REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO (S). 1445-1446 OF 2012

Suresh and Anr. …Appellant (s)

Versus

State of Haryana …Respondent (s)

With

CRIMINAL APPEAL NO. 1458 OF 2012

Sobhat Singh …Appellant (s)

Versus

Dharampal and Ors. …Respondent (s)

J U D G M E N T

N. V. RAMANA, J.

1. These appeals by special leave petitions, are preferred by two accused persons, namely Sobhat Singh and Suresh, against the conviction imposed by the High Court and the consequential acquittal of other persons, namely Dharampal and Umed Singh, sons of Beg Raj and Dharambir, passed by the High Court of Punjab and Haryana in Crl. Appeal No. 157-DB of 2002, 273-DB of 2002, 920-SB of 2002, 751-DBA of 2002 and Crl. Revision No. 907 of 2004. Facts being connected and issues being similar, we would like to deal with these appeals by a common judgment.

2. Few facts which are necessary for the disposal of these cases are that a panchayat election was held on 15.12.1994, in the village Sundawas, where there were two major contestants namely Maha Singh and Dharampal son of Beg Raj. Deceased Chander Bhan was an election agent for the losing candidate Maha Singh. It is necessary to note that there was a quarrel including gun shots being fired at around 11 A.M, on the day of election between both factions, as a result of which supporters of Dharampal son of Beg Raj (winning candidate) sustained injuries. In this context, a FIR No. 733 of 1994 was registered against Maha Singh (losing candidate) and one Darya under Sections 307 read with 34 of Indian Penal Code, 1860 [*hereinafter referred as* '**IPC**' *for brevity*] and Sections 25 and 27 of the Arms Act, 1959.

3. Later, during the intervening night of 15th and 16th December of 1994, Dharampal *alias* Dharam son of Nanak Ram [accused **A-1**], Sobhat Singh [accused **A-2**], both being supporters of losing candidate Maha Singh, came to the house of Chander Bhan, on

the pretext that since Maha Singh had lost the election and was involved in a criminal case, they should falsely implicate Dharampal son of Beg Raj also, by registering a counter case against him. On this pretext, they accompanied Chander Bhan to Hisar. On their way, one Suresh [accused **A-3**] is supposed to have joined them.

4. One Umed Singh son of Mahi Ram [**PW-14**], while waiting near Borstal Jail, Hisar for a conveyance at 4:00 A.M on 16.12.1994 (morning) had seen A-1, A-2, Chander Bhan and A-3 going in an auto rickshaw. It is the prosecution's version that all of them went to an abandoned house in Adarsh Nagar at Hisar, wherein Chander Bhan (deceased) was shot by the aforesaid accused.

5. Thereafter, A-1 and A-2 took injured Chander Bhan to the City Civil Hospital, Hisar for treatment. It is alleged that in the meanwhile A-3 tried to hide the gun. It is born from the record that Chander Bhan succumbed to his injuries 20 minutes after he was admitted to the aforesaid Hospital on 16.12.1994.

6. Thereafter, accused A-2 went to the Police Station, Sadar Hisar, for registration of a complaint against Umed Singh son of Beg Raj, Dharam Pal son of Beg Raj [Sarpanch] and Dharambir for the death of Chander Bhan. Accordingly, FIR was filed before the police being FIR No. 736/ 1994, dated 16.12.1994, based on the accused A-2.

7. As per the narration of accused A-2, on 16.12.1994, at about 4:30 A.M, the Chander Bhan (deceased), A-2 and A-1 were going to Chandigarh on foot. On reaching a few kilometers ahead of the village Sundawas, they spotted a jeep coming towards them. One of the occupants Umed Singh son of Beg Raj, raised *lalkara* that enemies were going and they should be taught a lesson for helping Maha Singh in the elections. Dharampal and Umed Singh sons of Beg Raj and Dharambir alighted from the jeep and Dharam Pal son of Beg Raj, who was armed with a pistol, shot Chander Bhan in his stomach and ran away. It is alleged that A-1 and A-2, who escaped the firing, rushed Chander Bhan to the City Civil Hospital, Hisar, where he succumbed to his injuries.

8. The case was investigated by I.O. Bhim Singh [**PW-15**], who reached the spot of the alleged occurrence as per the narration of accused A-2. However, he could not trace any incriminating material as alleged. Being suspicious of the version of accused A-2, the investigating police, started to investigate from different angles.

9. On 25.12.1994, all the accused-appellants contacted one Zile Singh [**PW-16**] and confessed their guilt before him. To put the gist of their extra-judicial confessions, it may be noted that the accused stated to Zile Singh (**PW-16**) that having the motive to file a counter case against Dharampal son of Beg Raj, the Sarpanch, the accused-appellants along with Chander Bhan reached an abandoned house in Adarsh Nagar, Hisar and Suresh [**A-3**] fired a shot at Chander Bhan in the house at Adarsh Nagar. Thereupon accused A-3 fled away with the gun. Later, accused A-1 and A-2 took Chander Bhan to the hospital and registered a false complaint against Dharampal son of Beg Raj, Dharambir and Umed Singh son of Beg Raj under Section 302, IPC.

10. It may be noted that Zile Singh produced all the accused before the Police and thereafter the accused identified the place of occurrence. By virtue of such disclosure statements made by the individual accused persons, the police are alleged to have recovered a licensed gun, cartridges, pellets, some concrete material from the khurli found in the house at Adarsh Nagar, Hisar. Based on the aforesaid complaint, Bhim Singh, S.I to the P.S Sadar, Hisar, registered a case under Sections 25, 30, 54 and 59 of Arms Act, being FIR No. 743 [Ex. PZ/1], against Lachman Singh [A-4] and A-3.

11. After the completion of the investigation, charge-sheets came to be filed in the Court against the accused A-1, A-2 and A-3 for offences under Section 302 read with Section 34 of IPC and accordingly, were summoned by the Addl. Sessions Judge on 10.10.1995 [*in Criminal Case No. 76-1-0802 of 1995 (Sessions Case No. 60 of 1995 in Sessions Trial No. 22 of 1995)*]. In a connected case of FIR No. 743, the accused A-3 and Lachman (A-4) were being tried for usage of fire arms, which was consolidated

with the main case, by order dated 19.09.1999 and both the cases were tried together. During the trial, the Prosecution examined 17 witnesses and the Defense examined 4 witnesses in the Sessions Case No. 60 of 1995. It may be noted here that the accused examined themselves as defense witnesses under Section 315 of Code of Criminal Procedure, 1973 [*herein after referred as* '**CrPC**' *for brevity*].

12. The Trial Court in Sessions Case No. 60 of 1995 in Sessions Trial No. 22 of 1995, by order dated 12.02.2002, found the accused guilty of committing the crime and convicted them for the offences punishable as under-

ACCUSED	CHARGES	CONVICTION
Sobhat Singh [A-2]	S. 302/34 IPC	RI for Life and fine of Rs 5,000. In default, to suffer RI for 6 months
Suresh [A-3]	[1] S. 302/34 IPC [2] S. 25 Arms Act	[1] RI for Life and fine of Rs 5,000. In default, to suffer RI for 6 months. [2] RI for 1 year and fine of Rs 500, In default, to undergo RI for 15 days. Sentence to run concurrently.
Lachman [A-4]	S. 30, Arms Act	Fine of Rs 1,000. In default, to suffer RI for 15 days.

It may be noted, that during the trial, accused A-1 died and the trial against him got abated. The Trial Court, held the accused guilty, and reasoned as under-

a) The motive is proved, wherein the crime was staged so as to falsely implicate Sarpanch Dharampal belonging to opposite political faction.
b) That the accused portrayed a fake story and filed a FIR against Dharampal, Umed Singh sons of Beg Raj and Dharambir alleging that they have murdered Chander Bhan. However, no evidence was found against Dharampal, Umed and Dharambir at the place of occurrence as described by accused A-2.
c) There was no motive for Dharampal, Umed Singh and Dharambir to murder Chander Bhan. Rather, a motive exists on the part of the accused, since their candidate had lost the election.
d) Inference was drawn that the probability of causing injuries to Chander Bhan by A-1 and A-2 was relatively higher.
e) That PW-14, Umed Singh son of Mahi Ram, had seen the accused with the deceased early in the morning when they had a small conversation and that the Umed Singh (PW-14) had noticed that Suresh was holding a single barrel gun.
f) That the version of accused A-2 was not tenable due to many contradicting circumstances.
g) That the accused had confessed their crime before Zile Singh (**PW-16**), who later produced the accused before the Police on 25.12.1994.
h) That the disclosure statements made by the accused appellants herein, before the police, led to the recovery of the licensed gun and pellets.

i) The FSL Report concludes that the pellets which were recovered from the Khurli as per such disclosure were similar to those found in the dead body.
j) The Post-mortem report confirms the death to have been caused due to hemorrhage and shock due to gunshot injuries.

13. Aggrieved by the fact that the complainant was himself shown as an accused by the investigating authority, A-2 filed a complaint before the Magistrate against the Dharambir, Umed Singh son of Beg Raj and Dharam Pal son of Beg Raj, on the facts as revealed by accused A-2 in FIR No. 736 dated 16.12.1994.

14. Accordingly, the Magistrate separately took cognizance and committed the case to the Sessions Court against Dharambir, Umed Singh son of Beg Raj and Dharam Pal son of Beg Raj, on 25.01.1997 [*in Complaint Case No. 95-1 of 1995 (Sessions case No. 62 of 1997*] under Sections 302 read with 34 of IPC. Further by order dated 05.03.1997, the Sessions Judge ordered the trial of all the cases to take place simultaneously. All the accused pleaded not guilty and claimed to be tried.

15. In Sessions case No. 62 of 1997, the Sessions Court by order, dated 12.02.2002, acquitted Dharampal son of Beg Raj, Umed Singh son of Beg Raj and Dharambir on the following reasons-

a) That prosecution failed to establish motive on the part of accused-Dharampal son of Beg Raj, as he has already won the election.
b) That accused persons came at midnight - 15.12.1994 -16.12.1994, called the deceased and told him that they had to shoot somebody so as to falsely implicate Sarpanch Dharampal son of Beg Raj in a case as corroborated by the evidence of DW-1 (Kamla).
c) That the story of the prosecution that the deceased was shot on the road at a distance of 1-1/2 K.M. from village by the accused Dharampal son of Beg Raj is uncorroborated in the absence of any incriminating evidence in the said crime scene, as supported by the evidence of DW-5 Bhim Singh.
d) That DW-2 Umed Singh corroborated that on 16.12.1994 at about 4:30 A.M. while waiting for conveyance to go to his village he had seen Sobhat Singh, Dharampal son of Nanak Ram and the Suresh who was carrying a single barrel gun along with the deceased in an auto-rickshaw.
e) The complainant had taken deceased to the Hospital at 6: 30 AM. In cross-examination Sobhat Singh (**PW-4/A-2**) and Dharampal (**PW-5/A-1**) could not explain when the deceased received injuries or why did they not take the deceased to the nearby hospital.
f) That complainants further failed to explain in their cross-examination how the three-wheeler appeared merely within five-minutes to take them to the Hospital at Hisar.
g) The evidence of PW5-Dharampal son of Nanak Ram, is contradictory to PW-4 (Shobat Singh [**A-2**]) as to how they took the deceased to the hospital.

h) That the complainants failed to state the number of vehicle, driver of the vehicle in their cross-examination. They have also failed to explain why they did not immediately report the matter in the village and to the family members of the deceased when they were just at a distance of 1-1/2 km from the village.

i) That extra-judicial confession was made before DW-3 (Zile Singh).

j) That the gun recovered in the instant case was the gun belonging to complainant Suresh [**A-3**] and FSL report available on record proves that the pellets found in the body of the deceased were similar to those fired from that gun.

k) Therefore, the prosecution failed to prove a case beyond reasonable doubt against the accused. So, all the accused were acquitted of the charge against them.

16. Aggrieved by the judgments of the Trial Court, in Session Case No. 60, accused A-2, A-3 and A-4 filed Criminal Appeal No. 273-DB, 157-DB, 920-SB respectively before the High Court. On the other hand, accused A-2 filed a Criminal Appeal No. 751-DBA of 2002, against the acquittal, of Dharampal son of Beg Raj, Umed Singh son of Beg Raj and Dharambir, passed by the Sessions Court in Sessions Case No. 62 of 1997. It may be noted that the High Court clubbed all the appeals and dismissed them through a common impugned judgment dated 03.01.2012. The High Court had further directed accused A-2 and A-3 to pay a sum of

Rs. One Lac as damages to Smt. Kamla and her two children.

17. The High Court while upholding the conviction emphasized following grounds-

a) That it was admitted by accused A-2 and A-1 that they had called for Chander Bhan at his house, in the presence of his wife, on 16.12.1994.

b) That the evidence produced by the I.O indicates that the accused took Chander Bhan to a room in Adarsh Nagar, Hisar, where he was shot by accused A-3 using his single barrel gun.

c) The accused-appellants had confessed to their crime, which led to the recovery of certain incriminating articles.

d) Sufficient evidence is on record like recovery of pellets, gun and some concrete material etc. to prove that Chander Bhan was shot inside that Kotha (Room) by the accused and not by the other gang, as alleged.

e) There was a crystal-clear motive on the part of the accused A-2 to commit such crime so as to implicate Dharampal son of Beg Raj (Sarpanch) in a false case.

f) Apart from the testimony of wife-Kamla and the recovery of the incriminating materials, the evidence of PW 14 (Umed Singh), who deposed that he had seen the accused along with Chander Bhan (deceased) earlier that morning with Suresh was also a major circumstance going against the accused.

g) Lastly, the extra judicial confession made before Zile Singh (PW-16), is found to be true and voluntary and since PW-16 is an independent witness, his evidence cannot be doubted.

h) The chain of circumstances are complete so as to bring home the guilt of the accused.

i) Further, the gun used was a licensed gun which belonged to Lachman, father of A-3, who had allowed the gun to be taken from his custody and misused by his son. Hence, the conviction under Arms Act was also justified.

18. Aggrieved by the judgment and order of conviction passed by the High Court, accused A-2 and A-3 have preferred Criminal Appeal No (s). 1445-1446 of 2012 (arising out of SLP (Crl.) No (s). 2868-2869 of 2012) in Sessions Case No. 60 of 1995 in Sessions Trial No. 22 of 1995. Further accused A-2 preferred a Criminal Appeal, being Criminal Appeal No. 1458 of 2012 (arising from SLP (Crl.) No. 2926 of 2012), against the acquittal of Dharampal son of Beg Raj, Umed Singh son of Beg Raj and Dharambir in Sessions Case No. 62 of 1997 in Sessions Trial No. 97 of 1997.

19. Learned senior counsel, Ms. Anjana Prakash, appearing on behalf of the appellant accused has mainly contended as under-

a) That the case involves no direct evidence and the chain of circumstantial evidence is not complete; therefore, the conviction of the appellants on the basis of unfounded evidence should not be sustained.
b) That PW-13 (wife of the deceased), when materially confronted, denied the statement that she had stated to the police that accused A-1 and appellant accused A-2 had told the deceased that they had to fire a shot at somebody to implicate Sarpanch Dharampal son of Beg Raj.
c) That PW-14 presence at spot is doubtful. He made out an illogical story that while waiting for conveyance to go to his village at 4:00 AM, he had seen the appellant and Dharampal with the deceased. But in Cross examination he was not able to explain why he was waiting for the conveyance 3½ hours

early, especially when the first bus for his village leaves at 7:30 AM.

d) That PW-14 has also admitted that he did not tell PW-13 that he had seen accused persons carrying gun along with the deceased in the said auto- rickshaw. PW-14 *inter alia* has also admitted that he and PW-16 had injured the deceased at an earlier point of time and denied the fact that brother of PW16 had fired upon the deceased.

e) That alleged extra-judicial confession made on 25.12.94 before PW-16 is not admissible on the ground that it was made under suspicious circumstances. PW-16 *inter-alia*, also admitted that Maha Singh had defeated him previously in the Sarpanch election; therefore, election rivalry is evident against accused persons.

f) That if the accused persons were arrested on 18.12.94, then the question of alleged extrajudicial confession made on 25.12.94 before PW16 casts doubt in the prosecution story.

g) That the FIR was lodged by the appellants and it is also an admitted fact that it was the appellant-accused who had brought the injured at the hospital for treatment.

h) That the gun recovered in the instant case is the licensed gun of the father of the accused Suresh and there is no forensic evidence available on record to prove that pellets found in the body of the deceased was fired from that gun.

i) That the motive plays an important role in a case of circumstantial evidence. In the present case there is no strong motive that can be inferred on the part of accused person on the ground of election rivalry.

j) That the role of investigating officer is doubtful in this case as there are contradictions in respect of the date of arrest of the accused persons. As the IO stated that he had found evidence against appellants within two days of occurrence but denied arresting them then. However, from the materials on record it is evident that date of arrest of accused persons is on

18.12.1994. That it can be said that IO is exonerating the actual accused and falsely implicating the appellants.

20. On the Other hand, learned counsel appearing on behalf of the State, Dr. Monika Gusain, while supporting the judgment of the lower courts, has drawn our attention to the fact that the accused, were hard core criminals, who would not stop short of killing their own for political rivalry. She has also contended that the recovery at the place in Adarsh Nagar bolsters the case of the prosecution. She argues that if for a moment, the version of accused A-1 is taken into consideration, then there was no question of taking the deceased to a Hospital 24 KM away in Hisar, while there was a Hospital near the vicinity of the alleged crime scene.

21. Having heard the Learned counsel for either side and given our anxious consideration to the facts and circumstances of the case on hand, at the outset, it would be apt to observe certain statements of prosecution witnesses, on whose evidence the courts below have excessively placed reliance. For this purpose, it would be necessary for us to deal with the two cases separately. First, we would like to take up the Criminal Appeal

No. 1445-1446 OF 2012 and thereafter consider Criminal Appeal No. 1458 of 2012.

22. PW-1(Dr. Bishnoi), SMO General Hospital, Tohana, deposed that he was the person, who conducted the post-mortem of the deceased. Regarding the nature of the injury, he states that-

> Multiple rounded and oval shaped wounds of the size of 1/3 cm into 1/3 cm present on the front of trunk and pelvic area along with upper part of the front of both thighs numbering about (50). Majority of these wounds were present on the left side of front part of the body. These were covered with clotted blood with inverted margins with lacerations. No blackening or tattooing were present. … All structures in the pelvic and in the lower abdomen including small and large intestine and vessels were injured. Abdominal cavity was full of red colored blood.

Further he has deposed that the death of Chander Bhan (deceased) resulted because of hemorrhage, and shock due to gun-shot injuries. All injuries were opined to have been ante-mortem in nature and sufficient in the usual course to cause death.

23. PW-2 (Dr. Surinder Singh), Medical Officer, who treated the Chander Bhan (deceased) at the Hospital. He avers that from the perusal of the bed-head ticket, the Chander Bhan (deceased) was

brought to the Hospital at Hisar, by accused A-1 and A-2. It is important to note that the deceased was brought in a semi-conscious state to the Hospital.

24. PW- 13 - Smt. Kamla, widow of deceased Chander Bhan states that on 15.12.1994, an election was held in the village of Sundawas, wherein the deceased Chander Bhan, was an election agent for Maha Singh. She deposed that persons in support of Maha Singh, supposedly fired gun shots and the supporters of Dharampal son of Beg Raj, allegedly had received injuries in the aforesaid firing. In the intervening night of 15-16th, A-1 and A-2, came to meet the deceased Chander Bhan. She states that her husband had enquired with the aforesaid accused, who had revealed to him that they had to go to Hisar and had to shoot somebody so as to involve Dharampal son of Beg Raj in a false case. In that pretext she states that all the three accused (A-1, A-2 and A-3) and Chander Bhan (deceased) left for Hisar.

25. It may be of some significance to note that, during her cross examination, she states as under-

> I had told in my statement to the police that accused Dharma and Sobhat has told my husband

> that somebody was to be fired at. I had told the police in my statement that accused Dharma and Sobhat had told my husband that they would fire shots at their own brother in order to involve Dharampal Sarpanch.

Appellant-accused has extensively placed reliance on the aforesaid statement, to point that the statement of PW-13 was ridden with improvements, which questions the reliability and credibility of her statements. The consequence of the same, will be discussed at a later stage.

26. PW-14 (Umed Singh son of Mahi Ram), states that he belongs to the village of Sundawas. On 15.12.1994, after casting his vote, he returned to Hisar in the evening for purchase of seed and fertilizers. Following morning, at about 4 AM, while he was standing near the Borstal Jail, Hisar, waiting for a bus to go back to his village Sundawas. Around that time, one auto rickshaw came from the side of Hisar City and stopped near him. The occupants of the auto-rickshaw were accused A-1, A-2, A-3 and Chander Bhan. He states that accused A-3 was holding a single barrel gun in his hand. When the occupants enquired about him, he replied to them that he was waiting for the conveyance to go

back to his village and the occupants of the auto supposedly told him that they were going for some urgent work.

27. PW-15- Bhim Singh, the Investigating Officer has deposed that accused A-2 had registered a complaint against Umed Singh, Dharampal sons of Beg Raj and Dharambir on the grounds that they have shot the deceased Chander Bhan on account of prior rivalry. He further deposed that in furtherance of the enquiry, on reaching the alleged scene of the crime, he did not find any tyre marks of the jeep or any incriminating marks whatsoever. It may be noted that his evidence is a crucial link to portray that the case of false prosecution against the winning candidate Dharampal son of Beg Raj was given full effect by misleading the police authority as to the scene of the incident. He further recorded the statement of PW-13-Smt. Kamla and found out that on 16.12.1994 the accused A-2 and A-1 came to the house of the deceased at around midnight and took Chander Bhan on the pretext that since Maha Singh had lost the election and was involved in a criminal case, hence they should falsely implicate

Sarpanch Dharampal son of Beg Raj, by registering a counter case against him.

28. PW-15 further deposed that PW-14 informed that while Umed Singh (**PW-14**) was waiting at Borstal Jail, Hisar for conveyance at 4:00 A.M on 16.12.1994, he had seen that accused A-1, A-2, deceased Chander Bhan and A-3 were going for some urgent work and that he had also noticed A-3 holding a single barrel gun.

29. Furthermore, PW-15 had also deposed that later, on 25.12.1994, PW-16, Zile Singh had produced the accused before him where he recorded the statement of Zile Singh with regard to the extra judicial confession made to him by the accused. It may be relevant to note PW-15 in the examination-in-chief states that the Zile Singh (PW-16), left the Police Station and did not wait till the completion of the interrogation. Whereas, in the cross-examination he contradicts himself that Zile Singh (PW-16) was present during the interrogation of the appellant-accused. PW-15 also deposed that by virtue of the disclosure statements made by the individual accused persons, the recovery of the gun,

cartridges, pellets and some concrete material from room and the khurli of the Adarsh Nagar House were made.

30. PW-16 (Zile Singh), deposes that on 25.12.1994, when he had come to the village Sundawas, accused A-1, A-2 and A-3 had confessed before him by detailing the *modus operandi* of the crime and subsequent cover-up of the incident. Thereafter, he states that he handed over the accused to the police for interrogation and the interrogation was conducted in his presence. At the appropriate stage, we will examine the relevance of the aforesaid confession made before Zile Singh (PW-16) and its impact on the prosecution's case.

31. As regards to the evidence of other witnesses who supported the prosecution case, PW-17, Mewa Singh, is the panch witness for the seizures made by the police from crime scene. He deposed that on 25.12.1994, he went to the police station along with one Sant Lal on getting the information that the real culprits in Chander Bhan's murder case have been arrested. He further deposed that I.O. Bhim Singh interrogated the accused in his

presence. That during such interrogation, accused A-1 and A-3 pointed out that they will be able to show the scene of the crime as well as the hidden gun. He had further deposed that he and Sant Lal were witnesses to the subsequent recoveries made by the investigating officer.

32. After having appreciated the evidence of certain crucial witnesses, we would like to clarify at the outset that this is a case of circumstantial evidence. Jurisprudentially the meaning of circumstantial evidence has never been settled. Although we may not require a detailed analysis of the jurisprudential dichotomy which exists as to what amounts to 'circumstantial evidence', we may indicate certain precedents and legal literature have given a definite shape for the aforesaid term. In **Thomas Starkie, A Practical treatise on the law of evidence, and digest of proofs, in civil and criminal proceedings (vol. I, 4th Eds., 1876)**, it is said that-

> "In criminal cases, proof that the party accused was influenced by a strong motive of interest to commit the offence proved to have been committed, although exceedingly weak and inconclusive in itself, and although it be a circumstance which

> ought never to operate in proof of the corpus delicti, yet when that has once been established aliunde, it is a circumstance to be considered in conjunction with others which plainly tend to implicate the accused".

Sir Fitz James Stephen, while writing his **Introduction to Indian Evidence Act**, 1872, writes as under-

> Facts relevant to the issue are facts from the existence of which inferences as to the existence of the facts in issue may be drawn.
> A fact is relevant to another fact when the existence of the one can be shown to be the cause or one of the causes, or the effect or one of the effects, of existence of the other, or when the existence of the one, either alone or together with other facts, renders the existence of the other highly probable, or improbable, according to the common course of events.

Wharton's Criminal Evidence (1955)-

> "In prosecutions for homicide, as in criminal prosecutions generally, evidence to show motive is competent and considerable latitude is allowed in its introduction. When proof has been made of the corpus delicti, all facts and circumstances that tend to show motive on the part of the accused are relevant".

33. ***Peacock v. The King***, 13 CLR 619, expounded the circumstantial evidence to mean-

> Whether the fact, or that body of facts which is called the 'case' is capable of bearing a particular

> inference, is for the Court, and unless it is so capable, the Court's duty is to withhold it from the jury, as a single fact or as a case. But when the case is undoubtedly capable of the inference of guilt, albeit some other inference or theory be possible, it is for the jury, properly directed, and for them alone, to say not merely whether it carries a strong probability of guilt, but whether the inference exists actually and clearly, and so completely overcomes all other inferences or hypotheses, as to leave no reasonable doubt of guilt in their minds.

34. In ***Anant Chintaman Lagu v. State of Bombay***, AIR 1960 SC 500, this court defined circumstantial evidence-

> Circumstantial evidence in this context means, a combination of facts creating a network through which there is no escape for the accused, because the facts taken as a whole do not admit of any inference but of his guilt.

35. In line with the aforesaid definition, this Court in catena of cases has expounded the test of 'complete chain link theory' for the prosecution to prove a case beyond reasonable doubt based on the circumstantial evidence. In ***Hanumant and Others v. State of Madhya Pradesh***, AIR 1952 SC 343 [*hereinafter referred as* '**Hanumant Case**' *for brevity*], this Court explained one of the

possible ways to prove a case based on circumstantial evidence, in the following manner -

> in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved.

36. It was for the first time that this Court formulated a test concerning circumstantial evidence. Subsequently, the aforesaid test was applied on multiple occasions by this Court in ***Deonandan Mishra v. State of Bihar***, AIR 1955 SC 801, ***Govinda Reddy v. State of Mysore***, AIR 1960 SC 29.

37. In ***Charan Singh v. State of Uttar Pradesh***, AIR 1967 SC 520, this Court expounded the proposition laid down in ***Hanumant Case*** (supra), and observed as under-

> It is well established that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established, and the circumstances so established should be consistent only with the hypothesis of

> the guilt of the accused person; that is, the circumstances should be of such a nature as to reasonably exclude every hypothesis but the one proposed to be proved. **To put it in other words, the chain of evidence must be so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused person.**

We may note that this Court for the first time explained the general test applicable for evaluating circumstantial evidence and brought in the concept of 'completion of chain of evidence'.

38. In ***Sharad Birdhichand Sarda v. State of Maharashtra***, AIR 1984 SC 1622. Therein, while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity or lacuna in the prosecution cannot be cured by a false defense or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are -

> (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must or should' and not merely 'may be' established;

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

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

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

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

The aforesaid tests are aptly referred as '*Panchsheel of proof in Circumstantial Cases*' [*refer* ***Prakash v. State of Rajasthan***, AIR 2013 SC 1474]. The expectation is that the prosecution's case should reflect careful portrayal of the factual circumstances and inferences thereof and their compatibility with a singular hypothesis wherein all the intermediate facts and the case itself are proved beyond reasonable doubt.

39. Circumstantial evidence are those facts, which the court may infer further. There is a stark contrast between direct evidence and circumstantial evidence. In cases of circumstantial evidence,

the courts are called upon to make inferences from the available evidences, which may lead to the accused's guilt. In majority of cases, the inference of guilt is usually drawn by establishing the case from its initiation to the point of commission wherein each factual link is ultimately based on evidence of a fact or an inference thereof. Therefore, the courts have to identify the facts in the first place so as to fit the case within the parameters of 'chain link theory' and then see whether the case is made out beyond reasonable doubt. In India we have for a long time followed the 'chain link theory' since ***Hanumant Case*** (supra), which of course needs to be followed herein also.

40. We need to consider five aspects and their impact on the case at hand, before we put forth our analysis. It is well settled that motive is an important aspect in circumstantial evidence case. In ***Shivaji Genu Mohite v. State of Maharashtra***, AIR 1973 SC 55

> "In case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eye-witness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so

> in cases where there are eye-witnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eye-witness is rendered untrustworthy".

In this case the motive has an important role as this case is based on circumstantial evidence, motive herein forms one of the intermediate fact/circumstances. In this case, the motive of killing Chander Bhan (deceased) was to foist a false case on Dharampal son of Beg Raj. If the motive was to foist a false case, then it is quite strange to believe that the accused went to the extent of killing their own (supporter of Maha Singh) to avenge the loss in the elections. Even if the motive is taken to be proved, then this too only forms one of the circumstances for adducing the guilt of the accused.

41. The credibility of the witnesses, which the prosecution mainly relies on to prove the case on the basis of the circumstantial evidence is an important aspect. In this case the evidence of PW-13 (wife of the deceased) is crucial. Her statements should be carefully appreciated. The statements, as indicated above, clearly

portray that there were material improvements in the statements, which makes her statement unreliable and doubtful. The vindictive statements which were made during the cross examination, clearly bars us from taking her testimony into consideration. There is no dispute that there was prior enmity between the wife and the accused appellants, which makes her statements unreliable. It is revealed from her evidence that, even though she knew that her husband was taken for shooting somebody, she kept quiet and did not stop her husband from accompanying the accused. Such behavior would be suspicious as it does not fit with the natural human behavior to inspire any confidence.

42. Although this Court, on number of occasions, reiterated that mere relationship with the deceased will not be sufficient to discredit a witness, in the present circumstances, it is apparent that the wife was an interested witness due to earlier enmity between the accused. Hence, we are of the considered opinion that the aforesaid witness does not inspire confidence for us to rely on the same.

43. Coming to the testimony of the PW-14 (Umed Singh), the defense has tried to exposé the aforesaid witness on certain contradictions and improvements, which needs our consideration. At the outset, they question the presence of the aforesaid witness at Hisar, as the veracity of him being a chance witness is questionable. Learned senior counsel for the accused-appellant, has strenuously contended that PW-14 is a chance witness, and contends that not much reliance may be placed on his statement.

44. Generally, the chance witness, who reasonably explains his presence in the named location at the relevant time, may be taken into consideration and should be given due regard, if his version inspires confidence and the same is supported by surrounding circumstances. Nonetheless, the evidence of a chance witness requires a very cautious and close scrutiny. A chance witness must adequately explain his presence at the place of occurrence [*refer* ***Satbir v. Surat Singh***, (1997) 4 SCC 192; ***Harjinder Singh v. State of Punjab***, (2004) 11 SCC 253]. Deposition of a chance witness whose presence at the place of

incident remains doubtful should be discarded [*refer* ***Shankarlal v. State of Rajasthan***, (2004) 10 SCC 632]. The behavior 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. [*refer* ***Thangaiya v. State of Tamil Nadu***, (2005) 9 SCC 650].

45. It may be noted that the (PW-14) has not explained as to why he was standing near the Bristol Prison so early at 4:00 AM in the morning of a peak winter day, when the first bus to the village was at 7:00 AM. Moreover, it is doubtful that A-3 would have brandished a gun, while travelling in the auto-rickshaw. It is suspicious that even after getting to know that Chander Bhan was killed at Hisar, PW-14 did not reveal to anybody that he saw the deceased in the company of the accused-appellant in the morning travelling towards Hisar. Indeed, it is quite unbelievable that a man, during peak of north Indian winter, would wait at 4 A.M for a bus, which is scheduled to leave at 7:00 AM morning. These suspicious circumstances impugn the general

trustworthiness of PW-14. Therefore, this Court cannot accept the evidence of this witness as being credible.

46. Now coming to the evidence of Zile Singh (PW-16). He narrates that the three accused met him in the bus stop on the morning of 25.12.1993, when they confessed to their crime individually. We may note that his statements are ridden with following un-clarified doubts-

a. That the Zile Singh (PW-16) accompanied the accused, after they confessed, from the bus stand to the police station.
b. Not taking the accused to the Police personnel present in the Bus stand.
c. That his presence in the police station itself is suspicious as the I.O. Bhim Singh (PW-15) has contradicted Zile Singh (PW-16) on this aspect.
d. That there is no signature of Zile Singh (**PW-16**) on any of the documents in the Police Station.

In light of these circumstances, we need to be cautious in considering the statements of this witness.

47. Now we need to concentrate on the relevance of the alleged confessions of the co-accused made before Zile Singh (**PW-16**). In ***Re Periyaswami Moopan,*** AIR 1931 Mad. 177, Reilly J.

observed *"where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in Section 30 may be thrown into the scale as an additional reason for believing that evidence".* Therefore, the aforesaid extra-judicial confession against the co-accused needs to be taken into consideration if at all it is one, only if other independent evidence on record have established the basic premise of the prosecution. The confession of the co-accused cannot be solely utilized to convict a person, when the surrounding circumstances are improbable and creates suspicion. [*refer* ***Haricharan Kurmi v. State of Bihar***, AIR 1964 SC 1184]. As the confession of a co-accused is weak piece of evidence, we need to consider whether other circumstances prove the prosecution's case.

48. On the aspect of recovery of pellets from a house at Adarsh Nagar, Hisar, it is an argument of the learned senior counsel, appearing on behalf of the appellant accused, that the FSL Report indicating the possibility of pellets being fired from the gun recovered from the confession of accused A-3, should not be

considered as the person, who made the report was not examined-is of some relevance. The FSL report forms part of the evidence, which is shown to point out that the crime had taken place in the house at Adarsh Nagar, Hisar and gun of 0.15 bore belonging to A-3 was used for the same. The prosecution was expected to examine the author of the report, and non-examination of the same is a fatal error in the case at hand. Moreover, at the scene of occurrence, there was no blood or foot marks found, which is apparent from the evidence of PW-8.

49. The last circumstance, pointed out by the learned senior counsel for appellant is that, if the intention of the accused-appellant was indeed to murder the deceased, then, why would they take him to the Hospital. Thereby, she extends this argument, to portray that the accused, never had an intention to kill the deceased. It has not been explained by the prosecution, as to why such action would be undertaken by the accused and risk taking an alive person, who was shot, to the hospital. The contention of the State that this was a diabolic act of perverted criminals, may not fit the evidence available on record.

50. In line with the aforesaid discussion on various circumstances, we may now identify the intermediate circumstances, which we are called upon to infer guilt from-

1.) On 15.12.1994, there was a local election, wherein main candidates were Maha Singh and Dharampal son of Beg Raj.
2.) Chander Bhan (deceased) was the election agent as well as the supporter of Maha Singh.
3.) On the day of the election, there was a fight between two factions, in which Maha Singh and one Darya were charged for firing gun shots at the supporters of Dharampal son of Beg Raj.
4.) Maha Singh lost the elections, which was known to the accused party as well as deceased.
5.) That Sobhat Singh [A-2], Dharampal son of Nanak Ram [A-1] and Chander Bhan (deceased), met on 15th-16th mid night.
6.) Near Hisar, the Chander Bhan was seen going with the accused around the time of the incident. [of doubtful veracity]
7.) Injured Chander Bhan was alive when he was brought to Hospital in Hisar by Sobhat Singh [A-1] and Dharampal [A-2].
8.) Chander Bhan's body was found to have sustained more than fifty ante mortem gun shot wounds.
9.) Gun and pellets were recovered from an abandoned house in Adarsh Nagar.
10.) Extra-judicial confession recorded before Zile Singh on 25.12.1994.

51. From the aforesaid circumstances, we may note that the hypothesis canvassed by the prosecution cannot be said to have

been proved beyond reasonable doubt as there exist apparent gaps in the prosecution story, which are left incomplete or insufficiently proved. In ***Latesh v. State of Maharashtra***, AIR 2018 SC 659, this court had observed the *'When you consider the facts, you have a reasonable doubt as to whether the matter is proved or whether it is not a reasonable doubt in this sense. The reasonableness of a doubt must be a practical one and not on an abstract theoretical hypothesis. Reasonableness is a virtue that forms as a mean between excessive caution and excessive indifference to a doubt.'* In view of this proposition, we accept that there is no direct evidence which led the prosecution to clearly prove that deceased was shot at Adarsh Nagar in Hisar. Even the circumstantial evidence which is led, has gaps in between. In the narration above, there is a big hiatus between the time the accused left the village and the accused-appellants were seen in the Hospital, at Hisar. Neither the intermediate facts are established with certainty, nor the case as a whole is established beyond reasonable doubt.

52. We may note that every acquittal in a criminal case has to be taken with some seriousness by the investigating and prosecuting authorities, when a case of this nature is concerned. We are aware of the fact that there has been a death of a person in this incident and there is no finality to the aforesaid episode as it ends with various unanswered questions, which point fingers at the lack of disciplined investigation and prosecution. Although Courts cannot give benefit of doubt to the accused for small errors committed during the investigation, we cannot however, turn a blind eye towards the investigative deficiencies which goes to the root of the matter.

53. Now, coming to the case foisted against Dharambir, Umed Singh and Dharampal (sarpanch) sons of Beg Raj, in Criminal Appeal No. 1458 of 2012 (Sessions Case No. 62 of 1997 in Sessions Trial No. 97 of 1997). The prosecution had examined PW-1 (Dr. R.S. Bishnoi), PW-2 (Dr. Surendra Singh), PW-3 (ASI-Jagbir Singh), PW-4 (Sobhat Singh [A-1]) and PW-5 (Dharampal son of Nanak Ram [A-2]). While the defense had led DW-1 (Kamla), DW-2

(Umed Singh), DW-3 (Zile Singh), DW-4 (Mewa Singh) and DW-5 (Bhim Singh).

54. We have considered the reasoning of the court below in this case, which we accept. Although this case was foisted to be a case of direct evidence, there is no credibility in the statements of the accused-appellant as the surrounding circumstances have shown, as already indicated in the earlier parts of the judgment, to be against them. We may note the golden rule of evidence that 'men may tell a lie, but the circumstances do not', which is squarely applicable in this case at hand. Therefore, we cannot also accept the narrative of the accused-appellant in the other appeals, as a gospel of truth.

55. In view of the discussion above, we allow the Criminal Appeal No(s). 1445-1446 of 2012, before us and simultaneously set aside the conviction and punishment as provided by the Trial Court in Sessions Case No. 60 of 1995 in Sessions Trial No. 22 of 1995, and dismiss the Criminal Appeal No. 1458 of 2012.

Further the concerned authorities are directed to release the appellants-accused, if not required in any other case.

.....J.
(**N. V. Ramana**)

.....J.
(**Mohan M. Shantanagoudar**)

AUGUST 21, 2018
NEW DELHI