some enmity between the family of Sheo Kumar and the accused and Sheo Kumar has admitted in his statement that some litigation had taken place between the two families sometime back. No reliance should be placed on the testimony of a chance witness who is also inimically deposed against the accused. The credibility of the F.I.R. in this case has been completely shaken. If all the circumstances referred to in the arguments are taken into consideration, the charges under Sections 376 and 302 I.P.C. cannot be said to have been proved against the accused. It was finally argued that the prosecution has not been able to prove beyond reasonable doubt that the murder of Sudha was committed by Om Prakash after committing rape against her.

25. Learned AGA appearing for the State has opposed the submissions advanced by the learned counsel for the appellant and has submitted that, in this case the evidence establishes beyond doubt that it was Om Prakash who committed murder of Sudha after committing rape on her. He was seen coming out of the house of Raj Kumar immediately after the occurrence with a knife in his hand. A book belonging to the accused and a post-card addressed to him was recovered from the place of occurrence and these articles prove it beyond any shadow of doubt that it was the accused, Om Prakash, who was present at the place of occurrence, and who committed the murder. The statement of P.W.2, Sheo Kumar and P.W.3, Laxmi Shanker establish beyond any doubt that

the accused was seen coming out of the house of Raj Kumar immediately after the occurrence. P.W.3, Laxmi Shanker had seen the accused and his associate coming out of the room in which the murder of Sudha was committed. Laxmi Shanker and two others present at the roof of his house had heard shrieks from the house of Raj Kumar and they had immediately rushed to the roof of *verandah* of the house of Raj Kumar and from there they saw that the accused and his associate were coming out of the room in which Sudha was murdered and they went out of the *Sadar Darwaza* and then escaped towards north; Laxmi Shanker is an independent witness and his house adjoins the house of Raj Kumar and his immediate presence at the place of occurrence cannot be easily disbelieved. The statements of P.W.2, Sheo Kumar and P.W.3 Laxmi Shanker, establish that murder of Sudha was committed by Om Prakash and his associate. There is no such reason which may suggest that there could be a chance of false implication of the accused. The defence tried to find faults with the investigation but the evidence on record cannot be brushed aside on account of any infirmity in the investigation; if any, the defence has tried to show that there was delay in lodging of F.I.R., and the F.I.R. and other papers have been ante-timed. There was no delay in lodging the F.I.R. and there was no ante timing of papers; defence has tried to show that the Investigating Officer had done ante timing in the *Panchayatnama* and the connected papers, when evidence on record shows that no such ante timing was done and the dead body was sent for post-mortem within a reasonable time and without any delay. It was also pointed out that some delay had taken place the in arrival of the dead

body at the Sadar, but the said delay has been explained by P.W. 4, Brij Kishore. In his cross-examination, he stated that the dead body was first brought to G.T. Road and then from G. T. Road it was taken in a tempo which became out of order on the way. The dead body was thereafter taken in another tempo from Uttaripura, leaving there at 6 a.m., and they arrived at the Police Lines at 10 am. The delay in the arrival of the dead body at the Sadar thus took place due to the fact that the first tempo had become out of order and another tempo had to be engaged for carrying the dead body. It was also argued that it becomes difficult to carry a dead body as many drivers do not agree to transport a dead body in their vehicles. Whatever delay took place in bringing the dead body to Sadar has therefore been duly explained. The charges against the accused, Om Prakash, have been proved beyond resonable doubt and he cannot escape conviction under Sec. 376 and 302 I.P.C.. It was finally argued that the evidence on record leads to the only irresistible conclusion that it was the accused, Om Prakash, who committed the murder of Sudha.

26. After hearing the rival submissions, going through the material on record, and perusing the judgment and order of trial court, we find that there is no eye-witness account of the alleged incident and that the case is based on circumstantial evidence. It is well settled that though conviction can be based on circumstantial evidence alone, but for that purpose the prosecution must establish chain of circumstances which consistently points to the guilt of accused and accused alone, and is inconsistent with his innocence. It is further essential for the prosecution to cogently and firmly establish the circumstances from which inference

of guilt of accused is to be drawn. These circumstances then have to be taken into consideration cumulatively. They must be complete to conclude that within all human probability, accused and none else has committed the offence. In the landmark judgment of Supreme Court in ***Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR 1984 SC 1622***, Hon'ble Apex Court 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 'must be or should be proved' as was held by this court in ***Shivaji Sahebaro Bobade V State of Maharashtra 1973 CriLJ1783*** where the following observations were made:

Certainly, it is the 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.

(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 to not 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".

27. In ***Joseph vs. State of Kerala, [(2000) 5 SCC 197]***, court has explained under what circumstances conviction can be based purely on circumstantial evidence. It observed:-

"it is often said that though witnesses may lie, circumstances will not, but at the same time it must cautiously be scrutinized to see that the incriminating circumstances are such as to lead only to a hypothesis of guilt and reasonably exclude every possibility of innocence of the accused. There can also be no hard and fast rule as to

the appreciation of evidence in a case and being always an exercise pertaining to arriving at a finding of fact the same has to be in the manner necessitated or warranted by the peculiar facts and circumstances of each case. The whole effort and endeavour in the case should be to find out whether the crime was committed by the accused and the circumstances proved from themselves into a complete chain unerringly pointing to the guilt of the accused."

28. Similar view has been expressed in *Padala Veera Reddy v. State of Andhra Pradesh, (AIR 1990 SC 79)*. In *C. Chenga Reddy and others v. State of Andhra Pradesh, AIR 1996 SC 3390*, the Court held:-

"In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence."

29. In *State of U.P. vs. Ashok Kumar Srivastava, [(1992) 2 SCC 86]*, it was pointed out that great care must be taken in evaluating circumstantial evidence and if evidence relied on is reasonably capable of two inferences, the one in favour of accused must be accepted. It was also pointed out that circumstances relied upon must be found to have

been fully established and cumulative effect of all the facts so established must be consistent only with the hypothesis of the guilt.

30. The same principle was reiterated in ***State of Rajasthan v. Kashi Ram (2006) 12 SCC 254, Ganesh Lal v. State of Rajasthan (2002) 1 SCC 731, State of Maharashtra v. Suresh (2000) 1 SCC 471 and State of Tamil Nadu v. Rajendran (1999) 8 SCC 679.***

31. In ***Varkey Joseph Vs. State of Kerala, reported in AIR 1993 SC 1892***, Court held that suspicion cannot take place of proof. The Court concluded as under:-

"12. Suspicion is not the substitute for proof. There is a long distance between 'may be true' and 'must be true' and the prosecution has to travel all the way to prove its case beyond all reasonable doubt."

32. From the aforesaid authorities, it is clear that in a case based on circumstantial evidence, Court is required to evaluate circumstantial evidence to see that the chain of events have been established clearly and completely to rule out any reasonable likelihood of innocence of the accused. Needless to say whether the chain is complete or not would depend on the facts of each case emanating from the evidence and no universal yardstick should ever be attempted [***See Ujjagar Singh v. State of Punjab, (2007) 13 SCC 90 : (2009) 1 SCC (Cri) 272***]. The principle that emerges from the above discussed decisions is that conviction can be based solely on circumstantial evidence, but it should be tested on the

touchstone of law relating to circumstantial evidence laid down by the Hon'ble Apex Court.

33. In *Arjun Marik and Ors. V. State of Bihar 1994 Supp (2) SCC 372*, it was reiterated by the Hon'ble Supreme Court that the solitary circumstance of the accused and the victim being last seen will not complete the chain of circumstances for the Court to record a finding that it is consistent only with the hypothesis of the guilt of the accused. No conviction on that basis alone can, therefore, be founded. So also in *Godabarish Mishra v. Kuntala Mishra and Another (1996) 11 SCC 264*, the Supreme Court held that the theory of last seen together is not of universal application and may not always be sufficient to sustain a conviction unless supported by other links in the chain of circumstances. In *Bharat v. State of M.P (2003) 3 SCC 106*; two circumstances on the basis whereof the appellant had been convicted were (i) the appellant having been last seen with the deceased and (ii) Recovery of ornaments made at his instance. The Supreme Court held:

"Mere non-explanation cannot lead to the proof of guilt against the appellant. The prosecution has to prove its case against the appellant beyond reasonable doubt. The chain of circumstances, in our opinion, is not complete so as to sustain the conviction of the appellant."

34. Applying the aforesaid legal preposition in the present case, it is quite apparent that neither the chain of circumstances is complete nor the alleged circumstance of last seen has been established. Moreover the

appellant was not even last seen with the deceased. He was only seen coming out of the house of Rameshwar, where deceased was residing with PW-2 and PW-3.

35. We further find that a chance witness is such a witness who is only planted by the prosecution to prove a point. In the instant case, if the eye-witnesses, PW-2 and PW-3 had been there on the spot and had they seen the incident, as they had narrated in their statements before the trial court, then they would themselves have taken action upon seeing the murder having taken place in the house of Raj Kumar, but since they had actually not seen the incident, they were planted by the prosecution to only prove the point that Om Prakash had actually committed the murder. Supreme Court in **(2023) 2 SCC 352 : Manoj and Ors. vs. State of U.P.** and has submitted that a chance witness cannot be taken to be a reliable witness and, therefore, the testimony of a chance witness cannot be, in any manner, used to convict the accused. As per the law laid down by the Supreme Court, a testimony of a chance witness should be utilized by the prosecution very cautiously. Evidence of the chance witness requires a very cautious and strict scrutiny and if there was any slackness in the explanation about the presence of the chance witness at the place of incident then his deposition ought to be rejected. Paragraphs 102, 103 and 104 of the judgment reported in **(2003) 2 SCC 353 : Manoj & Ors. vs. State of Madhya Pradesh**, the same are being reproduced here as under :-

"102. A chance witness is one, who appears on the scene suddenly. This species of witness was described in ***Puran v. State of Punjab (AIR 1953 SC 459)***, in the following terms:

"Such witnesses have the habit of appearing suddenly on the scene when something is happening and then of disappearing after noticing the occurrence about which they are called later on to give evidence."

103. This court has sounded a note of caution about dealing with the testimony of chance witnesses. In ***Darya Singh v. State of Punjab (AIR 1965 SC 328)***, it was observed that:

"where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts to examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. In dealing with such evidence, Courts naturally begin with the enquiry as to whether the said witnesses were chance witnesses or whether they were really present on the scene of the offence. "If the criminal Court is satisfied that the witness who is related to the victim was not a chance-witness, then his evidence has to be examined from the point of view of probabilities and the account given by him as to the assault has to be carefully scrutinised."

36. In ***Jarnail Singh v. State of Punjab [2009] 9 SCC 719]*** again, this Court held that:

“22. The evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence (*Satbir v. Surat Singh (1997) 4 SCC 192 30, Harjinder Singh v. State of Punjab (2004) 11 SCC 253, Acharaparambath Pradeepan and Anr. v. State of Kerala (2006) 13 SCC 643 and Sarvesh Narain Shukla v. Daroga Singh (2007) 13 SCC 360*).

Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded (vide *Shankarlal v. State of Rajasthan (2004) 10 SCC 632*).”

37. The defining attributes of a "chance witness" were explained by *Mahajan, J., in Puran v. State of Punjab, AIR 1953 SC 459*. It was held that such witnesses have the habit of appearing suddenly on the scene when something is happening and then disappearing after noticing the occurrence about which they are called later on to give evidence.

38. In *Mousam Singha Roy v. State of W.B., (2003) 12 SCC 377*, this Court discarded the evidence of chance witnesses while observing that certain glaring contradictions/omissions in the evidence of PW 2 and PW 3 and the absence of their names in the FIR has been very lightly discarded by the courts below. Similarly, *Shankarlal v. State of Rajasthan, (2004) 10 SCC 632 and Jarnail Singh v. State of Punjab, (2009) 9 SCC 719*, are authorities for the proposition that deposition of a chance witness, whose presence at the place of incident remains doubtful, ought to be discarded. Therefore, for the reasons recorded by

the High Court we hold that PW5 and PW6 were chance witnesses and their statements have been rightly discarded."

39. Conduct of the chance witness subsequent to the incident may also be taken into consideration particularly as to whether he has informed anyone else in the village about the incident. (vide ***Thangaiya v. State of Tamil Nadu (2005) 9 SCC 650***).

40. After consideration of the above legal position regarding the cases of circumstantial evidence and the prosecution case based on chance witness, we find from the facts of the case that on the date of the incident, i.e., 15.02.1987 at about 09:00 a.m., Rameshwar's wife suffered labour pains and was taken from the house of Raj Kumar in village Tarbiatpur, to Bilhaur Hospital. Subsequently, Sheo Kumar, also went to Bilhaur from his village, Chaubegahi, along with his wife after coming to know that Rameshwar's wife was in labour pain. Rameshwar is son of Raj Kumar, who lived in village Tarbiatpur alongwith Raj Kumar. There were five members i.e., Raj Kumar, his wife, Roop Rani, Rameshwar, his wife and their son. On the fateful day, there was no one left in the house except Sudha, since Raj Kumar and his wife had gone to their daughter's house in Mahmoodpur, Deoria. The son of Rameshwar was also not in the house, and only Sudha was present in the house when the alleged incident took place. His son had also gone to Bilhaur along with his mother who was about to deliver a child and his father, Rameshwar, was also there.

41. The prosecution case is that Sheo Kumar and Rameshwar were at the hospital where the wife of Rameshwar was suffering from labour pains. It has not been stated anywhere by the prosecution that wife of Rameshwar had delivered a child when they left for the house of Raj Kumar at 02:00 p.m., on the pretext that Sudha was alone in the house of Raj Kumar. It was admitted that Rameshwar accompanied his wife to Bilhaur, while Sheo Kumar, P.W.-2, went to Bilhaur from his village, Chaubegahi, with his wife to see the pregnant wife of Rameshwar. Rameshwar and Sheo Kumar suddenly left for Tarbiatpur and reached the house of Rameshwar at 02:00 p.m. Sheo Kumar stated that he went back saying that he would see his fields on the way. When they reached the house of Rameshwar, they saw the appellant, Om Prakash, along with an unknown person rushing out of the house of Raj Kumar. They neither questioned Om Prakash nor the unknown person accompanying, who were subsequently alleged to be holding knives in their hands by P.W.-3 in his statement recorded on the second day of the incident i.e., 16.02.1987, under section 161 Cr.P.C., by the investigating officer. Rameshwar, son of Raj Kumar, did not appear in the witness box, although he was also a chance witness to the incident. Only Sheo Kumar, who was not a resident of village, Tarbiatpur and uncle of Rameshwar, appeared as P.W.-2 before the trial court and was treated as only a chance witness.

42. The law in this regard has already been considered by us and the courts have cautioned that testimony of a chance witness should be

considered cautiously and subjected to strict scrutiny regarding his explanation about his presence at the place of incident.

43. On perusal of the statement of P.W.-2, we find that he only accompanied Rameshwar to his house in village Tarbiatpur on the pretext of seeing his fields on the way. However, in his evidence, it has not emerged that he stopped on the way and inspected his fields and thereafter proceeded to the house of Rameshwar. He reached there alongwith Rameshwar just at the relevant time when Om Prakash and another person were leaving the house. The justification for coming to the house of Rameshwar as set up by P.W.-2 before the court, was not proved. Rameshwar, who could have corroborated the testimony of PW-2 was not examined at all. Therefore , it appears that P.W.-2 was introduced in this case as a chance witness only to support the prosecution case.

44. Regarding the testimony of P.W.-3, we find that his conduct is also not natural. He is the next door neighbour of Raj Kumar/Rameshwar and he stated that he saw the appellant, Om Prakash, and an unknown young man coming out from the northern room of the house of Raj Kumar and leaving through the *sadar darwaja* (door) with knives in their hands. However, Raj Kumar neither questioned them nor raised any alarm. He further stated in his statement that at that very time, when Om Prakash and another young man were leaving the house of Raj Kumar, P.W.-2, Shiv Kumar and Rameshwar came to the house yet they never informed

him that Sudha is lying dead. Thereafter Laxmi Shankar, P.W.-3, came down from his roof and found a wound on the neck of Sudha,

45. From the statement of P.W.-3, the entire prosecution case appears to be based on co-incidence while P.W.-3 has explained lack of any action on his part against Om Prakash and his associate on the ground that as soon as he saw the incident, P.W.-2 and Rameshwar, came to the place of incident. Therefore justification was given that P.W.-3 had no occasion to raise any alarm or make effort to catch Om Prakash and his accomplice.

46. Therefore, we find that the prosecution case is based on suspicion only. Recovery of a book and a post card addressed to the appellant, could have been planted by the police. Since in the memo of the recovery of the book and post card, exhibit 1 and 2 there was no signature of any witness obtained thereon. Investigating officer prepared the memo of the blood stained *rajai*, *chadar*, *takiya* and *chappal* of the deceased and also *palang* and *galicha* of the deceased recovered from her room.

47. The next point of consideration is the injury caused to the deceased by the knives in the hands of Om Prakash and an unknown accused. In the post mortem of the deceased only incised wound is 12 c.m. x 3.5 c.m. x bone deep on right side neck 6.5 c.m. below right ear of the deceased and margins were clean cut.

48. We find that such a large injury having clear cut margins and bone deep cannot be caused by an ordinary knife. The doctor has found that the aforesaid wound was extending from just right side of mid line upto

8 c.m. behind mastoid, trachea, sterno, mastoid muscles, right carotid artery and jugular veins were clean cut and were visible through the wound. The injury of such magnitude could have been caused by some hard hitting and heavy weapon like axe, *farsa*, *chapad* and not by knife assigned to the appellant and an unknown accused, whose identify was never ascertained.

49. The prosecution has failed to explain how the injury of such magnitude was caused by knife allegedly assigned to the appellant. It is also notable that initially no weapon was assigned to the appellant, but on the next day of the lodging of the F.I.R., P.W.-3, a knife was assigned in the hands of the appellant and another young man.

50. The argument of the learned amicus curiae regarding the lapses committed by the investigating officer during investigation cannot be given much weight since it is settled law that the accused cannot get benefit of the same if other evidence led by the prosecution inspires confidence of the Court.

51. It is clear from the above consideration that no one has seen the actual incident being caused by the appellant nor the appellant was last seen with the deceased in her house. He was seen along with another person leaving the house of Raj Kumar by P.W.-2 and P.W.-3 while P.W.-2 has been found to be a chance witness. The conduct of P.W.-3 of not making any effort to question or stop Om Prakash while fleeing from the place of incident nor of raising any alarm seeing him armed with knife does not makes his testimony worth reliance.

52. The argument of defence that the deceased was murdered by her own relatives in her house after being seen with some one indulging in physical relationship is a possibility which cannot be ruled out since the enormity of the injury on her neck proves that she was brutally assaulted in anger by some heavy incised weapon which proved fatal to her life. The prosecution case of removal of all family members from the house of Raj Kumar at the time of incident lends credence to the fact that the alleged offence was committed in a planned manner. The statement of Rameshwar and P.W.-2 that they returned from the hospital at Bilhaur when they got worried about the Sudha being alone in the house of Raj Kumar points out two relevant queries as to why Sudha was left alone in the house at all when the prosecution case is that she was called to the house of Raj Kumar/Rameshar only to look after the pregnant wife of Rameshwar. While all the male members left with the pregnant wife of Rameshwar, Sudha was left behind when during delivery of a woman, presence of another woman is more important than that of the male relatives.

53. It is settled law that where there are two views possible of the incident from the same set of facts and evidence on record, one in favour of accused should be adopted. The prosecution has failed to prove the chain of circumstances, so complete, as would discard any other view of the alleged incident. The chain of circumstances have not been completed by the prosecution in proving its case beyond reasonable doubts. The identity of the person accompanying the appellant was neither determined nor proved by the prosecution before the trial court.

54. Considering the totality of facts and circumstances we are of the view that the prosecution case does not inspire confidence and the appellant deserves to be extended benefit of doubt.

55. The judgment and order passed by the trial court is set aside.

56. The appellant is on bail, his bail bonds are cancelled and his sureties are discharged.

57. The above noted appeal is **allowed**.

58. Office is directed to send the trial court record to the trial court and also notify this judgment to the trial court.

59. We appreciate the assistance rendered Sri Krishna Kant Dubey, learned Amicus Curiae and it is directed that he shall be paid Rs 10,000/ (Rs ten thousands) towards his professional fees within a month from raising the bill.

**(Prashant Mishra-I,J.) (Siddharth,J.)**

**January 16, 2026**  
Ruchi Agrahari