



2026:AHC:140656-DB

**Reserved**  
**A.F.R.**

**HIGH COURT OF JUDICATURE AT ALLAHABAD**  
**CRIMINAL APPEAL No. - 1952 of 2022**

Babu

.....Appellant

Versus

State of U.P.

.....Respondent

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|                            |                                                                                                          |
|----------------------------|----------------------------------------------------------------------------------------------------------|
| Counsel for the Appellant  | : Abhishek Mayank, Apsara, Arbaz Danish, Kartikey Singh, Shashikala Mani Tripathi, Upendra Kumar Pushkar |
| Counsel for the Respondent | : G.A.                                                                                                   |

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**Court No. - 2**

**HON'BLE J.J. MUNIR, J.**  
**HON'BLE SANJIV KUMAR, J.**

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

1. This is an appeal by the convict Babu, who has been tried and convicted by Mr. Anil Kumar Pandey, the then Additional Sessions Judge, Court No.01, Mathura *vide* judgment and order dated 25.01.2022 passed in Sessions Trial No. 817 of 2017 on a charge of murder punishable under Section 302 of the Indian Penal Code, 1860 (for short, 'IPC') and sentenced *vide* order dated 27.01.2022 to imprisonment for life together with a fine in the sum of Rs 30 000/- In default the convict has been ordered

a.m. by Smt. Sarvesh wife of Radhey Shyam, an aunt of the appellant, saying that she was a resident of the place near Radha Kishan Dham, Mathura and that her nephew, Babu son of Dwarka Prasad was a resident of Ganeshpuram Colony, P.S. Sadar Bazar (the appellant). She had gone over to the appellant's house on 03.09.2017 in the morning hours in connection with some personal work, when she saw that the appellant Babu's wife Shashi and both his sons were lying dead in their house. The appellant was not there. It was also reported that all three had been done to death with some sharp edged weapon. The informant requested investigation and necessary action in the matter. A copy of the written report is on record and marked as Ex. *Ka-1*.

3. On the basis of the aforesaid written report, a check First Information Report (for short, 'FIR') was registered on 03.09.2017 at 9.15 a.m. *vide* G.D. Entry No. 21, giving rise to Crime No.403 of 2017, under Section 302 IPC, P.S. Sadar Bazar, District Mathura. The check FIR is on record and marked as Ex. *Ka-2*. A copy of the relevant G.D. Entry No.21 is also on record and marked as Ex. *Ka-3*.

4. Here, it must be noted that during trial, apart from the original written report, marked as Ex. *Ka-1*, two photostat copies of the written information dated 03.09.2017 were also placed on record and mistakenly marked as Exhibits *Ka-19* and *Ka-28*. Likewise, two photostat copies of the check FIR, in addition to the one already marked as Ex. *Ka-2*, were also placed on record and marked as Ex. *Ka-18* and *Ka-27*. In addition to the extract of the

be superfluous documents, that were mistakenly marked as Exhibits. These were, therefore, ignored by the learned Trial Judge. We have also looked into the record and find that indeed these documents, which are duplicates and superfluous, were marked as exhibits by mistake. We also, therefore, ignore them.

5. Consequent upon registration of the crime, the Police proceeded with the investigation and inquest for the deceased Smt. Shashi commenced on 03.07.2017 at 10 a.m. ending at 12.15 p.m. Likewise, inquest for the deceased Jay Kishan also commenced on the same day at 10 a.m. ending at 12.15 p.m. Inquest for the deceased Neeraj commenced on 03.09.2017 at 10 a.m. ending at 1.00 p.m. The inquest report relating to Smt. Shashi is on record as Ex. ~~Ka-4~~, that relating to Jay Kishan as Ex. ~~Ka-5~~ and the one relating to the deceased Neeraj as Ex. ~~Ka-6~~.

6. Autopsy on the cadavers of the three deceaseds was held on 03.09.2017 at 6 p.m. Smt. Shashi sustained six incised wounds and an abrasion. The cause of death opined was shock and haemorrhage as a result of ante-mortem injuries. The autopsy report is on record as Ex. ~~Ka-7~~. The autopsy report relating to the deceased Jay Kishan shows that the deceased sustained as many as fourteen incised wounds and the cause of death indicated is shock and haemorrhage as a result of ante-mortem injuries. This autopsy report is also marked, surprisingly as Ex. ~~Ka-7~~. The marking of exhibits before the learned Trial Judge for some reason, apparently attributable to lack of acumen of the ministerial staff assisting the learned Judge, has gone haywire at least in two instances. The third autopsy report relating

7. The appellant was arrested on 03.09.2017 from his brother's home in Delhi by the Police and the arrest memo says that he was wearing a shirt, that had blood stains on it, and a Sando vest (*baniyan*), which too had blood stains. The appellant is said to have made a confession to the Police about the crime at the time of his arrest. The memo of his arrest-cum-recovery of blood-stained clothes from him, which also carries a reference to his confession, is on record and marked as Ex. *Ka-33*. The appellant was brought back to Mathura by the Investigating Officer, the S.H.O. of P.S. Sadar Bazar, Mathura and taken at 7.20 p.m. on 03.09.2017 to the appellant's house, situate in Mohalla Ganeshpuram, and near the said house on a *pucca* road, the party alighted from the police jeep. The appellant, who was handcuffed, is reported to have moved ahead and crossed a culvert on a drain adjacent to his house and into a vacant plot. There, from the foliage of small *babool* trees and shrubs, with the aid of a torch, he recovered a *banka* (*farsa*) at 7.58 p.m. The recovery memo describes the *banka* in graphic detail and says that on its handle and the blade, there were blood stains and dried earth. The appellant is said to have told the Police that this was the *banka* that he had employed to kill all the three victims. He said that he had hid it here before leaving for Delhi. The murder weapon was secured and sealed. The Investigating Officer also took samples of plain earth and blood-stained earth, which were separately secured and sealed in two plastic containers, both placed in a white cloth before affixing the seal. The memo regarding these earth samples collected is on record as Ex. *Ka-13*.

the learned Magistrate *vide* order dated 05.12.2017 committed the case to the Court of Sessions for trial.

9. Before the Court of Sessions, the case was assigned to the learned Additional Sessions Judge, Court No.01, Mathura for trial. It came up before Mr. Amar Nath Singh, the Additional Sessions Judge, Court No.1, Mathura on 06.01.2018 for the purpose of framing charges. The learned Judge framed a solitary charge, rather oddly, under Section 302/34 IPC. The appellant was read over and explained the charge, who denied it and claimed trial.

10. The prosecution examined the following witnesses in support of their case:

1. PW-1 – Smt. Sarvesh, the first informant,
2. PW-2 – Tejveer, a neighbour of the appellant,
3. PW-3 – CC 2439 Shekhar Chauhan, who got registered the check FIR,
4. PW-4 – Raj Kumar Nohwar, an inquest witness,
5. PW-5 – Dr. Harsh Vardhan, who conducted postmortem of the deceaseds,
6. PW-6 – HC 796 Naresh Sharma, who proved the signatures of IO/ SHO Subodh Kumar Singh on various documents and proved the charge-sheet,
7. PW-7 – Constable 372 Sonu Bhati, who proved the material exhibits.

11. The prosecution produced the following documentary evidence:

| Sr. No. | Exhibit No. | Exhibited documents with brief particulars         |
|---------|-------------|----------------------------------------------------|
| 1       | Ex. Ka-1    | Written report dated 03.09.2017 lodged with Police |

|    |           |                                                                                                                                  |
|----|-----------|----------------------------------------------------------------------------------------------------------------------------------|
| 5  | Ex. Ka-5  | Inquest report of the deceased Jay Kishan dated 03.09.2017, proved by PW-4, Raj Kumar Nohwar                                     |
| 6  | Ex. Ka-6  | Inquest report of the deceased Neeraj dated 03.09.2017, proved by PW-4, Raj Kumar Nohwar                                         |
| 7  | Ex. Ka-7  | Postmortem report of the deceased Jay Kishan dated 03.09.2017, proved by PW-4, Dr. Harsh Vardhan                                 |
| 8  | Ex. Ka-7  | Postmortem report of the deceased Shashi dated 03.09.2017, proved by PW-4, Dr. Harsh Vardhan                                     |
| 9  | Ex. Ka-8  | Postmortem Requisition Letter (Police Form No.33) sent to the Civil Surgeon relating to the deceased Jay Kishan dated 03.09.2017 |
| 10 | Ex. Ka-9  | Police Form, bearing No. 4A/37                                                                                                   |
| 11 | Ex. Ka-10 | Challan Lash of the deceased Jay Kishan dated 03.09.2017                                                                         |
| 12 | Ex. Ka-11 | Letter to the C.M.O. dated 03.09.2017 for conducting postmortem of the deceased Jay Kishan                                       |
| 13 | Ex. Ka-12 | Photo Lash of the deceased Jay Kishan dated 03.09.2017                                                                           |
| 14 | Ex. Ka-14 | Postmortem Requisition Letter (Police Form No.33) sent to the Civil Surgeon relating to the deceased Neeraj dated 03.09.2017     |
| 15 | Ex. Ka-15 | Challan Lash of the deceased Neeraj dated 03.09.2017                                                                             |
| 16 | Ex. Ka-16 | Letter to the C.M.O. dated 03.09.2017 for conducting postmortem of the deceased Neeraj                                           |
| 17 | Ex. Ka-17 | Photo Lash of the deceased Neeraj dated 03.09.2017                                                                               |
| 18 | Ex. Ka-21 | Postmortem report of the deceased Neeraj dated 03.09.2017, proved by PW-4, Dr. Harsh Vardhan                                     |
| 19 | Ex. Ka-22 | Postmortem Requisition Letter (Police Form No.33) sent to the Civil Surgeon relating to the deceased Shashi dated 03.09.2017     |
| 20 | Ex. Ka-23 | Challan Lash of the deceased Shashi dated 03.09.2017                                                                             |
| 21 | Ex. Ka-24 | Photo Lash of the deceased Shashi dated 03.09.2017                                                                               |
| 22 | Ex. Ka-25 | Letter to the C.M.O. dated 03.09.2017 for conducting postmortem of the deceased Shashi                                           |
| 23 | Ex. Ka-26 | Letter to the RI relating to the deceased Shashi dated 03.09.2017                                                                |
| 24 | Ex. Ka-30 | Site-plan of the place of occurrence dated 03.09.2017, proved by PW-6, HC Naresh Sharma                                          |
| 25 | Ex. Ka-31 | GD Entry No. 39 dated 03.09.2017 Time 19.00 hours regarding arrest of the accused, proved by PW-6, HC Naresh Sharma              |
| 26 | Ex. Ka-32 | GD Entry No. 40 dated 03.09.2017 Time 19.20 hours, entering disclosure made by the accused, proved by PW-6, HC Naresh Sharma     |
| 27 | Ex. Ka-33 | Recovery memo of the clothes of the accused dated 03.09.2017, proved by PW-6, HC Naresh Sharma                                   |

12. After the prosecution evidence was over, the statement of the appellant was recorded under Section 313 Cr.P.C.

13. The appellant entered defence and produced Sanju @ Sanjay as DW-1 in support of his case.

14. The learned Trial Judge, after hearing learned Counsel for the parties, by means of the impugned judgment and order dated 25.01.2022 convicted the appellant of the offence punishable under Section 302 IPC, and sentenced him to imprisonment for life *vide* order dated 27.01.2022, besides imposing a fine of Rs.30,000/-, as already detailed.

15. Aggrieved, the appellant has preferred the present appeal.

16. Heard Mr. Abhishek Mayank, learned Counsel for the appellant and Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate on behalf of the State.

17. It must be remarked at the outset that this is a case, which rests entirely on circumstantial evidence. The two witnesses of fact, who have been examined by the prosecution, have not seen the occurrence, or so to speak, the fact in issue: Whether it was the appellant, who murdered the three victims? The witnesses of fact can at best be said to be witnesses of some relevant facts. The standard, by which the prosecution have to prove a case of circumstantial evidence, is well established. It is the duty of the prosecution, firstly to prove all the circumstances, on which they rely beyond doubt. It is then their burden to ensure that the circumstances brought on record put together form such a complete chain that it is consistent alone with the guilt of the

**Maharashtra, (1984) 4 SCC 116**, which is a *locus classicus* on the standards by which the prosecution have to establish their case, where it rests on circumstantial evidence entirely. In **Sharad Birdhichand Sarda** (*supra*), it was observed by the Supreme Court:

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

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

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

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

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

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

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

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

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



would reside near the Radha Kishan Dham, Mathura. On 03.09.2017 in the morning hours, she went to her nephew's place, that is to say, the appellant Babu's home, situate in Ganeshpuram Colony. She had gone there in connection with some personal work. Upon reaching, her nephew's home, she saw that his wife Shashi and two sons of Shashi were lying dead. The appellant was not present. All three had been done to death with a sharp edged weapon. She also said that she had dictated the written report before signing it and handed it over to the police station. She proved the written report, which was then exhibited as Ex. *Ka-1*.

19. This witness was cross-examined some weeks after her examination-in-chief on 17.08.2018. She has said in her cross-examination that the Police took down her statement on the 3<sup>rd</sup> between 10-10.30 of the clock. She said that she did not say in her examination-in-chief that she is not much educated. She has said further on in her cross-examination that she had gone for a stroll, when she was told of the fact by a neighbour. She does not remember the neighbour's name and address. She also stated that she had written the fact in her report as well and said so in her statement under Section 161 Cr.P.C. that she was told of the fact by a neighbour. She did not know what the Police have written. She also said that she cannot say why it was not mentioned in her written report. It is also said that she does not know if the fact about her going for a stroll was mentioned in the written report or in her statement to the Police. It is then said that the witness did not know, who had scribed the written report, Ex. *Ka-1*. She did not know the scribe's address. It is also testified

redeeming feature that whatever is written in her report is based upon her information.

**20.** The next witness of fact is Tejveer son of Ramesh Chandra, who has been produced by the prosecution as PW-2. He has said in his examination-in-chief that he is a resident of Ganeshpuram Colony for the past three years. He carries on practice in medicine as his source of livelihood. On 03.09.2017 at about 7 o'clock in the morning hours, he heard a commotion, in response to which he went over to Babu's house located in the colony. He saw a big congregation of people there. The appellant Babu's house is located in the colony just behind this witness's. He has testified to the fact that in Babu's home, his wife Shashi and the two children were lying dead. All three of them had been brutally done to death. The appellant Babu was not present. A big crowd had gathered there. The door of the appellant's house was locked and the dead bodies could be seen from the window. Some persons from the crowd suggested of breaking open the main door, but this witness stopped them saying that the Police had to be informed. It is also said by this witness that upon the suggestion of others, who were there, it was he who gave information to the Police at the *Chowki*, which is located within the township. The Police arrived at the scene of crime upon his information. They broke open the door and were into the process of taking necessary steps when this witness came away. In his cross-examination, which is very brief, this witness has said that he had not seen the appellant Babu at his house over the past many days. The weapon of crime was lying by the side to the dead bodies. To a suggestion, he said that he was not deliberately

fateful day, Head Constable Suresh Chand was on duty along with him at the police station, when Smt. Sarvesh, the informant, had handed over a written report to Suresh Chand Sharma. The Head Moharrir Suresh Chand Sharma had dictated the check FIR to the computer typist, which was registered against unknown offenders. Some part of it was typed by this witness as well. He has testified that he had typed out G.D. Entry No. 21, on the basis of which the case was registered at 9.10 a.m. at the police station. He had brought along the original G.D. from the police office. He had another typed written copy of the G.D. on him, which he proved. He proved the check FIR as well and the copy of the G.D. registering the crime. There is nothing remarkable in the testimony of this witness.

**22.** Raj Kumar Nohwar, PW-4, is a *panch* witness and has affirmed the fact that he signed the inquest reports relating to the deceaseds.

**23.** Dr. Harsh Vardhan, PW-5, is the autopsy doctor. He has said in his examination-in-chief that on 03.09.2017, he was posted at the Combined Hospital, Vrindavan. He affirmed the fact that he had carried out the autopsy on the cadavers of Smt. Shashi, Jay Kishan and Neeraj. He has affirmed the respective injuries on their dead bodies, all of which are multiple incised wounds. He has said in his cross-examination that the incised wounds on Smt. Shashi's dead body had varying width, which may lead to the possibility that more than one weapons were used. He also said that for the same reason, the assailants could be more than one. The same holds true for the deceased Jay Kishan and Neeraj as

**24.** Naresh Sharma is a Head Constable in the Police, who was produced as PW-6. He has said in his examination-in-chief that on 03.09.2017, he was posted at P.S. Sadar Bazar, Mathura as a *pairokar*. He has stated that investigation in the case was undertaken by S.H.O. Subodh Kumar Singh, whose writing he was acquainted with. He has proved the S.H.O.'s signatures on various documents, including recovery memos etc. and the G.D.s. He has testified towards the end of his examination-in-chief that S.H.O. Subodh Kumar Singh had been murdered. In his cross-examination, there is nothing remarkable.

**25.** The last witness examined on behalf of the prosecution is Sonu Bhati, a Constable, who was posted at P.S. Sadar Bazar on 03.09.2017. He had accompanied S.H.O. Subodh Kumar Singh and Senior Sub-Inspector Ravindra Yadav to the place of occurrence. He has proved the collection of blood-stained and plain earth and his signatures on the memorandum as also those on the material exhibits carrying the two kinds of earth. He had also accompanied the police party to Sonia Vihar, Delhi and to the residence of the appellant's brother Tulsi Prasad. He has testified to the recovery of the blood-stained shirt and vest that the appellant was wearing. This witness has also witnessed the recovery of the murder weapon, which the prosecution allege from the foliage in an open plot of land near the appellant's house. The statement that the appellant made at the time of recovery has also been testified to. The witness has also proved material exhibits of the recovery as also the recovery memorandum. In his cross-examination, he has testified to a few matters that are relevant, and in our opinion, must be quoted in his own words:

नहीं। मुलजिम का Discloser statement लेने से पहले किसी स्वतंत्र गवाह को बुलाया अथवा नहीं मुझे याद नहीं है। दिल्ली में मुलजिम का कोई ब्यान भी नहीं लिया था। जिस जगह से बांक बरामद हुआ वह स्थान खुला हुआ स्थान था वह सभी को दिखाई देता था। दिन में बांक को देखा जा सकता था। कपड़ों पर कितने स्थानों पर खून था यह फर्द में नहीं लिखा हुआ है। न उनके साइज लिखे हुए है। मुझे नहीं पता कि घटना स्थल से पाया गया ब्लड व बांक व कपड़ों पर पाये गये ब्लड को टेली करने भेजा गया या नहीं। फर्द बरामदगी में गणेश पुरम के किसी व्यक्ति को गवाह नहीं बनाया गया। बरामदगी स्थल का कोई नक्शा नहीं बनाया गया। फर्द बरामदगी में बरामदगी के समय पर ओवर राइटिंग है। बरामदगी का पहले समय क्या लिखा गया था मैं नहीं बता सकता। जो बांक मैं बरामद होना बताता हूँ इस तरह के बांक बाजार में मिल जाते हैं। बांक के फल पर किस क्षेत्र में कितनी लम्बाई मैं कितनी चौड़ाई मैं कितने धब्बे थे यह नहीं लिखा हुआ है। बांक की धार पर खून के धब्बे थे यह भी नहीं लिखा है। यह बात सही है कि हस्ताक्षरों से पहले फर्द में यह लिखा हुआ है कि हमराहियान कर्मचारियों के हस्ताक्षर बनवाये गये। पहले फर्द लिखी गयी फिर सील किया गया।

यह कहना गलत है कि सारी कार्यवाही थाने पर बैठकर फर्जी रूप से की गयी हो।

यह सही है कि यह बांक मजिस्ट्रेट महोदय के समक्ष प्रस्तुत नहीं किया गया। बांक के हैडिल की मोटाई फर्द में अंकित नहीं है। हैडिल के किस हिस्से पर खून लगा है फर्द में नहीं लिखा है।

प्रदर्श क- 20 जो कपड़ों की फर्द है उसमें हस्ताक्षरों से पहले यह लिखा है कि हमराही कर्मचारीगण के हस्ताक्षर बनवाये गये।

कपड़ों की फर्द बनायी गयी उसके बाद सील मौहर किया गया। फर्द में उल्लेख नहीं है कि कपड़ों पर किस किस साइज के व कहां-कहां खून लगा है। इस फर्द पर किसी स्वतंत्र गवाह के हस्ताक्षर नहीं है न ही किसी गवाह को बुलाया गया। जहां फर्द समाप्त हुई है उससे काफी नीचे कर्मचारियों के हस्ताक्षर है। कपड़ों की फर्द पर अभियुक्त के हस्ताक्षर नहीं है।"

(emphasis by Court)

**26.** In the last question, that was put to the appellant under Section 313 Cr.P.C., which is to the effect if he had anything else to say, the appellant has stated:

"मैं घटना वाले दिन व समय घटनास्थल पर न होकर दिल्ली में रह रहा था। पुलिस ने मेरे विरुद्ध फर्जी व झूठी कार्यवाही की है तथा गलत समय व दिनांक पर घटना होना दर्शाया है। घटना से संबंधित आलाकतल मेरे निशानदेही पर बरामद नहीं हुआ है। फर्जी बरामदगी दिखाया है। मैं निर्दोष हूँ। झूठा फंसाया गया है।"

**27.** The appellant produced in his defence, Sanju @ Sanjay son of Dwarka Prasad as DW-1. DW-1 in his examination-in-chief has

appellant's wife and children live in Mathura. The appellant would visit his family once a month and provide them with money, whenever he would visit them. Fifteen days antedating the occurrence, the appellant had to come back to Delhi after providing for his wife and children, and on the fateful night, the appellant was with this witness in Delhi. After his wife and children died, on 03.09.2017, the Police from P.S. Sadar Bazar came over to his house at 12 noon. The other family members, upon inquiry by the Police, told them that the appellant would be present with the witness at his shop. On 03.09.2017, the two brothers were transacting business on the footpath of the 25 feet wide road, located at Sonia Vihar, when the Sadar Bazar Police came over and took the appellant away. His brother was wearing clean and untainted clothes with no blood spots on them.

**28.** The witness also says that the appellant had cordial relations with his wife and children and there were no bickerings between them. The witness has also said that the Police on the following day, when the witness came over to Mathura, kept assuring him that they would release the appellant by evening, but they did not. Therefore, the witness on 05.09.2017 addressed an application to the S.S.P., Mathura in this regard, a copy whereof is on record. In his cross-examination by the prosecution, the witness (DW-1) says that he lives in Delhi with his wife and children. The appellant's children would study at Mathura and for the said reason, he would not bring them over to Delhi. The appellant would frequent his family at Mathura. The appellant and this witness were five brothers. The eldest of them Tulsi Das lived in Delhi; the second is the appellant; the third in order of age was

02/03.09.2017. The appellant had gone over to Mathura 7-8 days earlier. On 03.09.2017, the appellant was arrested from their shop. It was then that all of them came to know that the appellant's wife and children had been murdered at Mathura. He moved the S.S.P. in the matter, but did not know of the outcome. The witness also says that he sells ladies' wares on the footpath. There is a school across the footpath, called Hardang Public School. The first information was lodged by their aunt against unknown offenders.

**30.** The foremost circumstance that has been propounded by the prosecution to establish the case is the fact that the appellant and the three deceaseds were a family of husband, wife and two children, and the fact that three of the family were found dead at their residence with the appellant, the fourth family member absent, throws the burden upon him under Section 106 of the Indian Evidence Act to disclose facts specially within his knowledge relating to the circumstances in which three others of the family died. We must remark at the outset that the prosecution have to establish their case even in a case of circumstantial evidence and cannot rely upon the special knowledge of the accused alone to relieve them of the overall burden under Section 101 of the Evidence Act. It is after the prosecution have established the necessary incriminating circumstances, with only some facts remaining unexplained, which possibly the prosecution cannot know of, that the burden under Section 106 of the Evidence Act can be invoked. In that case too, the failure to discharge the burden would not *ipso facto* lead to a discharge of the prosecution's burden of proof under Section 101 of the

**31.** The mere fact that a family of four, that stayed together, out of whom three were found murdered, when the fourth was not around, is not a circumstance in itself to hold it as a circumstance in itself against him as one link in his complicity. There could be many possibilities compatible with the murder of the other family members and yet consistent with the surviving member's innocence. Therefore, the prosecution would have to show some conduct on the surviving family member's part to indicate his complicity in the crime that would serve as a circumstance in the chain to be completed before the charge against him can be brought home. Here, it is not that the prosecution have not produced any evidence to show that the appellant's complicity could be there, apart from his mere absence from the party's family home. The prosecution have allegedly recovered blood-stained clothes from the person of the appellant, which he wore at the time when they arrested him from his brother's house in Delhi, and then, also produced evidence of recovery of the weapon of offence at his pointing, which may be admissible under Section 27 of the Evidence. Act.

**32.** The fact, therefore, if the absence of the appellant from his home while his family were found murdered within the four-walls of their house, is an incriminating circumstance to form a link in the chain, would depend upon the fact if the recovery of blood-stained clothes from the appellant's person and recovery of the weapon of crime at his pointing out are established by the prosecution. So far as recovery of the blood-stained shirt and the vest that he wore at the time when the appellant was arrested from his brother's home or may be from their place of business,



time of his arrest. There does not appear to be much cavil about the fact that the appellant was indeed arrested from Delhi, though there is an issue about the fact if he was arrested from his elder brother Tulsi Das's home or the footpath shop, where he would work along with his younger brother Sanju @ Sanjay, DW-1. That matter, for the time being, can be kept aside as the foremost to determine is the fact if the appellant was indeed arrested wearing blood-stained clothes at Delhi, wherever he was. A perusal of the recovery memo, Ex. Ka-33, shows that it is signed by the two inspectors and the two constables Sonu Bhati and Pramod, who were part of the police party, that had gone to Delhi to arrest the appellant. The recovery memo is not signed by the appellant. There are no signatures of any independent or public witness as well. It also appears from the testimony of PW-7, Constable Sonu Bhati, that no public witness was asked to witness the recovery. In this connection, reference may be made to the following part of the cross-examination of PW-7, Constable Sonu Bhati:

"कपड़ों की फर्द बनायी गयी उसके बाद सील मौहर किया गया। फर्द में उल्लेख नहीं है कि कपड़ों पर किस किस साइज के व कहां -कहां खून लगा है। इस फर्द पर किसी स्वतंत्र गवाह के हस्ताक्षर नहीं है न ही किसी गवाह को बुलाया गया। जहां फर्द समाप्त हुई है उससे काफी नीचे कर्मचारियों के हस्ताक्षर है। कपड़ों की फर्द पर अभियुक्त के हस्ताक्षर नहीं है।"

**33.** What we find is that the evidence of recovery of these blood-stained clothes from the person of the appellant is utterly unreliable for three reasons: firstly, the fact that the appellant himself did not sign the recovery memo and there is no endorsement on the recovery memo that he was asked to sign it but refused. The document is signed by the police party alone and in the absence of the appellant signing it, or their being an

adds to the suspicion about the fact itself; and, thirdly, it belies the possible and plausible behaviour of any man, much less a murderer, who has escaped from home and gone to his brother that hours after the evil deed he would still wear blood-stained clothes, almost carrying damning evidence wrapped about his person. In the normal conduct of human affairs, after commission of a gruesome crime, like murder, it is not only the expected behaviour of an accused, but something borne by testimony of crime etched in judicial records that the first thing that a murderer does is to wash away the blood-stains; or at least attempt to do so.

**34.** This takes us to the question of the incriminating recovery of the murder weapon at the pointing out of the appellant. The recovery of the weapon of offence is recorded in a memo of recovery dated 03.09.2017, which is on record as Ex. *Ka-34*. The material part of the recovery memo reads:

"फर्ड बरामदगी आलाकल्ल बांका (फरसा) सम्बन्धित मु०अ०सं० 403/17 धारा 302 IPC थाना सदर बाजार मथुरा।

आज दिनांक 03.09.17 को मैं SHO सुबोध कुमार सिंह मय व० उ०नि० श्री रविन्द्र सिंह व हमराह कां० 1234 प्रमोद कुमार व कां० 1944 सोनू भाटी मय चालक जीप सरकारी कां० सुनील कुमार के मु०अ०सं० 403/17 धारा 302 IPC थाना सदर बाजार मथुरा से सम्बन्धित अभियुक्त बाबू S/० श्री द्वारिका प्रसाद R/० गणेशपुरम कालोनी थाना सदर बाजार के साथ वाउम्मीदगी बरामदगी आलाकल्ल सम्बन्धित मुकदमा उपरोक्त के बहवाले रपट संख्या 40 समय 19.20 बजे तारीखी इमरोजा रो०आम थाना हाजा से रवाना होकर मोहल्ला गणेशपुरम स्थित मकान प्रतिवादी के पास वाले पक्के रास्ते पर जीप को रोका। अभियुक्त बाबू उपरोक्त जो हथकड़ी लगाकर हमराह कां० सोनू भाटी के सुपर्द है जीप से उतरकर पैदल-पैदल आगे चलने लगा तथा मकान से सटे नाले की पुलिया से पारकर नाले की दूसरी तरफ स्थित खाली प्लॉट पर पहुँचा। खाली प्लॉट में स्थित बबूल के छोटे पेड़ व झाँड़ियों में से टार्च की रोशनी की सहायता से चुपाकर रखा हुआ लोहे का बँका (फरसा) समय करीब 19.58 बजे निकाल कर दिया।..... बाँका पर बेटा व फल पर खून के धब्बे तथा मिट्टी लगी हुयी है। अभि० बाबू ने बताया कि साहब यही वह बँका है जिससे मैंने तीनों की हत्या की है। दिल्ली जाने से पहले मैं इसे यहाँ पर छिपा गया था बरामदा बँका को सूत की रूई में रखकर कपड़े में रखकर सिलकर सर्वशील मोहर कर नमूना मोहर

relate distinctly to the fact likely to be discovered so as to make the appellant's statement to that extent admissible in evidence. The Police apparently in some surreptitious manner recorded the fact that the appellant would lead them to the place where he had hidden the weapon of crime and set about the task of getting the weapon recovered. How this was precisely done and how much in breach of the law it was, is evident from the following part of examination-in-chief of PW-7 Constable Sonu Bhati:

"इसके उपरान्त हम सभी हमराहीजन अभियुक्त बाबू को दिल्ली से लेकर उसी दिन थाना सदर बाजार आये तथा थाना सदर बाजार से नये सरकारी जीप से चालक सुनील कुमार को मैं, कांस्टेबल प्रमोद कुमार, SSI रविन्द्र यादव व थानाध्यक्ष सुबोध कुमार सिंह, अभियुक्त बाबू द्वारा बतायी गयी आला - कतल की बरामदगी हेतु समय 19-20 बजे अभियुक्त के घर के पास पहुँचे, जहाँ से अभियुक्त के निशान देही पर मकान से सटे नाले की पुलिया से पार नाले की दूसरी तरफ खाली प्लाट पर पहुँचे। खाली प्लाट पर स्थित बबूल के छोटे पेड़ व झाड़ियों में से टार्च की रोशनी की सहायता से समय करीब 19:58 बजे छुपाकर रखा गया लोहे का बांक अभियुक्त ने निकाल कर अभियुक्त ने दिया। बांक का फल लोहे का, बेता लकड़ी का गोलाकार बना हुआ था। बेंते की ऊपर से फल का लम्बा भाग लकड़ी का बना हुआ है। बेंते में लोहे का छल्ला फंसा हुआ है। बांक की लम्बाई 1 बलिस्त 10 अंगुल है जिसमें फल की नुकीली हिस्से की लम्बाई करीब 4 अंगुल है। मुख्य फल की लम्बाई करीब 10 अंगुल, चौड़ाई 5 अंगुल है। लकड़ी के बेते की कुल लम्बाई 7 अंगुल है। बांक व बेते पर खून के धब्बे व मिट्टी लगी हुयी है। अभियुक्त बाबू ने बांक बरामद करते हुये बताया था कि यह वही बांक है, जिससे मैंने अपनी पत्नी व दोनों बच्चों की हत्या की है। इसको मैं दिल्ली जाने से पहले छुपा गया था। आज ये बांक मेरे सामने है। जिस पर वस्तु प्रदर्श-4 डाला गया। बरामद बांक को सूत की रूई में रखकर, कपड़े में रखकर सील कर सर्वे मोहर नमूना टार्च की रोशनी में तैयार किया गया था। फर्द थानाध्यक्ष महोदय द्वारा बोल बोलकर SSI रविन्द्र यादव से टार्च की रोशनी में लिखवायी गयी थी जिस पर मेरे अलावा कांस्टेबल प्रमोद, थानाध्यक्ष सुबोध कुमार सिंह और SSI रविन्द्र यादव तथा अभियुक्त बाबू के मौके पर हस्ताक्षर कराये गये थे।"

### 36. In his cross-examination, this witness has testified:

"जब अभियुक्त को देहली से पकड़ा तो दिल्ली किसी मजिस्ट्रेट के समक्ष पेश नहीं किया। कोई भी स्वतंत्र व्यक्ति किसी भी रिकवरी का गवाह नहीं बनाया गया था। और न ही कोई स्वतंत्र व्यक्ति मुलजिम का ब्यान लेने से पूर्व बुलाया गया। किसी स्वतंत्र साक्षी की मौजूदगी में मुलजिम का ब्यान नहीं लिया गया था।..... मुलजिम का Discloser statement लेने से पहले किसी स्वतंत्र गवाह को बुलाया अथवा नहीं मुझे याद नहीं है। दिल्ली में मुलजिम का कोई ब्यान भी नहीं लिया था। जिस जगह से बांक बरामद हुआ वह स्थान खुला हुआ स्थान था वह सभी को दिखाई देता था। दिन में बांक को देखा जा सकता था।"

information obviously being that the appellant had hidden the weapon of murder at the place, wherefrom he got it recovered. These cannot be read in evidence. The reason why it cannot be read in evidence is that the first part of the memorandum or *panchayatnama* under Section 27 of the Evidence Act has not been drawn up, as the law requires it. It has not been drawn up at the police station after calling two independent witnesses to witness the disclosure made. The requirement is to record the disclosure in the presence of witnesses, and thereafter, follow the accused to the place about which he has made the disclosure, along with the two independent witnesses. It is only if the appellant had recovered the weapon of crime in the presence of such *panch* witnesses, before whom he had made the disclosure, would the evidence be admissible under Section 27. Else not. If no independent witness was available to witness the disclosure, the fact had to be recorded in the *panchnama*. In that event, the evidence of the Investigating Officer would have to be considered. Here, that is not the case. It is a case of utter breach where no independent witness was summoned at the time of recording the disclosure statement by the Investigating Officer at all. Otherwise as well, in this case, the Investigating Officer, who could have proved the recovery under Section 27, subject to fulfillment of conditions which have not been adhered to here, has not been produced to prove the fact because Subodh Kumar Singh, the Investigating Officer, died shortly afterwards. The only witness of the recovery made purportedly under Section 27 is PW-7, who has been produced. This witness by his own evidence renders the recovery suspect and surely one in breach of the salutary

place wherefrom recovery was alleged and then attributing the recovery at his pointing from the bushes in an open piece of land. This kind of a recovery, which the prosecution want us to act upon by resort to Section 27 of the Evidence Act far from satisfies the requirements of the law. The law in this connection has been laid down by the Supreme Court in **Ramanand v. State of U.P., (2023) 16 SCC 510**. The facts and the issue involved, relevant to the question here, can best be recapitulated in the words of their Lordships in **Ramanand (supra)**. In **Ramanand**, the relevant facts were:

***“Discovery of weapon of offence and bloodstained clothes***

54. It is the case of the prosecution that on 24-1-2010 the appellant-accused was picked up by the investigating officer from nearby a bus stand and was arrested in connection with the alleged crime. After the arrest of the appellant-accused and while he being in the custody at the police station, he is said to have on his own free will and volition made a statement that he would like to point out the place where he had hidden the weapon of offence (banka) and his bloodstained clothes after the commission of the alleged crime. According to him, after such statement was made by the appellant-accused, he along with his subordinates set forth for the place as led by the accused. There is something very unusual, that we have noticed in the oral evidence of the investigating officer. According to him while the police party along with the accused were on their way, all of a sudden, the investigating officer realised that he should have two independent witnesses with him for the purpose of drawing the panchnama of discovery. In such circumstances, while on the way the investigating officer picked up PW 2 Chhatarpal Raidas and Pratap to act as the panch witnesses. According to the investigating officer the accused led them to a coriander field and from a bush he took out the weapon of offence (banka) and the bloodstained clothes. The weapon of offence and the bloodstained clothes were collected in the presence of the two panch witnesses and the panchnama, Ext. 5 was accordingly drawn. The weapon of offence and the bloodstained clothes thereafter were sent for the serological test to the forensic science laboratory. We are of the view that the courts below committed a serious error in relying upon this piece of evidence of discovery of a fact i.e.

evidence has been laid down by the Supreme Court in **Ramanand**, where it is observed:

**“56.** If, it is say of the investigating officer that the appellant-accused while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence along with his bloodstained clothes then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or bloodstained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.

**57.** The reason why we are not ready or rather reluctant to accept the evidence of discovery is that the investigating officer in his oral evidence has not said about the exact words uttered by the accused at the police station. The second reason to discard the evidence of discovery is that the investigating officer has failed to prove the contents of the discovery panchnama. The third reason to discard the evidence is

available was not examined by the prosecution for some reason. Therefore, we are now left with the evidence of the investigating officer so far as the discovery of the weapon of offence and the bloodstained clothes as one of the incriminating pieces of circumstances is concerned. We are conscious of the position of law that even if the independent witnesses to the discovery panchnama are not examined or if no witness was present at the time of discovery or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the discovery evidence unreliable. In such circumstances, the Court has to consider the evidence of the investigating officer who deposed to the fact of discovery based on the statement elicited from the accused on its own worth.

58. Applying the aforesaid principle of law, we find the evidence of the investigating officer not only unreliable but we can go to the extent to saying that the same does not constitute legal evidence."

39. We have already noticed the manner in which a surreptitious recovery, without recording a disclosure statement in the presence of two independent witnesses, was effected by the Police from an open piece of land. The manner in which the recovery of the murder weapon was done, for all the reasons that we have indicated hereinbefore and the principles laid down by the Supreme Court in **Ramanand**, does not render either the statement of the appellant or the fact discovered distinctly in consequence thereof, admissible under Section 27 of the Evidence Act. In our considered opinion, therefore, this incriminating circumstance of recovery of the weapon of murder at the pointing out of the appellant has to be discarded.

40. There is another facet to the issue of recovery in this case. PW-7 in his cross-examination has very candidly acknowledged the fact that the place from where the *banka* was recovered is an open place, visible to all. During day time, the *banka* could be

said in his cross-examination that when he visited the appellant's house, he saw the weapon of murder lying close-by to the dead bodies. This witness was never cross-examined by the prosecution about this assertion of his. This renders the recovery at the pointing out of the appellant highly suspect.

**41.** There is yet another angle to the matter. In a case of circumstantial evidence, the assailant would have some reasonable motive to commit the crime, which it is always safe to consider and look into in such cases. Here, the testimony, that has been offered by the prosecution, does not attribute any motive to the appellant to commit such a gruesome crime. There is some mention of a motive in the statement of the appellant recorded by the Police under Section 161 Cr.P.C., but no evidence thereof could be produced in Court by the prosecution. In the absence of some reasonable and potent motive in a case of circumstantial evidence, like the present one, it would be unsafe to convict the appellant. We are aware of the well settled principle that the absence of motive alone will not be a ground to throw out a prosecution based entirely on circumstantial evidence, where it establishes the guilt beyond reasonable doubt, but in a case where the circumstances otherwise do not establish the case, the absence of motive, as in the present case, would certainly weigh in favour of the appellant. In this connection, reference may be made to **Subhash Aggarwal v. State (NCT of Delhi), (2025) 8 SCC 440**. In **Subhash Aggarwal (supra)**, it was held:

*"26. Nandu Singh v. State of M.P. [Nandu Singh v. State of M.P., (2022) 19 SCC 301] was a case in which the deceased was found missing and later his body recovered. One of the witnesses deposed that the*



**27.** Reliance was placed on *State of U.P. v. Kishanpal* [*State of U.P. v. Kishanpal*, (2008) 16 SCC 73 : (2010) 4 SCC (Cri) 182] wherein it was held that motive is something which is primarily known to the accused themselves and it is not possible for the prosecution to always explain what prompted or excited them to commit a particular crime. Motive is a very important link in the circumstances which could prove the guilt of the accused, and it loses its importance only when there is direct evidence of eyewitnesses, which is convincing and conclusive as to the guilt of the accused.

**28.** However, it was also noticed in *Kishanpal* [*State of U.P. v. Kishanpal*, (2008) 16 SCC 73 : (2010) 4 SCC (Cri) 182] that even if there may be a very strong motive for the accused to commit a particular crime, it does not lead to a conviction by itself, if the eyewitnesses are not convincing or the chain of circumstances is not complete.

**29.** The declaration in the cited decisions and the decisions relied on therein, is to the effect that if the case is built solely upon circumstantial evidence, absence of motive will be a factor that weighs in favour of the accused. Just as a strong motive does not by itself result in a conviction, the absence of motive on that sole ground cannot result in an acquittal. When the eyewitnesses are not convincing, a strong motive cannot by itself result in conviction, likewise when the circumstances are very convincing and provide an unbroken chain leading only to the conclusion of guilt of the accused and not to any other hypothesis; the total absence of a motive will be of no consequence.

**30.** We extract para 17 from a three-Judge Bench decision, *Jan Mohammad v. State of Bihar* [*Jan Mohammad v. State of Bihar*, (1953) 1 SCC 5] ; which also is of vintage flavour, succinctly putting forth the proposition: (SCC p. 12)

"17. Motive is a relevant fact under the Evidence Act (Section 8). It is an important element in a chain of presumptive proof where the evidence is purely circumstantial, but it may lose importance in a case where there is direct evidence by witnesses implicating the accused. In a case such as the present where the prosecution evidence itself shows that the relations between the deceased and the appellants were cordial, the absence of an apparent motive, though not necessarily fatal to the prosecution case, may reasonably be regarded as a fact in favour of the accused. We think, therefore, that the attempt to prove a motive against any of the appellants has failed. [sic]"

"21. At the very outset we may mention that sometimes motive plays an important role and becomes a compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention. *In a case where there is clear proof of motive for the commission of the crime it affords added support to the finding of the court that the accused was guilty of the offence charged with. But it has to be remembered that the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of the crime.*"

(emphasis supplied)

**32. Sukhpal Singh v. State of Punjab** [Sukhpal Singh v. State of Punjab, (2019) 15 SCC 622 : (2020) 1 SCC (Cri) 460] found that if prosecution establishes motive, it will undoubtedly strengthen the prosecution case, but to say that absence of motive will be fatal to the prosecution, irrespective of other material before the court in the form of circumstantial evidence is far-fetched. Para 15 reads as follows: (SCC p. 627)

"15. The last submission which we are called upon to deal with is that there is no motive established against the appellant for committing murder. It is undoubtedly true that the question of motive may assume significance in a prosecution case based on circumstantial evidence. *But the question is whether in a case of circumstantial evidence inability on the part of the prosecution to establish a motive is fatal to the prosecution case. We would think that while it is true that if the prosecution establishes a motive for the accused to commit a crime it will undoubtedly strengthen the prosecution version based on circumstantial evidence, but that is far cry from saying that the absence of a motive for the commission of the crime by the accused will irrespective of other material available before the court by way of circumstantial evidence be fatal to the prosecution.* In such circumstances, on account of the circumstances which stand established by evidence as discussed above, we find no merit in the appeal and same shall stand dismissed."

(emphasis supplied)

**42.** In this case, we have relied on the absence of motive as weakening one link in the chain of circumstances, which otherwise is far from complete. It is not that on ground of absence of motive alone, we opine in favour of the appellant.

**43.** There is yet another aspect of the matter. There is evidence on behalf of the defence, that is to say, the testimony of DW-1, the appellant's brother, who has said that the appellant would stay at Delhi with him and work for a period of one month or 15 days and periodically visit his family to provide for them. The brothers would sell small time wares on the footpath of a particular road in order to earn their livelihood. This witness has said that on the fateful night, the appellant was with him and had come back from Mathura after his last visit more than a week ago. This testimony of DW-1 has to be read in conjunction with the evidence of PW-2, who is a neighbour of the appellant's at Mathura. He has said in his cross-examination that he had not seen the appellant at his home for the past many days. This testimony of PW-2, while it may not entirely support the stand of DW-1 that the two brothers worked at Delhi with the appellant, visiting his family periodically at Mathura because his children were studying there, appears to support the fact that the appellant was not at Mathura for the past few days and on the day of the crime. We emphasize that discarding defence evidence and treating it always as second grade or unreliable testimony, is neither a principle of law nor one of prudence. The quality, character, origin and truthfulness of defence evidence must be judged with an even scale, just as the case is with the prosecution evidence. Here, both the evidence strongly support the likelihood of the appellant, indeed staying with his brother at Delhi

**44.** Upon consideration of all the circumstances, we find and hold that the chain of circumstances is far from complete so as to support a conviction for the appellant on the charge of murder of his wife and two sons.

**45.** In the result, we **allow** this appeal, **set aside** the impugned judgment and order dated 25/ 27.01.2022 passed by the Additional Sessions Judge, Court No.01, Mathura in Sessions Trial No. 817 of 2017 and **acquit** the appellant. The appellant is in jail. He will be released forthwith unless wanted in connection with some other case.

**46.** The appellant shall execute a personal bond in the sum of Rs.25,000/- under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437-A of the Code of Criminal Procedure, 1973) for his appearance, in the event of an appeal being preferred against his acquittal.

**47.** Let the lower court records be returned.

**(Sanjiv Kumar,J.) (J.J. Munir,J.)**

**July 13, 2026**

Anoop