HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 79 of 2008

Shiv Pujan Verma ……..Appellant

Versus

State of U.P. ……..Respondent

Counsel for Appellant : Sri S.S. Imam Rizvi, Sri Diwakar Singh, Sri Rajiva Dubey

Counsel for Respondent : Govt. Advocate

A.F.R

Court No.-10

Reserved On: 02.12.2025
Delivered On: 13.02.2026

HON'BLE RAJNISH KUMAR, J.
HON'BLE ZAFEER AHMAD, J.
(*Per Hon'ble Zafeer Ahmad, J*)

1. Heard Sri Rajiva Dubey learned counsel for the appellant and Sri Pawan Kumar Singh learned A.G.A for the State.
2. The aforesaid criminal appeal arises out of order and judgment dated 15.12.2007 passed by learned Sessions Judge , Balrampur in S.T. No. 48 of 2006 (State v. Shiv Pujan) arising out of case crime no. 06 of 2006 wherein the appellant has been convicted and sentenced to undergo life imprisonment u/s 302 Indian Penal Code (in short I.P.C).

Prosecution Case in Nutshell:

3. The prosecution case, in nutshell, is that the complainant Mangal Prasad Verma submitted a written report (Ex. Ka-1) at Police Station Jarwa, District Balrampur, stating therein that his father Shiv Pujan had two brothers, namely Munshi and Nibber.

Shiv Pujan was the eldest, Munshi was the second and Nibber was the youngest. All the three brothers were living separately. The second brother Munshi used to reside with his parents, namely Ragunath and Kamla, in a seperate house situated at the edge of the forest. Furthermore, it was stated that on the morning of 17.01.2006, his uncle Nibber came and informed him that during the preceding night, some unknown persons had dragged Munshi (uncle), Ragunath (grandfather) and Kamla (grandmother) from the said house to the back side of the *chak-road* and assaulted them with sharp-edged weapons, resulting in their death. On receiving this information, the complainant rushed to the house of his grandfather and found that all the three had been murdered. It was further stated that his uncle Nibber had collected the dead bodies and placed them in the courtyard of the house.

4. On the basis of the aforesaid written report, a FIR was registered under Section 302 IPC against unknown persons (Ex. Ka-8) and corresponding entry was made in the general diary as entry no. 14 (Ex. Ka-9). The investigation was taken up by S.H.O. R.N. Gautam, who reached the place of occurrence and inspected the site. During inspection, samples of blood-stained and plain soil were collected (Ex. Ka-6) and a site plan of the place of occurrence was prepared (Ex. Ka-30).

5. The *panchayatnama* of the dead body of Smt. Kamla was prepared by S.I. A.P. Singh (Ex. Ka-4). On his directions, the dead body was duly sealed and the following papers were prepared: letter to R.I. (Ex. Ka-13), letter to C.M.O. (Ex. Ka-14), *challan lash* (Ex. Ka-15), sketch of the dead body (Ex. Ka-16) and sample seal (Ex. Ka-17). The *panchayatnama* of the dead body of Raghunath was prepared by S.I. Bhagirathi Tiwari (Ex.

Ka-2). On his directions, the dead body was duly sealed and the following papers were prepared: letter to R.I. (Ex. Ka-18), letter to C.M.O. (Ex. Ka-19), challan lash (Ex. Ka-21), sketch of the dead body (Ex. Ka-20) and sample seal (Ex. Ka-22). Furthermore, the *panchayatnama* of the dead body of Munshi was prepared by S.I. A.P. Singh and S.I. Bhagirathi Tiwari (Ex. Ka-3). On his directions, the dead body was duly sealed and the following papers were prepared: letter to R.I. (Ex. Ka-23), letter to C.M.O. (Ex. Ka-24), challan lash (Ex. Ka-25), sketch of the dead body (Ex. Ka-26) and sample seal (Ex. Ka-27).

6. During the preparation of the *panchayatnama* of the dead body of Munshi, an application addressed to Police Station Jarwa, dated 14.01.2006, was recovered from the pocket of his jacket (Ex. Ka-29). The said application contained allegations against the accused Shiv Pujan. A recovery memo in respect of the said application was prepared at the place of occurrence and the same was attested by witnesses (Ex. Ka-28).

7. Further, on 17.01.2006 at about 8:30 P.M., an application was produced at the police station by constable Mahesh Prasad, which had been received through the office of the Sub-Divisional Magistrate, Tulsipur. The said application, dated 28.12.2005, had been submitted by the deceased Raghunath on *Tehsil Diwas* against his son Shiv Pujan, on which the Sub-Divisional Magistrate had passed directions on the same day. Along with the said application, other connected documents were also produced at the police station (Ex. Ka-31).

8. On 20.01.2006, Ram Niwas (brother of the complaint Mangal Prasad) and the accused Shiv Pujan were brought to the police station for interrogation and their statements were recorded

under Section 161 Cr.P.C. During the said interrogation, the accused Shiv Pujan confessed the commission of the offence and assured recovery of the axe and *danda* used in the incident. Thereafter, he was arrested and taken into custody. Pursuant to his disclosure statement, the accused was taken to the house of Raghunath, where a heap of dry sugarcane leaves was lying near a bullock cart placed in the eastern corner of the house, he caused the recovery of an axe and a *danda* from the said heap, stating that the same had been used by him in killing his parents and brother. A recovery memo of the said weapons was prepared and the same was attested by two independent witnesses, namely Mahendra Nath and Kuddan (Ex. Ka-5).

9. Upon completion of the investigation, a charge-sheet (Ex. Ka-33) under Section 302 IPC was submitted before the Court of the Chief Judicial Magistrate on 25.03.2006. Cognizance was taken and the case was committed to the Court of Session on 19.04.2006.

10. To prove its case, the prosecution examined ten witnesses, namely: PW-1 Mangal Prasad (complainant), PW-2 Ram Chhabiley, PW-3 Mahendra Nath, PW-4 Guddan, PW-5 Govardhan, PW-6 Lalta Prasad, PW-7 Ramashankar Chauhan (constable), PW8- Dr. H.P. Singh (post-mortem doctor), PW9- Ram Nihore Gautam, and PW-10 Israr Husain (constable).

11. Appellant has not produced any oral or documentary evidence in his defence. In his statement under Section 313 CrPC, the appellant denied having committed the crime. Thus, the appellant pleaded innocence.

12. Upon a comprehensive appraisal of the oral and documentary evidence on record, the learned Trial Court convicted the appellant to undergo life imprisonment under Section 302 IPC.

Submission made by learned counsel for the accused-appellant:-

13. Learned counsel for the accused-appellant submitted that the impugned judgment and order are unsustainable in law and on facts. It was further argued that the Trial Court has erred in placing reliance upon the testimonies of the police witnesses, which, according to the learned counsel, suffer from material contradictions. It was further urged that there is no eyewitness to the occurrence and, therefore, the appellant has been falsely and wrongly implicated in the present case.

14. It was also argued that the entire prosecution case substantially rests upon the testimony of PW-2 Ram Chhabiley, which, according to the learned counsel, is unreliable and unworthy of credence. It was further argued that the judgement of the Trial Court is founded upon conjectures and surmises and on erroneous presumptions, rather than on cogent and trustworthy evidence. It was lastly argued that the appellant was not named in the first information report, which, according to the learned counsel, further weakens the prosecution case.

Submission made by learned A.G.A : -

15. Per contra, learned A.G.A. has vehemently opposed the submissions advanced by the learned counsel for the appellants. It was argued that the prosecution has successfully established the chain of circumstances pointing unerringly towards the guilt of the appellant and that no material infirmity or illegality has been committed by the Trial Court while recording the conviction. It was further argued that though the appellant was

not named in the FIR, the subsequent investigation has clearly brought on record cogent material establishing the motive, conduct and involvement of the appellant in the commission of the offence. It was argued that the recovery of the weapon used during the offence at the instance of the appellant, the extra-judicial confession made by him, and the surrounding circumstances constitute a complete and unbroken chain pointing to his guilt.

16. Thus, learned A.G.A. submitted that the accused-appellants has rightly been convicted in accordance with law and sentenced accordingly. There is no illegality or error in the impugned judgment and order. It is further submitted that the appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed.

Oral Testimonies:

In order to appreciate the issues arising in the present appeal, it is appropriate to examine, in brief, the oral evidence adduced by the prosecution.

17. **PW-1 Mangal Prasad**, son of the accused Shiv Pujan, deposed that his father had two brothers, namely Munshi and Nibber, Shiv Pujan being the eldest, Munshi the middle and Nibber the youngest. He further deposed that his father was residing separately in the village, whereas his grandfather Raghunath, grandmother Kamla and uncles Munshi and Nibber were residing in a house situated about one kilometre to the south of the village. He further deposed that on the night of the incident, Raghunath, Kamla, Munshi and Nibber were sleeping in the said house. He further deposed that in the morning following the occurrence, Nibber came to his house and

informed him that during the night some unknown person had dragged Raghunath, Munshi and Kamla to the *chak-road* and had murdered them by using sharp-edged weapons and *danda*. Upon receiving this information, he along with his family members reached the spot and saw that all three had been killed. He further deposed that Nibber had brought the dead bodies to the courtyard of the house. He denied acquaintance with the village chowkidar and also denied having gone with him to the police station, though he admitted that the police subsequently came to the spot and thereafter he went to the police station, where a written application was prepared by the police. At this stage, he was declared hostile by the Trial Court.

18. During cross-examination, he denied having made any statement to the police regarding his arrival at the police station along with the village chowkidar and also denied the suggestion that he was deposing falsely to save his father. He further deposed that his uncle Munshi generally lived in a separate house in the village and only occasionally stayed with his grandfather. He further deposed that the second marriage of his uncle Nibber had taken place on the condition that some land would be transferred to his wife, and when Raghunath refused to do so, disputes arose between Nibber's in-laws, Nibber and his grandparents Raghunath and Kamla, due to which Nibber's wife left for her parental home. On being questioned by the Court as to who came into possession of Raghunath's agricultural land after the deaths of Ragunath and Munshi, he stated that he could not say whether the land was vacant or not. He further stated that he had one more uncle and that during *chakbandi* (consolidation proceedings) Ragunath had received about 12–14 bighas of *abadi* land, over which disputes

existed between Moose, Bachchan, Gadde Yadav and Kalau Rajendra Walender. He further stated that after the murders of his grandfather, uncle and grandmother and after his father was sent to jail, the said land was taken over by Moose, Bachchan, Gadde, Kalu Rajendra and Walender. He further deposed that the three deceased persons were living together in the same house and that Nibber's wife was not present on the date of occurrence as she had gone to her parental home after a quarrel. He further deposed that he was informed about the murders on the following morning, whereafter his entire family reached the place of occurrence on receiving the information from his uncle. He further deposed that his uncle Nibber and his father had went with the dead bodies to Gonda for post-mortem examination and that in his presence no articles were recovered from the bodies of his uncle, grandmother and grandfather.

19. **PW-2, Ram Chhabiley**, deposed that about 15–20 days prior to the occurrence, he had met deceased Raghunath, who informed him that his son Shiv Pujan had threatened to kill him. He further deposed that frequent quarrels used to take place between Raghunath and the accused over agricultural land and that Raghunath had categorically stated that Shiv Pujan would not receive any share in the land during his lifetime. He further deposed that two days after the occurrence, in the afternoon hours, Shiv Pujan met him and made a confession stating that he had murdered his father Raghunath, his mother Kamla and his brother Munshi. He further stated that the accused requested him to use his influence with the police to save him. Upon being questioned as to why he had killed his mother, the accused replied that he had done so in order that no witness might remain alive.

20. During cross-examination, he deposed that he was not present in the village on the date of occurrence and returned on the following day. He further deposed that the house of deceased Munshi Verma was situated adjacent to the house of Govardhan Yadav and that Munshi and his brother Nibber used to stay alternately with their parents. He stated that the land on which Munshi had constructed his hut was not *patta* land but was *abadi* land belonging to the Gram Samaj. He further deposed that Shiv Pujan had earlier assisted Munshi in obtaining land from the village Pradhan. He further deposed that he used to frequently meet deceased Raghunath. He admitted that he was involved in proceedings under Section 151 Cr.P.C. with deceased Munshi Verma about one years prior to the incident, though he denied that the said proceedings were related to any land dispute. He further deposed that Nibber's first wife had left him and that the in-laws of his second marriage were primarily interested in the family property, but Raghunath had refused to transfer any land in favour of Nibber's wife. He further stated that Nibber possessed no property of his own and that the entire agricultural land stood in the name of Raghunath. He further deposed that Raghunath had ongoing land disputes with villagers namely Moose, Gudde, Bachchan, Atau and Ghirau in respect of land near the Nevalgarh Dam, and that Shiv Pujan himself had earlier submitted an application at the police station on behalf of his father regarding said dispute.

21. **PW-3, Mahendra Nath,** deposed that upon receiving information regarding the murder of Munshi, Raghunath and Smt. Kamla of village Pehalwan Purva, he reached the said village. He further deposed that the Inspector conducted the *panchayatnama* of the dead bodies of Raghunath, Munshi Verma

and Smt. Kamla at the place of occurrence and, after sealing the dead bodies in cloth, sent them to Gonda for post-mortem examination. He further deposed that the *panchayatnama* of all the deceased persons was prepared on the spot by the Station House Officer. He further deposed that on 20.01.2006 the accused Shiv Pujan was neither arrested nor produced before him and that the police did not interrogate Shiv Pujan in his presence. He further deposed that the accused did not lead to any recovery of the alleged murder weapons, namely axe or *danda*, in his presence, nor did the police prepare any recovery memo in his presence. Upon being shown paper no. 4/13, he admitted that the signatures appearing thereon were his, but deposed that his signatures were obtained by the Inspector on a blank paper. At this stage, the witness was declared hostile in the Trial Court.

22. During cross-examination, he stated that to his knowledge the Investigating Officer had not recorded any of his statement. When his alleged statement under Section 161 Cr.P.C. was read over to him, he stated that he had not made any such statement to the Investigating Officer and could not explain how the Investigating Officer had recorded the same. He denied the suggestion that he had colluded with the accused and was deliberately not speaking the truth before the Court in order to protect him. He further denied the suggestion that the murder weapon, namely axe, was recovered in his presence, that he had appended his signatures on the recovery memo of the murder weapons, or that any written recovery memo was prepared and read over to him in his presence.

23. **PW-4, Guddan**, son of Dhagai and resident of Jugulmaria, deposed that on the morning of 17.01.2006, accused Shiv Pujan

came to his house in village Pahalwan Purva and informed him that during the preceding night, some unknown person had murdered his father, mother and brother. He further deposed that upon receiving the said information, he went to the place of occurrence and was present when the police prepared the *panchayatnama* of the three deceased persons, namely Raghunath, Kamla and Munshi. He further deposed that no letter was recovered from the pocket of the jacket of deceased Munshi in his presence. He further deposed that he did not witness the arrest of the accused Shiv Pujan, nor did he see the police interrogate him. He further deposed that no recovery of axe or *danda* was made in his presence. Upon being shown the recovery memo, the witness admitted that the signatures appearing thereon were his, but deposed that the Inspector filled up the memo and thereafter obtained his signatures. At this stage, the witness was declared hostile in the Trial Court.

24. During cross-examination, he stated that the inspector had not recorded his statement. When his alleged statement under Section 161 Cr.P.C. was read over to him, he deposed that he had not made any such statement to the inspector and could not explain how the inspector had recorded the same. He further deposed that he is illiterate and is only aware of how to sign his name. He denied the suggestion that he had colluded with the accused and was deliberately not speaking the truth before the Court in order to protect him. He admitted that he is the Pradhan of the village of Shiv Pujan and further admitted that Shiv Pujan had remained his supporter. He denied the suggestion that the murder weapons, namely axe and *danda*, were recovered in his presence, that he had appended his signatures

on the recovery memo of the murder weapons, or that any written recovery memo was prepared and read over to him.

25. **PW-5 Govardhan**, a neighbour of the deceased Raghunath, deposed that his agricultural land is situated near the house of Raghunath. He deposed that on the day of the incident, he had gone to inspect his land and to ease himself at around 6:00–7:00 p.m., though he could not specify the exact time as he is illiterate and unable to accurately assess time. He deposed that when he proceeded some distance near a brick structure, he saw deceased Ragunath and Munshi coming from that side in a bullock cart. He further deposed that after Munshi reached his house, he heard Munshi saying *"kon ho?"* and *"tum kya kar rahe ho?"*, but he could not hear the second voice. He further deposed that he heard only the voices of Munshi and Raghunath and did not hear the voice of any other person. He further deposed that he neither saw nor heard the voice of Shiv Pujan at the spot. He further deposed that his statement was recorded by the Inspector. He also stated that he did not hear any cries for help from Munshi or Raghunath. At this stage, the witness was declared hostile in the Trial Court.

26. During cross-examination, he deposed that he did not inform the Inspector that he had heard cries of Munshi and Raghunath for help or that they were being beaten with a *danda*. He denied having heard the voices of Munshi, Raghunath or Shiv Pujan at the time of the incident and stated that he had only informed the Inspector that he had seen Raghunath and Munshi while they were coming in a bullock cart. He further deposed that he was not aware of any dispute involving the parties and admitted that he had friendly relations with Shiv Pujan. He denied the suggestion that he was deposing falsely before the

Court due to fear or pressure from the accused. He denied the suggestion that his statement under Section 161 Cr.P.C. had been correctly recorded by the Inspector in accordance with what he had stated. He further denied the suggestion that he had heard the voices of deceased Munshi and Raghunath or of accused Shiv Pujan at the time of the incident and that he was deliberately suppressing the truth before the Court. He further deposed that Munshi and Raghunath had no enmity with anyone in the village, though there was some dispute with one Gudde regarding agricultural land, and that on some occasions he had heard quarrel between Shiv Pujan and Raghunath, with regards to share in the property.

27. **PW-6 Lalta Prasad**, elder brother of deceased Raghunath, deposed that Raghunath possessed about 26–27 bighas of land at his maternal village Pahalwan Purva and had three sons, namely Shiv Pujan (the eldest), Munshi, and Nibbar (the youngest). He deposed that Shiv Pujan had been residing separately from his parents and brothers for about seven to eight years prior to the occurrence. He further deposed that Shiv Pujan had approached him requesting that he influence Raghunath to give him about five bighas of land for cultivation; to which Raghunath agreed. He further deposed that as per his knowledge there was no dispute between Raghunath and Shiv Pujan.

28. During cross-examination, he stated that the second marriage of the youngest son Nibbar was solemnised on the condition that Raghunath would transfer land in the name of Nibbar’s wife. When Raghunath refused to do so, disputes arose between Raghunath and Nibbar’s in-laws. He further deposed that Raghunath had informed him that threats were being extended by Nibbar’s in-laws on account of the property dispute. He

further deposed that a portion of Raghunath's land was acquired for the Sarju Canal, for which compensation was paid, and that several villagers, namely Ghirau, Moose, Gudde, Bachchan and Atau, were desirous of occupying the said land. He further deposed that after the deaths of Raghunath, Munshi and Kamla and the subsequent incarceration of Shiv Pujan, the aforesaid villagers occupied the land and have remained in possession thereof till date.

29. **PW-7, Ramashankar Chauhan**, C.P. 254 Police Station, Uska Bazaar, Siddarth Nagar, depsoed that on 17.01.2006 he was posted as head constable in Kotwali Jarwa police station. He further deposed that on the basis of written complaint of Mangal Prasad Verma he filed a *chik* FIR No, 2/06, case crime no. 6/06 under Section 302 IPC (Ext. Ka-8). He further deposed that he made the entry of same as entry no. 14 on 17.01.2006 at around 9-10 AM (Ext. Ka-9).

30. No cross-examination of PW-7 was done.

31. **PW-8 Dr. H.P. Singh**, Consultant Surgeon, District Hospital, Gonda deposed that on 18.01.2006 he was posted at District Hospital Gonda and on that day he conducted the post-mortem of deceased Smt. Kamla, who was brought in sealed cover condition by constable 225 Bachanram and constable 330 Israr Husain of police station Jarwa. On external examination, it was found that the *rigor mortis* had passed in the upper limbs and was beginning to subside in the lower legs. The following ante-mortem injuries were found on the deceased's body:

Injury No. 1: Lacerated wound on forehead measuring 8cm X 6cm X bone deep, 3 cm above the tips of the eyes. There was no fracture.

Injury No. 2: Contusion measuring 4cm X 2cm, which was 2 cm lateral to the right angle of the mouth. There was no fracture of Mandible.

Injury No. 3: Multiple contusions on right arm, 4cm below the shoulder measuring 12 cm X & 7 cm. The right humerus bone was fractured.

Injury No. 4: Lacerated wound on right wrist measuring 2½ cm X 1cm X deep up to bone.

Injury No.5: Multiple contusions on the back of the right hand measuring 8 cm X 4cm.

Injury No. 6: Contusion with a swelling on both sides of the front chest, 2cm below the medial end of left clavicle measuring 12 cm X 12cm.

Injury No. 8: Rib bone 2nd to 6th on the right side and 2nd to 9th on the left were broken.

Injury No. 7: Multiple contusion on right thigh, lacerated 10 cm above the right knee, measuring 8 cm X 8 cm.

The left lung was severely lacerated and the pleural cavity was filled. All other organs were normal. The teeth were 9/8 in numbers. There was fluid in the stomach. There was faecal matter in the large intestine. He opined that she could have died from excessive bleeding and shock due to the ante-mortem injuries. Further he opined that she could have died between 36 to 48 hours from the time of post-mortem examination.

32. Furthermore, on the same day at 1:35 PM, he also examined the dead body of deceased Raghunath, who was brought by same constable namely, Bechanram and Israr Hussain. On external examination, he found that the *rigor mortis* had passed

in the upper body and was almost passed in the lower body. The following ante-mortem injuries were found on the deceased's body:

Injury No. 1: Lacerated wound measuring 3cm X 1½cm X deep to bone was present at the junction of the eye and forehead. The nasal bone was fractured and the right lower part of the frontal bone was fractured.

Injury No. 2: Lacerated wound measuring 3cmX 1cmX bone deep on the right side of the chin. The lower jaw bone of the right side was fractured and the teeth were protruding and dislodged.

Injury No. 3: Lacerated wound measuring 3cm X 1cm deep to bone, behind the right ear.

Injury No. 4: Lacerated wound measuring 1cm X 1 cm X on the right arm, 12 cm below the right shoulder deep upto bone. The humerus bone of the arm was fractured.

Injury no. 5: Lacerated wound measuring 3cm X 2cm X bone deep on the left forearm, 6cm above the left wrist. Both the radius and ulna bones of the forearm were fractured.

Injury No. 6: Lacerated wound measuring 6cm X 1½ cm X deep up to bone in left leg 12 cm below knee.

Injury No. 7: Multiple abrasions with swelling on the front of the chest, 1cm below the suprasternal notch. Rib bone 2nd to 5th on the left side and 2nd to 9th on the right side were broken and the lung cavity was filled with blood. The liver on the right side was ruptured and the stomach cavity was completely filled with blood. The deceased had 14/ 11 teeth, his stomach was empty and his heart was also empty but there was blood in the heart

membrane. Brain was not liquidified. Further, he opined that the Ragunath died due to excessive bleeding and shock caused by the ante-mortem injuries on his body. He may have passed away between 36 to 48 hours prior to the time of post-mortem examination.

33. Furthermore, on the same day at 4:15 PM, he conducted the post-mortem examination of the deceased Munshi Verma, who was brought by the same constables as stated above. On external examination, he found that the *rigor mortis* had passed in the upper body and was beginning to subside in the lower body. The following ante-mortem injuries were found on the body of the deceased:

Injury No. 1: Incised wound measuring 4cm X 2cm X bone deep on the left side of the neck, 4 cm below the left ear. The carotid and jugular veins on the right side were severed.

Injury No. 2: Incised wound on the right side of the face about 5cm below the ear measuring 5cm X 5cm X deep to the bone. The jaw bone was fractured.

Injury No. 3: Multiple lacerated wounds on right side of the face, 1cm above the injury no. 2, measuring 6cmX 3cm X deep up to bone.

Injury No. 4: Lacerated wound on the right side of the head 5½ cm above the right eyebrow measuring 6cm X 1cm X deep up to bone.

Injury No. 5: Multiple contusions measuring 12cm X 3cm on the right chest, 2cm below the right nipple.

Injury No. 6: Multiple contusions on the chest 4cm below suprasternal notch. The seventh rib on the left side and rib 2nd

to 6th on the right side along with middle bone (sternum) were fractured.

On internal examination he found that the right lung membrane and lung were ruptured. The deceased had 11/10 teeth, stomach contained black digested food, the large and small intestines were empty, brain was not liquidified. He opined that the death may have occurred due to bleeding and shock caused by the ante-mortem injuries and he may have passed away between 36 to 48 hours from the time of post-mortem examination.

34. He further deposed that in his opinion the cut wound on the body of Munshi could have likely been caused by a sharp weapon such as an axe and the contusions and lacerated wounds on the bodies of all the deceased could have been caused by a hard and blunt object like a *lathi*. He further opined that all the deceased may have died sometime during the night of January 16th/17th, 2006 and the injuries inflicted on all the deceased were sufficient to cause the death.

35. During cross-examination, he deposed that under normal circumstance it takes four hours for the food to pass through the stomach. He further deposed that no food was found in the stomachs of deceased Kamla and Ragunath, and black type digested food was found in the stomach of deceased Munshi, which was not recognizable as to what type of the food it was. He further deposed that looking at the contusions and lacerated wounds of all the deceased it would not be possible to conclude as to whether they were caused by same weapon or different weapon.

36. **PW-9, Ram Nihor Gautam**, DCRV police line Balrampur, Balrampur deposed that on 17.01.2006 he was posted as

inspector-in-charge at police station Kotwali Jarwa. He further deposed that on the same day, he had registered a case crime number 06/06, on the bases of the written complaint of Mangal Prasad Verma, under Section 302 IPC and he himself took up the investigation of the case. He further deposed that thereafter he along with constable Ramshankar Chauhan, S.S.I Sri Arvind Pratap Singh, S.S.I. Sri Bhagirathi Tiwari, CP 244 Naval Bihari Pandey, SI CP 225 Bechan Prasad, CP 330 Israr Hussain, CP 361 Radhey Shyam Sharma, H.G. Somai Prasad, and Pawan Kumar left for the place of the occurrence. He further deposed that after reaching the place of occurrence he recorded the statement of Mangal Prasad. He further deposed that after the witnesses of the *panchayatnama* were appointed, *panchayatnama* of dead body of deceased Kamla and Munshi were prepared and after sealing the bodies in separate clothes and stamping them, they were handed over to constable 330 Israr Hussain, constable 225 Bachan Ram and SI Bhagirathi Tiwari for post-mortem. He further deposed that he had prepared the *panchayatnama* of dead body of Kamla (Ext. Ka-4). He further deposed that on his instruction SI A.P. Singh had prepared letter to RI, letter to CMO, *challan lash,* sketch of the dead body, and sample of the seal (Ext. Ka-13 to Ka-17). He further deposed that on his instruction the *panchayatnama* of dead body of Raghunath Verma was prepared by SI Bhagirathi Tiwari (Ext. Ka-2) along with letter to RI, letter to CMO, *challan lash,* sketch of the dead body, and sample of the seal (Ext. Ka-18 to Ka-22). He further deposed that he had also prepared the *panchayatnama* of dead body of Munshi Verma (Ext. Ka-3). He further deposed that on his instruction SI Bhagirathi Tiwari and SI A.P. Singh prepared letter to RI, letter to CMO, *challan lash,* sketch of the dead

body, and sample of the seal (Ext. Ka- 23 to Ka-27). He further deposed that while preparing the *panchayatnama* of dead body of Munshi, an application dated 14.01.2006 was found, addressed to Jarwa police station, against the accused Shiv Pujan and his son. He further deposed that memo of recovery for this application was prepared and it was attested by the witnesses (Ext. Ka-28). He further deposed that the application was taken into custody along with paper number 4/5 (Ext. Ka-29). He further deposed that on 17.01.2006 statement of Nibber was recorded and thereafter the place of occurrence was inspected and a site map was prepared (Ext. Ka-30). He further deposed that on the same day, after the *panchayatnama* were prepared, plain soil and blood-stained soil were collected from the place of occurrence, placed in separate boxes, sealed and stamped, and single memo for all of them was prepared (Ext. Ka-6). He further deposed that on 17.01.2006 at about 8:30 PM an application dated 28.12.2005 submitted by deceased Raghunath at *tehsil diwas* against Shiv Pujan and his son was received through the office of S.D.M., Tulsipur and an entry in this regard was made (Ext. Ka-31). He further deposed that SDM, Tulsipur took action on the said application on 28.12.2005. He further deposed that on 20.01.2006 Ramnivas, brother of Mangal Prasad, and accused Shiv Pujan were called to the police station for questioning. He further deposed that the statement of witness Govardhan and Ram Chhabiley were recoded under Section 161 CrPC. He further deposed that thereafter, statement of accused Shiv Pujan was recorded, wherein he confessed to his crime and assured the recovery of the murder weapon, an axe and *danda*. He further deposed that thereafter accused Shiv Pujan was arrested and taken into custody. He further deposed that public

witnesses Mahendra Nath and Kuddan along with accused Shiv Pujan were taken to place of occurrence, where accused took to police to a pile of dry sugarcane leaves near the bullock cart in the eastern corner of Ragunath's house and from that pile accused himself searched for an axe and a *danda,* and told that he had killed his parents and brother with the same. He further deposed that after taking possession of the *danda* and axe, the same were kept in a cloth, sealed and stamped. He further deposed that a memo of the recovery of the murder weapon was prepared at the spot and it was attested by the witnesses (Ext. Ka-5). He further deposed that on the same day, the site plan of the recovery of murder weapon was prepared (Ext Ka-32). He further deposed that on 22.01.2006 statement of Lalta, brother of deceased Ragunath, was recorded wherein he stated that he had bequeathed the property situated in village Pehalwan Purva to the deceased Ragunath (copy of will is marked as Ext. Ka-7). He further deposed that after sufficient evidence against the accused, the charge-sheet was filed in the court on 07.03.2006 (Ext. Ka-33).

37. During cross-examination, he deposed that he received the information of the incident on 17.01.2006 at around 9:10 AM, when he was present at the police station. He further deposed that Mangal came along with the *chowkidar* for registering FIR. He further deposed that in the *panchayatnama* of the all three deceased, as per the FIR, it was mentioned that a sharp-edge weapon was used for the murder however, on inspecting the dead bodies and the injuries it was difficult to conclude whether or not such weapon was used and therefore the bodies were sent for post-mortem examination. He further denied the suggestion that injury was shown on the basis of

recovery of an axe and he also denied the suggestion that after inspecting the lacerated wounds of the dead bodies he had shown the recovery of *danda*. He further deposed that it appeared to him that the Raghunath's right hand was broken and twisted and therefore he had mentioned the same in *panchayatnama.* He further deposed that the application, which was recovered from the pocket of deceased Munshi during *panchayatnama,* was not shown by him to Superintendent of Police or District Magistrate or any other officer and on that application, there was no signature or thumb impression of deceased Munshi. He further deposed that the said application was taken into custody. The same was seen by the witnesses, however, it was difficult to conclude that who had written the said application. He further denied the suggestion that a wrong entry was made in the *panchayatnama*, and initially nothing was recovered and later by cutting the entry he showed the recovery. He further deposed that on 16.01.2006 Nibber went for a *bhandara* in a temple. He further denied the suggestion that Nibber did not stay in the *bhandara.* He further deposed that the entry regarding the application given on *tehsil diwas* (Ext. Ka-34) was made on 17.01.2006 at around 8:30 PM. He further deposed that he had not verified the thumb impression of deceased Ragunath which was affixed on the said application because no record containing the thumb impression could be obtained. He further deposed that the accused had not revealed him that from where had the accused obtained the *danda*. He further deposed that the appellant did not disclose the source of the *danda* and admitted that no thumb impressions were obtained from the axe or the *danda.* He

further denied the suggestion that he had concealed the real culprits and falsely named Shiv Pujan and sent to jail on the basis of fake seizures. He further denied the suggestion that he had presented a fake application and fabricated witnesses' statements.

38. **PW-10, Israr Hussain**, C.P. 330, Police Station Kotwali Jarwa, District Balrampur, deposed that on 17.01.2006 he was posted at Police Station Jarwa and accompanied the Inspector to the place of occurrence. He further deposed that the *panchayatnama's* of the deceased Kamla Devi, Raghunath and Munshi were prepared at the spot (Ext. Ka-2, Ka-3 and Ka-4 respectively). He further deposed that thereafter the dead bodies were separately wrapped in cloth, duly sealed, and the relevant papers pertaining to the dead bodies were handed over to him and constable Bechan Ram for taking the same for post-mortem examination at Gonda. He further deposed that while the dead bodies remained in his custody, the seals remained intact and no unauthorised person was permitted to touch, inspect or disturb the dead bodies until they were delivered to the post-mortem doctor. He further deposed that upon delivery, identification of the dead bodies was carried out by the doctor and post-mortem examination was thereafter conducted. He further deposed that he collected the post-mortem reports and submitted the same at the police station.

39. During cross-examination, he deposed that at the time when the dead bodies were being shifted for preparation of *panchayatnama*, Raghunath's son Nibbar was present, whereas the accused Shiv Pujan did not accompany them. He further deposed that he had personally seen the dead bodies before

attesting his signatures on the relevant documents and had signed the papers at the direction of the Inspector.

Court Analysis:

Effect of Extra-Judicial Confession:

40. The conviction of the appellant substantially rests upon the extra-judicial confession attributed to him before PW-2 Ram Chhabiley. It is, therefore, necessary to examine the evidentiary value of such confession in the light of settled principles of criminal jurisprudence.

41. The evidentiary value of an extra-judicial confession has been examined in detail by the Supreme Court in ***Sahadevan v. State of T.N.*****, (2012) 6 SCC 403**, wherein the apex court held that in cases founded upon circumstantial evidence, where the prosecution relies upon an extra-judicial confession, the Court must subject such evidence to a greater degree of scrutiny, and the onus lies upon the prosecution to establish a complete chain of circumstances unerringly pointing towards the guilt of the accused. Furthermore, the apex court held:

> *"16. … (i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.*
>
> *(ii) It should be made voluntarily and should be truthful.*
>
> *(iii) It should inspire confidence.*
>
> *(iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.*
>
> *(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.*

(vi) Such statement essentially has to be proved like any other fact and in accordance with law."

42. Applying the aforesaid settled principles to the facts of the present case, this Court finds that the alleged extra-judicial confession attributed to the appellant before PW-2 Ram Chhabiley does not satisfy the litmus tests. Firstly, PW-2 does not occupy any position of authority nor has the prosecution established any special relationship of trust between him and the appellant which would render it natural for the appellant to confess a heinous triple murder. The witness himself admits that he was not present in the village on the date of occurrence and returned only on the following day. There is no convincing explanation as to why the appellant would voluntarily choose PW-2 as the confidant of such a serious admission.

43. Secondly, the conduct of PW-2 is wholly inconsistent with ordinary human behaviour. Despite claiming that the appellant confessed to having committed a heinous triple murder and sought his help to manage the police, PW-2 did not inform any authority, village elders, or police officials immediately. Such unnatural silence is inconsistent with ordinary human conduct and considerably weakens the credibility of his version.

44. The Court also cannot lose sight of the fact that PW-2 admitted previous involvement in proceedings under Section 151 Cr.P.C. with deceased Munshi and also admitted the existence of long-standing land disputes involving the deceased family and other villagers. These circumstances indicate the possibility of underlying village factionalism and provide a fertile ground for false implication.

45. In view of the aforesaid, the alleged extra-judicial confession, standing alone and unsupported by unimpeachable corroboration, does not inspire the confidence of this Court. It is unsafe to base a conviction solely or substantially on such a shaky piece of evidence. The Trial Court, in placing heavy reliance upon the extra-judicial confession of PW-2, has not subjected the same to the degree of scrutiny mandated by law. Consequently, the evidentiary value of the said confession is found to be weak and insufficient to independently sustain the conviction.

Validity of Statements Recorded under Section 161 Cr.P.C. and Credibility of the Alleged Recovery of Murder Weapons:

46. The prosecution has also placed reliance upon the statement allegedly made by the appellant during police interrogation and leading to the recovery of an axe and *danda* claimed to be used in the commission of the offence. The said recovery is stated to have been effected on the basis of the statement recorded under Section 161 Cr.P.C.

47. At the outset, it is necessary to notice the settled position of law that a statement recorded under Section 161 Cr.P.C. is not substantive evidence. Such statement can only be utilized for the limited purpose of contradiction in accordance with Section 145 of the Evidence Act. Any confession made to a police officer is hit by Sections 25 and 26 of the Evidence Act and is inadmissible in evidence. Only that portion of a statement which leads to the discovery of a fact may be admissible under Section 27 of the Evidence Act, provided the discovery is proved to be genuine, voluntary and trustworthy.

48. In the present case, the alleged recovery of the *axe* and *danda* is sought to be proved through PW-3 Mahendra Nath

and PW-4 Guddan, both cited as independent witnesses to the recovery memo. However, both these witnesses have not supported the prosecution version. They have denied that any recovery was effected in their presence and have stated that their signatures were obtained on blank papers or that they were made to sign without knowing the contents. Both witnesses were declared hostile. Their testimony, therefore, substantially weakens the prosecution version regarding the alleged recovery.

49. What remains thereafter is the solitary testimony of the Investigating Officer regarding the recovery. It is true that a recovery can be proved even through the testimony of a police officer alone; however, when independent witnesses are admittedly available and cited, but they disown the recovery, the Court is required to exercise greater caution before placing reliance solely on official testimony, particularly in a case resting entirely on circumstantial evidence.

50. In such circumstances, the alleged recovery, which is founded primarily upon a police statement recorded under Section 161 Cr.P.C. and is unsupported by independent corroboration, does not inspire confidence. The prosecution has failed to establish the recovery as a reliable incriminating circumstance against the appellant. Therefore, the said recovery cannot be treated as a strong or conclusive link in the chain of circumstantial evidence.

Effect of Absence of Eyewitness and Failure of the Prosecution to Establish a Complete Chain of Circumstantial Evidence:

51. Admittedly, the prosecution case does not rest upon any direct ocular testimony. No witness has come forward to claim

that he had seen the accused committing the murders of Raghunath, Kamla and Munshi. The case is, therefore, founded entirely on circumstantial evidence.

52. It is well settled that where a conviction is sought to be based solely on circumstantial evidence, the prosecution is under a heavy burden to establish a complete and unbroken chain of circumstances which must point unerringly towards the guilt of the accused and must exclude every possible hypothesis consistent with his innocence. In ***Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116**, the Hon'ble Supreme Court laid down the celebrated *"five golden principles"* (*panchsheel*) governing cases based on circumstantial evidence, namely:

(i) the circumstances from which the conclusion of guilt is to be drawn must be fully established;

(ii) the facts so established must be consistent only with the hypothesis of the guilt of the accused;

(iii) the circumstances must be of a conclusive nature and tendency;

(iv) they must exclude every possible hypothesis except the one to be proved; and

(v) there must be a chain of evidence so complete as not to leave any reasonable ground for a 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.

53. Furthermore, mere recovery of the alleged weapon of assault is not sufficient by itself to record a conviction in cases bases purely on circumstantial evidence particularly when the chain of circumstances is not complete. The Supreme Court consistently held that conviction in circumstantial evidence

cases requires a complete and unbroken chain of circumstances that points unerringly and exclusively to the guilt of the accused, and is inconsistent with any hypothesis of innocence. This principle was laid down in the case of ***Sharad Birdhichand Sarda*** *(supra).* Mere recovery of weapon, even if blood-stained or matching victim's blood group via FSL/forensic report, does not fulfil this requirement on its own. The apex court in ***Raja Naykar v. State of Chhattisgarh, (2024) 3 SCC 481*** held that mere recovery of blood-stained weapon, even bearing the same blood group as the victim, is insufficient to prove the charge of murder unless the recovery is convincingly linked to the crime and forms part of a complete and unbroken chain of incriminating circumstances.

54. Therefore, recovery alone, even with a matching FSL report, cannot sustain a conviction without strong corroborative evidence connecting the accused to the crime scene, motive, act etc. If the chain breaks or leaves room for a reasonable doubt - for example, where recovery is made from an open or public place easily accessible to others or where there is no eyewitness or where witnesses have turned hostile, the accused is entitled to acquittal. In cases based entirely on circumstantial evidence, the factum of recovery of the weapon of assault must be dealt with great caution as suspicion, howsoever strong, cannot take the place of, nor substitute, the proof beyond reasonable doubt. In this context, reference may also be taken from the case of ***Mustkeem alias Sirajudeen v. State of Rajasthan*****, (2011) 11 SCC 724.**

55. When the prosecution evidence in the present case is tested on the anvil of the aforesaid settled principles, it becomes apparent that the chain of circumstances is far from complete.

Furthermore, the ratio of the case of ***Nanhar & Ors. v. State of Haryana, (2010) 11 SCC 423*** relied upon by the learned counsel for the appellant, on the aspect of circumstantial evidence would be applicable in the present case.

56. There is no *"last seen"* evidence or eyewitness account. PW-5 Govardhan, who was examined as a witness who alleged to be present near the place of occurrence, has stated that he neither saw nor heard the appellant at the relevant time and did not hear any cries for help from the deceased. This testimony, instead of strengthening the prosecution case, seriously weakens it.

57. The alleged recovery of the *axe* and *danda* has not been supported by any independent/public witnesses, and PW-3 Mahendra Nath and PW-4 Guddan, have denied of witnessing any recovery at the instance of the appellant. Their evidence renders the alleged recovery wholly unreliable.

58. The recovery of the alleged incriminating application from the pocket of deceased Munshi also becomes suspicious, as the *panch* witnesses to the inquest have not supported such recovery.

59. Even the alleged extra-judicial confession made to PW-2 Ram Chhabiley, which has been projected as the main link in the chain, does not inspire confidence and lacks independent corroboration.

60. Thus, the circumstances relied upon by the prosecution neither stand firmly proved nor form a continuous and unbroken chain. They do not point exclusively towards the guilt of the appellant, nor do they exclude other reasonable hypotheses consistent with his innocence.

61. In such a scenario, the conviction cannot be sustained, as suspicion, however strong, cannot take the place of legal proof. The prosecution having failed to satisfy the *panchsheel* laid down in *Sharad Birdhichand Sarda (supra)*, the benefit of doubt must necessarily enure to the appellant.

Motive Alone Cannot Sustain Conviction:

62. Much emphasis has been laid by the prosecution upon the alleged motive arising out of the property dispute between the appellant Shiv Pujan and the deceased Raghunath and Munshi. The evidence on record does indicate that there were differences within the family regarding partition and enjoyment of land. However, it is a settled principle of criminal law that motive, even if assumed to be established, cannot by itself be made the sole basis for sustaining a conviction.

63. The Hon'ble Supreme Court, in ***Mahendra Singh & Ors. v. State of Madhya Pradesh, (2022) 7 SCC 157,*** has held *"it is well settled that only because motive is established, the conviction cannot be sustained"* and the reliance taken by the applleant on this aspect is correct. Thus, it can be said that motive may provide a background for the occurrence, but it does not dispense with the requirement of proving the involvement of the accused in the commission of the crime through reliable and cogent evidence.

64. Ld. A.G.A. vehemently argued that the application allegedly recovered from the pocket of the jacket worn by the deceased (Ext. Ka-29) (paper no. 4/5) constitutes an incriminating circumstance against the appellant and lends assurance to the

prosecution case. This Court has examined the said submission in the light of the evidence available on record.

65. The prosecution seeks to rely upon the alleged recovery of the application during the preparation of the inquest proceeding. However, PW-4 Guddan, who was cited as an independent witness to the proceedings, has denied that any such letter was recovered in his presence. He further admitted his signatures on the recovery memo pertaining to the alleged recovery of the murder weapon (Ext. Ka-5), yet stated that the same were obtained after the Inspector procured his signatures on blank papers. Such testimony casts a serious shadow upon the authenticity of the documentary proceedings relied upon by the prosecution. When an independent witness disowns the recovery and alleges that signatures were obtained without knowledge of the contents, the evidentiary value of the document becomes doubtful and cannot be accepted without caution.

66. It is equally relevant to notice that the alleged application recovered from the pocket of the deceased has not been proved through unimpeachable evidence. The Investigating Officer himself admitted that the document bore neither signature nor thumb impression of the deceased and that its authorship could not be verified. In the absence of proper proof of origin and authenticity, such recovery cannot be elevated to the status of a reliable incriminating circumstance. The said circumstance, therefore, fails to strengthen the chain of evidence sought to be established by the prosecution.

67. The prosecution has also attempted to rely upon the conduct of the appellant in not lodging the FIR and in not

accompanying certain proceedings as indicative of guilt. This Court is unable to subscribe to such submission. Evidence of conduct must be evaluated within the meaning of Section 8 of the Evidence Act and must be such as clearly points towards culpability. On the contrary, the record indicates that the appellant participated in the inquest proceedings. Had he been the perpetrator of the crime, his presence in such formal proceedings cannot be lightly construed as adverse conduct. Likewise, mere absence at the time of lodging of the FIR or failure to take particular steps does not automatically give rise to an inference of guilt. Human conduct varies widely, and criminal liability cannot be fastened on speculative assumptions regarding behaviour.

68. Therefore, neither the alleged recovery of the application nor the conduct attributed to the appellant constitutes a dependable incriminating circumstance. These factors, when examined in the light of the entire evidence on record, do not advance the prosecution case and instead reinforce the doubts already noticed in the chain of circumstances.

69. In the present case, apart from the alleged and rather weak motive, there is no evidence connecting the appellant with the occurrence. The case of the prosecution rests entirely on circumstantial evidence. Moreover, the circumstances relied upon by the prosecution do not form a complete and unbroken chain so as to point unerringly towards the guilt of the appellant and to rule out every hypothesis consistent with his innocence.

70. Therefore, even if the existence of motive is accepted, the same cannot, in the absence of a complete and reliable chain

of circumstantial evidence, form the foundation for sustaining the conviction. Motive can only be an additional link in a proved chain of circumstances; it cannot by itself take the place of proof.

Benefit of Doubt and Presumption of Innocence:

71. It is a cardinal principle of criminal jurisprudence that every accused is presumed to be innocent until proven guilty beyond all reasonable doubt. The burden squarely lies upon the prosecution to establish each and every link in the chain of circumstances leading unerringly to the guilt of the accused. Suspicion, however grave, cannot take the place of proof.

72. In a case resting entirely on circumstantial evidence, the presumption of innocence becomes even more pronounced, for the Court must be satisfied that the circumstances relied upon by the prosecution form a complete chain and are inconsistent with any hypothesis other than the guilt of the accused. Where two views are possible on the evidence adduced, the view favourable to the accused must necessarily be adopted. It is well settled principal of law that a suspicion however governed can not take place of valid proof. There is considerable difference betweeen *"may be proved"* and *"must be proved"*.

73. In the present case, as discussed hereinbefore, the prosecution has failed to establish a complete and unbroken chain of circumstances. The alleged extra-judicial confession suffers from serious infirmities and does not inspire confidence. The recovery of the alleged murder weapons is also shrouded in doubt, having not been supported by independent witnesses and lacking corroborative forensic evidence. There is no eye-

witness to the occurrence, and the circumstantial links relied upon by the prosecution are either weak, doubtful or uncorroborated.

74. The cumulative effect of these deficiencies creates a reasonable doubt in the prosecution case. Such doubt is neither fanciful nor speculative, but arises from material contradictions and lacunae in the evidence on record. In criminal law, even a single reasonable doubt is sufficient to entitle the accused to an acquittal.

75. Accordingly, the appellant is entitled to the benefit of doubt. The presumption of innocence, which accompanies the accused from the inception of the trial and continues throughout the appellate stage, stands fortified in the present case, and the prosecution has failed to dislodge the same by reliable and convincing evidence.

Conclusion:

76. In view of the foregoing discussion and upon an overall re-appraisal of the evidence on record, this Court is of the considered opinion that the prosecution has not been able to establish the charge against the appellant beyond reasonable doubt. The chain of circumstances is found to be incomplete and does not unerringly point towards the guilt of the appellant. The findings recorded by the learned Trial Court, therefore, cannot be sustained in law.

77. Accordingly, the appeal is **allowed**. The impugned judgment and order dated 15th December 2007 passed by the learned Session Judge, District Balrampur in Session Trial No. 06 of 2006 is set aside.

78. The appellant, Shiv Pujan is acquitted of all the charges. He shall be released forthwith, if not wanted in any other case.

79. Pending applications if any stands disposed of.

80. The office is directed to transmit a certified copy of this judgment to the court concerned for immediate compliance.

(Zafeer Ahmad, J.) (Rajnish Kumar, J.)

February 13, 2026
Fahim/-