IN THE HIGH COURT OF JUDICATURE AT PATNA

Md. Wasim & Anr.
vs.
The State of Bihar

CRIMINAL APPEAL (DB) No. 1099 of 2016

07 April 2025

(Hon'ble Mr. Justice Mohit Kumar Shah and Hon'ble Mr. Justice Shailendra Singh)

Issue for Consideration

Whether finding to Ld. Trial Court that there is credible, ample and concrete testimony to establish the charge of murder by the appellants is sustainable or not?

Headnotes

Indian Evidence Act, 1872---section 118--- Appeal against conviction for the offence of murder----Testimony of Child Witness---Evaluation of Circumstantial Evidence.
Held:- only eye witness to the occurrence was aged about five years only at the time of occurrence and eight years at the time of recording of his testimony---evaluation of the evidence of a child witness must be done with greater care and caution as a child witness is easy prey to tutoring--- Ld. Trial Court, while recording the testimony of a child witness, is required to record its satisfaction to the effect that the minor is able to understand the questions put to him, who is turn is able to respond and provide rational answers to the questions asked---however, in the present case, the learned trial court has not taken pains to put any question whatsoever, to the child witness to assess the capability of this witness, nor any demeanor of the witness has been recorded anywhere during the course of recording of his deposition---child witness was not consistent in his version and the same is replete with inconsistencies, exaggerations and embellishments and, hence, is untrustworthy--- in absence of eye witness to the alleged crime, circumstantial evidence becomes essential to establish the guilt or innocence of an accused--- basic requirements for Circumstantial Evidence are that the circumstances from which guilt is inferred must be firmly established and not open to doubt and it must form a complete chain, linking the accused to the crime without any gaps or inconsistencies---in present case, neither the dagger/knife used to assault and kill the deceased has been recovered by the police nor blood soaked mud/clothes have been seized much less sent for FSL examination nor the motive for the occurrence has been established nor the inquest report / post mortem report has been proved nor the fardbeyan has been exhibited apart from the fact that the prosecution has failed to examine the investigating officer and the doctor who had conducted the post mortem---- the circumstances from which the conclusion of guilt is to be drawn are

non-existent in the present case, hence the evidence on record does not lead to the conclusion that the appellants have committed the crime---impugned judgment of conviction set aside---appellants acquitted----appeal allowed. **(Para-16-17, 19-22)**

Case Law Cited

Bhagwan Singh and others Vs. State of M.P., **(2003) 3 SCC 21;** Panchhi v. State of U.P., **(1998) 7 SCC 177;** Digamber Vaishnav and another vs. State of Chhattisgarh, **(2019)4 SCC 522;** Pradeep vs. State of Haryana, **2023 SCC Online SC 777**

…….. Relied Upon.

List of Acts

Code of Criminal Procedure, 1973---sec. 374(2), 389(1)---Indian Penal Code---302, 34--- Indian Evidence Act, 1872---section 118

List of Keywords

Appeal Against Conviction; Murder ;Eyewitness; Child Witness Testimony; Circumstantial Evidence ; Benefit of Doubt.

Case Arising From

Sessions Trial No. 817 of 2011, Judgment of conviction and the order of sentence dt. 6.9.2016 and 08.9.2016 passed by the learned Court of Additional Sessions Judge-II, Begusarai.

Appearances for Parties

For the Appellant/s: Ms. Mira Kumari, Advocate

For the Respondent/s: Ms. Shashi Bala Verma, APP

Headnotes Prepared by: Ghanshyam

Judgment/Order of the High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No. 1099 of 2016

Arising Out of PS. Case No.-43 Year-2011 Thana- KHODAWANDPUR District- Begusarai

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1. Md. Wasim, Son of Md. Ijharul Haque @ Md. Ijharul
2. Noorjahan W/o Md. Ijharul Haque @ Md. Ijharul,

Both resident of Nurullahpur P.S. Khodawandpur, District- Begusarai.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Appearance:
For the Appellant/s : Ms. Mira Kumari, Advocate
For the Respondent/s : Ms. Shashi Bala Verma, APP

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date: 07-04-2025

The present appeal under Section 374 (2) read with Section 389(1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.') has been preferred by the appellants against the judgment of conviction and the order of sentence dt. 6.9.2016 and 08.9.2016 passed by the learned Court of Additional Sessions Judge-II, Begusarai (hereinafter referred to as the Ld. Trial Judge) in Sessions Trial No. 817 of 2011 (arising out of Khodawandpur P.S. Case No. 43 of 2011). By the said judgment dated 06.09.2016, the aforesaid appellants have been held guilty for the commission of offence under

Sections 302/34 of the Indian Penal Code (hereinafter referred to as the 'IPC') and they have been sentenced to undergo imprisonment for life under Section 302 read with Section 34 of the IPC with fine of Rs. 25,000/- each.

2. The short facts of the case are that the fardbeyan of Md. Salim was recorded by the S.H.O., Khodawandpur Police Station on 25.03.2011 at 10:00 p.m. at home. In his *fardbeyan*, the informant, namely Md. Salim has stated that on 25.03.2011 at about 05:00 p.m. in the evening, his wife Ajrul Khatoon alongwith his younger son, Sahnawaj (PW-5) had gone to her field situated across the *Bandh* on the northern side for doing some work and at that time a goat and its kid belonging to her neighbor, Md. Wasim (Appellant No. 1), had entered in the field of the informant, whereupon his wife with a view to save the crops had driven away the goat and its kid from there. At that time, Md. Wasim who was grazing his goat at that place started abusing the wife of the informant as also threatened her whereafter, Md. Wasim went to his home and then wife of the informant alongwith her younger son started coming back from the field, however as soon as she reached near the *bandh*, Md. Wasim (appellant no. 1) holding a knife (cleaver), used to cut goat, in his hand alongwith his mother, Noorjahan (appellant no.

2) came near the wife of the informant whereupon, Noorjahan instigated Md. Wasim resulting in Md. Wasim giving a blow on the neck of the wife of the informant, leading to her sustaining injuries on her left shoulder near the arm as also lot of blood started flowing. The informant has further stated that upon hearing alarm, he and his elder daughter ran and went to the *bandh* where they saw that his wife was soaked with blood and was quivering in pain. Thereafter, the informant had somehow brought his wife back to the house and while they were taking her for treatment to Rosera, she died on the way. The informant has also stated that on account of Md. Wasim having inflicted dagger blow on the left arm of his wife leading to lot of blood flowing out, his wife had died. The *fardbeyan* of the informant was read over to the informant which he had understood and finding the same to be correct, he had put his left thumb impression over the same. After recording of the fardbeyan, a formal FIR bearing Khodawandpur P.S. Case No. 43/2011 was registered on 26.03.2011 in the night at 00:30 a.m. under Sections 302/34 of the IPC against the aforesaid appellants.

3. After investigation and finding the case to be true qua the appellant no. 2, the police had submitted charge sheet on 30.07.2011 under Section 302/34 of the IPC and thereafter,

chargesheet was also filed against the appellant no.1. The learned trial court had then taken cognizance of the offence under Section 302/34 of the IPC, whereafter the case was committed to the Court of Sessions vide order dated 06.09.2011 and it was numbered as Sessions Trial No. 817 of 2011. After taking into consideration the charge sheet and the materials collected during investigation, the learned Trial Judge framed charges under Sections 302/34 of IPC against the appellant no. 2 on 19.09.2012 and against the appellant no. 1 on 21.10.2011. Though the trials of the aforesaid two appellants had been separated, however subsequently both were amalgamated into the present Sessions Trial No. 817 of 2011.

4. During the course of trial 5 prosecution witnesses were examined, i.e. PW-1 Mojibur Rahman, who has been declared hostile, PW-2 Md. Salim (informant of this case and husband of the deceased Ajrul Khatoon), PW-3 Farhat Parvin (daughter of the deceased), PW-4 Jasima Khatoon (sister-in-law of the deceased) and PW-5 Md. Sahnawaj (son of the deceased).

5. The learned counsel appearing for the appellants, Ms. Meera Kumari, has submitted that the testimony of the prosecution witnesses is full of contradiction and inconsistency, as far as the place of occurrence and the mode and manner of

occurrence is concerned. It has also been submitted that neither the *fardbeyan* has been exhibited nor the inquest report has been exhibited nor the postmortem report has been exhibited apart from the fact that the weapon used in the alleged occurrence has also not been recovered. The learned counsel for the appellants has next submitted that neither the Investigating Officer nor the Doctor who had conducted the postmortem of the dead body of the deceased have been examined, which has caused grave prejudice to the appellants. In this regard, reference has been made to a judgment rendered by the Hon'ble Apex Court in the case of ***Rajesh Patel vs. The State of Jharkhand***, reported in ***(2013) 3 SCC 791***. Thus, it is submitted that the judgment of conviction and order of sentence passed by the learned Trial Judge is perverse and fit to be set aside.

6. *Per contra*, the learned APP for the State, Ms. Shashi Bala Verma has submitted that the prosecution witnesses i.e. PW-2 to PW-5 have consistently deposed about the appellant no.1 having inflicted dagger blow on the deceased resulting in her death. It is thus submitted that in view of the consistent testimony of the prosecution witnesses, non-examination of Investigating Officer and Doctor would not cause any prejudice to the appellants, hence there being no error in the judgment

passed by the learned Trial Judge, no interference is required in the judgment of conviction and the order of sentence rendered by the learned Trial Judge, thus the present appeal is fit to be dismissed.

7. Besides hearing the learned counsel for the parties, we have minutely perused both the evidence i.e. oral and documentary. Before proceeding further, it is necessary to cursorily discuss the evidence.

8. PW-1, Mojibur Rahman has stated in his deposition that he does not know anything about the incident and that he had also not given any statement before the police, hence, the prosecution had declared him to be hostile. Thus, we find that no purpose would be served by discussing his evidence.

9. PW-2, Md. Salim is the informant of this case and husband of the deceased Ajrul Khatoon. He has stated in his deposition that the occurrence dates back to three years at about 05:00 p.m. in the evening when his wife, Ajrul Khatoon was returning from the field after doing work and when she had reached near the *bandh* at Nurullahpur village, quarrel erupted with Noorjahan, whereupon she exhorted to kill her with dagger leading to Md. Wasim (appellant no.1) inflicting a dagger blow on the neck of the deceased which hit her arm and shoulder

resulting in her becoming unconscious as also lot of blood started flowing out and then she was taken to Rosera for treatment, however on the way she died. PW-2 has further stated that the occurrence was witnessed by daughter, Farhat Parwin (PW-3), son Md. Sahnawaj (PW-5) and her sister-in-law i.e. wife of Qamrulzama. In paragraph no. 3, PW-2 has stated that he had gone to the police station where his statement was recorded. PW-2 had also recognized the appellants standing in the dock. In paragraph no. 5, PW-2 has stated that his goat had strayed in the field of Wasim whereafter, the goat was driven away leading to the instant occurrence having taken place. In his cross-examination, PW-2 has stated that upon hearing alarm, he and his daughter went there and saw that his wife was smeared with blood as also was quivering in pain whereafter, they had taken her to Rosera for treatment but she died on the way. PW-2 has also described the place of occurrence where *Masoor* and wheat crops are growing. He has also stated that the house of Md. Wasim is at a short distance from his house. In paragraph no. 8 of his cross-examination, PW-2 has stated that his wife had firstly gone to the field alone. He has also stated that he had seen his wife lying down below the *bandh* on the bank of river Gandak, smeared with blood. In paragraph-9 of his cross-

examination, PW-2 has stated that he cannot say as to how many people were present when he had lifted his wife and brought her back. He has also stated that blood stains were also present on his clothes and his daughter's clothes, however the police personnel had not taken the clothes. PW-2 has also stated that while they were taking his wife to Rosera for treatment and had reached Hatiya village, his wife died whereafter, they had returned back to their house, where the police personnel had arrived at about 6:00 p.m. and then they had come after 2 days.

10. PW-3, Farhat Parwin is daughter of the deceased and she has stated in her deposition that the occurrence dates back to three years at about 5:00 p.m. in the evening when she was at her home. She has also stated that quarrel erupted in between the appellants and her mother Ajrul Khatoon on account of goat having grazed their field and then Noorjahan said that Ajrul Khatoon should be killed because she quarrels every day. PW-3 has further stated that her mother had gone to the field and Md. Wasim (appellant no.1) had inflicted dagger blow on her mother, which she had caught by her hand and then the dagger hit her chest. She has also stated that they had then taken her mother to Rosera for treatment, however, she died on the way, whereafter they had brought the dead body back to their house. She has

also stated that the occurrence took place below the *bandh*. She has recognized the appellants standing in the dock. In cross-examination, PW-3 has stated that her statement was recorded by the police, in which she has stated that hulla (alarm) was raised to the effect that Md. Wasim has inflicted dagger blow on her mother, whereafter she ran and went there and saw that her mother had fallen down in an injured condition. She has also stated that the distance in between her house and *bandh* is 50-60 feet towards the down side and the field where the occurrence took place, is situated towards the southern side of the *bandh* and at that time wheat crops were growing in the field. She has also stated that her father had lifted her mother and brought her, however when they were taking her to Rosera for treatment, she died on the way.

11. PW-4, Jasima Khatoon is the sister-in-law of the deceased and she has stated in her deposition that the occurrence dates back to three years and some months when she was at the courtyard of her house and upon hearing *hulla* (alarm), she came outside and saw that Md. Wasim, holding a dagger, along with his mother was going towards the place of occurrence and the appellant No. 2 was saying that she would not leave her as also was abusing Ajrul Khatoon. Ajrul Khatoon had then driven

away the goat of Wasim from her field. PW-4 has stated in paragraph no. 2 of her examination-in-chief that Wasim had gone to the field with a dagger and had assaulted Ajrul Khatoon with dagger which had hit her near the neck and then he had ran away towards the river. She has also stated that they had then lifted the deceased and taken her to the doctor for treatment, however she died on the way. In cross-examination, PW-4 has stated that her courtyard and that of the deceased is same but they live separately. She has also stated that her house and that of Wasim is adjacent to each other and a land dispute is existing between the accused and the informant. In paragraph no. 4 of her cross-examination, she has also stated that Sahnawaj had told that her mother was killed. PW-4 has next stated that when she had gone to the place of occurrence, the deceased Ajrul Khatoon was quivering in pain and some people were also present there. PW-4 has further stated that she had stated that Wasim was going along with his mother with a dagger in his hand and they were abusing Ajrul Khatoon as also she had stated that Wasim and his mother had gone near the *bandh* where Wasim had assaulted with dagger which hit near the neck of her mother whereafter, the appellants had fled away. PW-4 has also described the place of occurrence in her cross-

examination.

12. PW-5 Md. Sahnawaj is the son of the deceased, who is stated to be about five years old at the time of the alleged occurrence. He has stated in his deposition that the name of his mother is Ajrul Khatoon who is dead and Md. Wasim had inserted dagger in her chest because her goat had grazed the crops of his field. He had recognized the appellants standing in the dock. In cross-examination, he has stated that he met the Officer-in-Charge of the police station at his house. He has also stated that at the time when he met the Officer-in-Charge, his mother's dead body was lying at the house and the Officer-in-Charge had made inquiries from him as also had told him that his mother had died. In paragraph no. 5 of his cross-examination, PW-5 has stated that there are two rooms in his house and when he came out of the room of his house, he saw the dead body of his mother.

13. After closing the prosecution evidence, the learned Trial Court recorded the statement of the appellants on 30.06.2016 under section 313 of the Cr.P.C. for enabling them to personally explain the circumstances appearing in the evidence against them, however, they claimed themselves to be innocent.

14. The Trial Court upon appreciation, analysis and scrutiny

of the evidences adduced at the trial has found the aforesaid appellants guilty of the offences and has sentenced them to imprisonment and fine, as stated above, by its impugned judgment and order.

15. We have perused the impugned judgment of the learned Trial Court, the entire materials on record and have given thoughtful consideration to the rival submissions made by learned counsel for the appellants as well as the learned APP for the State. A bare perusal of the evidence of PW-2, i.e. the informant, would show that in paragraph no. 8 of his cross-examination, he has said that his wife had gone to the field alone and he had seen his wife lying below the *bandh* near the bank of river Gandak, hence, apparently, he cannot be said to be an eyewitness. As far as PW.-3, Farhat Parwin, is concerned, she has stated in paragraph no. 4 of her cross-examination that after hulla (alarm) was raised to the effect that Md. Wasim had assaulted her mother by dagger, she ran and went to the place of occurrence where she found that her mother had fallen down in an injured condition, thus even PW-3 is not an eyewitness. As regards PW-4, Jasima Khatoon, a bare perusal of her evidence would show, more particularly paragraph no. 4 of her cross-examination that when she went to the place of occurrence,

Ajrul Khatoon was quivering in pain and some persons were standing there, thus, apparently, she is also not an eyewitness. In fact even in the fardbeyan, informant (PW-2) does not claim that he and his daughter (PW-3) had witnessed the actual occurrence regarding Md. Wasim having inflicted dagger blow on the deceased. Now, we are left with the testimony of PW-5 Md. Sahnawaj (son of the deceased), who has stated in paragraph no. 5 of his cross-examination that when he came out of the room, he found the dead body of his mother lying on the way of the house, hence he cannot also be said to be an eyewitness.

16. Yet another aspect of the matter is that PW-5, Md. Sahnawaj, who claims to be the only eye witness, was aged about five years only at the time of occurrence and eight years at the time of recording of his testimony. In this regard it would be essential to understand as to how the testimony of a child witness should be looked into and appreciated, as the Court has a bounden duty to see and analyze whether the evidence of such a witness is cogent, convincing and creditworthy or whether there has been enough scope for tutoring of the witness. The law with regard to the testimony of a child witness is well settled. The Hon'ble Supreme Court of India, in the case of ***Bhagwan Singh and others Vs. State of M.P.***, reported in ***(2003) 3 SCC***

21 has taken into consideration the competence of a child witness and has held that it would be hazardous to rely on the sole testimony of the child witness in case the same has not been made immediately after the occurrence giving scope of possibility of tutoring him. Paragraphs 19 and 22 of the said judgment are quoted hereunder:-

> *"19. The law recognises the child as a competent witness but a child particularly at such a tender age of six years, who is unable to form a proper opinion about the nature of the incident because of immaturity of understanding, is not considered by the court to be a witness whose sole testimony can be relied upon without other corroborative evidence. The evidence of a child is required to be evaluated carefully because he is an easy prey to tutoring. Therefore, always the court looks for adequate corroboration from other evidence to his testimony, (See Panchhi v. State of U.P. [(1998) 7 SCC 177].*
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> *22. It is hazardous to rely on the sole testimony of the child witness as it is not available immediately after the occurrence of the incident and before there were any possibility of coaching and tutoring him. (See paras 14-15 of State of Assam v. Marfin Ahmed [(1983) 2 SCC 14]. In that case evidence of a child witness was appreciated and held unreliable thus (SC p. 20)*
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> > *14. The other direct evidence is the deposition of PW 7, the son of the deceased, a lad of 7 years The High Court has observed in its judgment:*

'...the evidence of a child witness is always dangerous unless it is available immediately after the occurrence and before there were any possibility of coaching and tutoring."

15. A bare perusal of the deposition of PW 7 convinces us that he was vacillating throughout and has deposed as he was asked to depose either by his nana or by his own uncle. It is true that we cannot expect much consistency in the deposition of this witness who was only a lad of 7 years. But from the tenor of his deposition it is evident that he was not a free agent and has been tutored at all stages by someone or the other."

17. The evidentiary value of the evidence of a child witness was also considered in the case of ***Panchhi v. State of U.P***. reported in ***(1998) 7 SCC 177***, wherein it has been held that the valuation of the evidence of a child witness must be done with greater care and caution as a child witness is easy prey to tutoring. Paragraph nos. 11 and 12 of the said judgment is quoted herein below:-

"11.....The law is that evidence of a child witness must be evaluated must carefully and with greater circumspection because a child susceptible to be swayed by what others tell hits and thus a child witness is an easy prey to tutoring.

12. Courts have laid down that evidence of a child witness must find adequate corroboration before it is

relied on. It is more a rule of practical wisdom than of law."

18. We may further refer to a judgment rendered by the Hon'ble Apex Court in the case of **Digamber Vaishnav and another vs. State of Chhattisgarh** reported in **(2019)4 SCC 522** by extracting paragraph nos. 21 and 22 of the same hereunder:-

"21. The case of the prosecution is mainly dependent on the testimony of Chandni, the child witness, who was examined as PW 8. Section 118 of the Evidence Act governs competence of the persons to testify which also includes a child witness. Evidence of the child witness and its credibility could depend upon the facts and circumstances of each case. There is no rule of practice that in every case the evidence of a child witness has to be corroborated by other evidence before a conviction can be allowed to stand but as a prudence, the court always finds it desirable to seek corroboration to such evidence from other reliable evidence placed on record. Only precaution which the court has to bear in mind while assessing the evidence of a child witness is that witness must be a reliable one.

22. This Court has consistently held that evidence of a child witness must be evaluated carefully as the child may be swayed by what others tell him and he is an easy prey to tutoring Therefore, the evidence of a child witness must find adequate corroboration before it can be relied upon.

It is more a rule of practical wisdom than law."

19. The Ld. Trial Court, while recording the testimony of a child witness, is required to record its satisfaction to the effect that the minor is able to understand the questions put to him, who is turn is able to respond and provide rational answers to the questions asked. This satisfaction of the learned trial court is based upon certain preliminary questions which ought to be put to a child witness to understand capability of the witness to understand the questions and answering the same with some amount of rationality, in terms of Section 118 of the Indian Evidence Act, 1872. In this regard, we are tempted to make reference to a judgment passed by the Hon'ble Apex Court in the case of ***Pradeep vs. State of Haryana*** reported in ***2023 SCC Online SC 777***, Paragraph nos.9, 10 and 11 whereof are being reproduced herein below:-

> *"9. It is a well-settled principle that corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. A child witness of tender age is easily susceptible t tutoring However, that by itself is no ground to reject the evidence of a child witness. The Court must make careful scrutiny of the evidence of a child witness. The Court must apply its mind to the question whether there is a possibility of the child witness being tutored. Therefore, scrutiny of the evidence of a*

child witness is required to be made by the Court with care and caution

10. Before recording evidence of a minor, it is the duty of a Judicial Officer to ask preliminary questions to him with a view to ascertain whether the minor can understand the questions put to him and is in a position to give rational answers. The Judge must be satisfied that the minor is able to understand the questions and respond to them and understands the importance of speaking the truth. Therefore, the role of the Judge who records the evidence is very crucial. He has to make a proper preliminary examination of the minor by putting appropriate questions to ascertain whether the minor is capable of understanding the questions put to him and is able to give rational answers. It is advisable to record the preliminary questions and answers so that the Appellate Court can go into the correctness of the opinion of the Trial Court.

11. In the facts of the case, the preliminary examination of the minor is very sketchy. Only three questions were put to the minor on the basis of which the learned Sessions Judge came to the conclusion that the witness was capable of giving answers to each and every question. Therefore, the oath was administered to him. Following are the questions put to him:-

Q. In which school you are studying?

Ans. I am studying in Govt Primary School, Barwashni

Q. What is occupation of your father?

Ans. My father is a Pujari in a Mandir named Hanuman, at Gohanba,

Q. Should one speak truth or false?

Ans. Truth"

20. However, we find that in the present case, the learned trial court has not taken pains to put any question whatsoever, to the child witness i.e. PW-5 to assess the capability of this witness, nor any demeanor of the witness has been recorded anywhere during the course of recording of his deposition. Thus, we are of the definite view that the learned court below has not satisfied itself with regard to the ability and capability of the said witness to understand questions and give rational answers and has even not recorded his satisfaction with regard to the same, thus leaving the scope for doubting the credibility of such witness. So far as scrutinizing the evidence of a child witness i.e. PW-5 with greater circumspection is concerned, we gather from the evidence recorded during the trial that this witness has not been consistent in his version and the same is replete with inconsistencies, exaggerations and embellishments. In such view of the matter, the testimony of PW-5 becomes untrustworthy in light of the provisions contained under section 118 of the Indian Evidence Act, 1872.

21. We thus find from the evidence led in the present case

that none of the prosecution witnesses are eye witness. Therefore, in absence of eye witness to the alleged crime, circumstantial evidence becomes essential to establish the guilt or innocence of an accused. It is a well settled law that the basic requirements for Circumstantial Evidence are that the circumstances from which guilt is inferred must be firmly established and not open to doubt, the circumstances must clearly point towards the accused's involvement and not be susceptible to alternative explanations, the circumstances must form a complete chain, linking the accused to the crime without any gaps or inconsistencies and the circumstances should not be explainable by any hypothesis other than the guilt of the accused. Now coming back to the present case, we find that neither the dagger/knife used to assault and kill the deceased has been recovered by the police nor blood soaked mud/clothes have been seized much less sent for FSL examination nor the motive for the occurrence has been established nor the inquest report / post mortem report has been proved nor the fardbeyan has been exhibited apart from the fact that the prosecution has failed to examine the investigating officer and the doctor who had conducted the post mortem of the dead body of the deceased, which have all led to great prejudice to the defence. In

such view of the matter, we are of the view that the circumstances from which the conclusion of guilt is to be drawn are nonexistent in the present case, hence the evidence on record does not lead to the conclusion that the appellants have committed the crime.

22. Thus, taking into account an overall perspective of the entire case, emerging out of the totality of the facts and circumstances, as indicated hereinabove and having perused the entire evidence on record, we find that the prosecution has failed to lead cogent, credible and trustworthy evidence to establish the commission of the offence and has failed to prove beyond all reasonable doubts the commission of offence, as aforesaid. Therefore, we find that the learned Trial Judge has committed a gross error in holding that there is dependable, credible, specific, ample and concrete testimony to establish the charge of murder by the appellants and that the defence has not been able to prove its innocence beyond all reasonable doubt.

23. Thus, in the facts and circumstances, as discussed hereinabove and for the foregoing reasons, we are of the view that there are compelling reasons in the present case, which necessitate that the appellants of the aforesaid two cases be given the benefit of doubt.

24. Accordingly, we find that the finding of conviction recorded by the learned Trial Court, in our opinion, is not sustainable and requires interference. Therefore, the judgment of conviction dated 06.09.2016 and the order of sentence dated 08.09.2016, passed by the learned Court of Additional Sessions Judge-II, District-Begusarai in Sessions Trial No. 817 of 2011 (arising out of Khodawandpur P.S. Case No. 43 of 2011), are set aside. The appellants of the aforesaid appeal are acquitted of charges levelled against them.

25. The appellant no. 1 Md. Wasim, who is in custody is directed to be released from jail forthwith unless required in any other case. As far as appellant no. 2 Noorjahan is concerned, she is already on bail, hence she is discharged from the liability of her bail bonds.

26. Accordingly, the appeal i.e. Criminal Appeal (DB) No. 1099 of 2016 is allowed.

(Mohit Kumar Shah, J)

(Shailendra Singh, J)

S.Sb/-

AFR/NAFR	AFR
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