



2026:DHC:5379-DB



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on: 30.04.2026*  
*Pronounced on: 07.07.2026*

+ CRL.A. 370/2004  
RAJESH @ GUTKA

.....Appellant

Through: Mr.Rishi Malhotra, Sr. Adv.  
with Ms.Ansuiya and  
Mr.Shivaansh Maini, Advs.

versus

STATE OF NCT OF DELHI .....Respondent

Through: Mr.Aman Usman, APP with  
Mr.Manvendra Yadav Adv.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**HON'BLE MR. JUSTICE RAVINDER DUDEJA**

**J U D G M E N T**

**RAVINDER DUDEJA, J.**

1. This is a Criminal Appeal filed by the appellant, impugning the Judgment of Conviction and Order on Sentence dated 12<sup>th</sup> September, 2003 [**“impugned judgement”**], passed by learned Additional Sessions Judge, New Delhi, in case FIR No.440/2001, registered at Police Station Vasant Kunj, under Section 365/302/201/34 of Indian Penal Code, 1860 [**“IPC”**]. *Vide* the aforesaid judgment, the learned Trial Court convicted the appellant under Section 302 IPC, while acquitting him under Section 201 IPC, and vide Order on Sentence, the appellant was sentenced to undergo imprisonment for life with fine of Rs. 500/- for the offence under Section 302 IPC, in default of payment of fine, he was directed to undergo Simple Imprisonment for a period of three months.



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2. The appeal was admitted on 19<sup>th</sup> May, 2004 and, *vide* order dated 17<sup>th</sup> July, 2006, the sentence of the appellant was suspended during the pendency of the appeal.

**BRIEF FACTS:**

3. The case of the prosecution, as noted by the learned Trial Court in the impugned judgment, is that the Appellant Rajesh @ Gutka was employed as a driver with RTS Transport Company owned by Rajender Singh, who was carrying on transport business at Mahipalpur, New Delhi, within the jurisdiction of P.S. Vasant Kunj. The deceased Dilbagh Singh was also employed with the same transport company as a helper. The appellant and the deceased together, left for Agra in Tata 407 truck bearing No. HR-55-A-1536, for transportation of goods on 24<sup>th</sup> January, 2001. On 25<sup>th</sup> January, 2001, the appellant informed his employer *via* the phone, that the goods had been unloaded at Agra and that he would return by 27<sup>th</sup> January, 2001. However, when neither the appellant nor the vehicle returned, his employer Rajender Singh contacted the consignee at Agra and was informed that both, the appellant and Dilbagh Singh, had delivered the goods and thereafter left after receiving the freight charges. Subsequently, on inquiry from the native village of the appellant, Rajender Singh was informed by Bhanu Pratap, brother of the appellant, that Rajesh had been admitted in a hospital at Urai. However, when the employer visited the said hospital, the appellant was not found there. Later, a telephonic call was received from Bhanu Pratap to the employer on 14/15.02.2001, that the Tata 407 vehicle had been found abandoned within the jurisdiction of P.S. Gur Sarai,



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whereupon Rajender Singh lodged a report against appellant Rajesh and Dilbagh Singh in Delhi.

4. In the meantime, on 27<sup>th</sup> January, 2001, an unidentified dead body was recovered near Agra by villagers of Saidalpur, P.S. Sirsa Ganj. The body was sent for post-mortem and, as per the post-mortem report, the cause of death was opined to be asphyxia due to strangulation. Since the identity of the deceased could not be established at that stage, the body was cremated as unclaimed after photographs were taken and the clothes of the deceased were preserved in the Malkhana of P.S. Sirsa Ganj.

5. Subsequently, when Dilbagh Singh remained untraceable, his wife Smt. Sushma Devi filed a Habeas Corpus petition before this Court. Pursuant thereto, the present FIR came to be registered and investigation was initiated.

6. During investigation, the abandoned truck was recovered and the Delhi Police also obtained the post-mortem report, photographs which were taken before cremating the body, and clothes (Blanket/Ex.P-1, Pant/Ex.P-2, Shirt Ex.P-3 and Sweater/Ex.P-4) connected with the unidentified body, which was later identified to be that of Dilbagh Singh. The appellant was thereafter arrested on 10<sup>th</sup> October, 2001 from Agra *vide* personal search memo Ex.PW-4/C at the instance of PW-4 Amit, and is alleged to have made a disclosure statement confessing that he, along with one Ram Khiladi, had murdered Dilbagh Singh and thrown the dead body near Agra. Investigation further revealed that the appellant had made an extra-judicial confession before one Dasrath, PW-14, of his village.



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7. Upon completion of investigation, the police filed the charge sheet against appellant Rajesh under Sections 365/302/201/34 IPC. Charges were framed on 07<sup>th</sup> March, 2002 under Sections 302/201 IPC, to which, the appellant pleaded not guilty and claimed trial.

8. During the course of trial, the prosecution examined, 15 witnesses in total to bring home the guilt of the appellant, which included the wife and brother of the deceased (PW-1 and 2), PW-4 (Amit son of owner of transport company Rajender Singh), PW-8 (witness of discovery of the dead body), PW-12 (medical officer who conducted post mortem on the dead body), PW-15 (IO), PW-14 (witness of extra-judicial confession), and other formal witnesses including officials of Delhi Police and U.P. Police.

9. In his statement under Section 313 of the Code of Criminal Procedure [“Cr.P.C.”], which was recorded on 04<sup>th</sup> September 2003, the Appellant denied all the incriminating evidence, stating that he was running his own vehicle at Kanpur and neither worked with RTS Transport Company nor knew the deceased Dilbagh Singh. In his defence, the Appellant examined his brother Bhanu Pratap as DW-1, who denied the prosecution version that the Appellant was arrested from Agra and produced certain telegrams, vehicle documents, and complaints to suggest false implication and prior enmity with PW-14 Dasrath Singh.

**SUBMISSIONS MADE BY THE APPELLANT:**

10. Mr. Rishi Malhotra, learned senior counsel for the appellant, submitted that the entire prosecution case rests solely on circumstantial evidence and, therefore, it was incumbent upon the



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prosecution to establish each incriminating circumstance beyond reasonable doubt so as to form a complete and unbroken chain leading only to the hypothesis of the appellant's guilt. Reliance was placed on the decision of the Supreme Court in *Vijay Shankar v. State of Haryana* (2015) 12 SCC 644, to contend that the circumstances relied upon by the prosecution must be firmly established, must be consistent only with the guilt of the accused, and must be incapable of explanation on any other reasonable hypothesis. It was argued that the present case is full of inconsistencies, omissions and missing links which completely demolish the chain of circumstances sought to be projected by the prosecution.

11. It was further submitted that no motive for the alleged crime has been proved and that the learned Trial Court proceeded on conjectures and surmises while drawing adverse inferences against the appellant. The prosecution has also failed to explain why no charge-sheet was filed against Ram Khiladi, who was allegedly involved in the commission of the offence as per the witness PW-14, thereby rendering the prosecution story incomplete and doubtful.

12. Learned senior counsel further assailed the prosecution's reliance on the alleged extra-judicial confession attributed to the appellant. Placing reliance upon *Sahadevan v. State of Tamil Nadu*, (2012) 6 SCC 403 and *Majenderan v. State*, (2013) 7 SCC 192, it was argued that an extra-judicial confession is a weak piece of evidence which can be acted upon only if it is voluntary, truthful and inspires complete confidence. In the present case, the alleged confession was stated to have been made before PW-14 Dasrath Singh, who



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admittedly had long-standing political rivalry with the appellant's family owing to Panchayat elections contested by their respective wives. Apart from such political hostility, there also existed a business dispute concerning a mini-truck jointly owned by the appellant and Samrat Singh, brother of PW-14. It was contended that despite PW-14 admitting that several villagers were present when the confession was allegedly made, none of those independent witnesses were examined by the prosecution. PW-14 was also unable to disclose either the exact date of the alleged confession or the identities of the persons before whom it was made. It was, therefore, argued that the alleged confession suffers from inherent improbabilities and cannot be treated as a reliable circumstance against the appellant. It was further submitted that even the alleged recovery of a blanket from the appellant's house does not find support from the testimony of PW-14 and consequently fails to strengthen the prosecution case.

13. It was next contended that the testimonies of the prosecution witnesses suffer from serious contradictions and material omissions. PW-1 Sushma Devi and PW-2 Jagdish Singh merely identified certain belongings of the deceased at the police station and categorically admitted that no test identification parade were conducted before a Magistrate. PW-4 Amit, the owner of RTS Transport Company and the principal witness heavily relied upon by the prosecution, failed to produce any documentary evidence showing that either the deceased or the appellant were employed with his transport company. Though PW-4 claimed that the deceased had left in the company of the appellant and another unidentified person, the prosecution neither



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traced nor examined the said unidentified individual, thereby leaving a vital gap in the prosecution narrative. Learned senior counsel argued that despite the Trial Court accepting PW-4's testimony regarding the alleged employment of the appellant, it arbitrarily discarded the same witness's statement that the appellant had been arrested from Kanpur, thereby adopting a selective approach to the evidence. It was also submitted that the identity of the deceased itself remains doubtful as an unclaimed and unidentified dead body found near Agra was treated as that of Dilbagh Singh merely on the basis of clothes allegedly identified from photographs, without any reliable identification process.

14. Assailing the prosecution case further, learned senior counsel highlighted serious discrepancies regarding the arrest of the appellant. PW-4 deposed that the appellant was arrested from Kanpur, whereas PW-6, PW-7 and PW-15 stated that he was arrested from Agra on 10.10.2001. PW-5, on the other hand, stated that the appellant was traced through his brother in the village. These contradictory versions, strike at the root of the prosecution case. It was further argued that despite the alleged arrest having taken place at Agra, the appellant was never produced before the concerned Magistrate of the area from where he was arrested nor his transit remand was obtained, thereby, casting grave doubt on the legality and genuineness of the arrest proceedings. Reference was also made to the testimony of PW-13, who admitted that although information regarding the dead body had been received on 27.01.2001, no FIR was registered at the concerned police station. Such serious lapses in investigation, coupled with the



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absence of territorial jurisdiction to try the matter, according to counsel, rendered the prosecution case wholly unreliable. It was further submitted that the Trial Court failed to properly appreciate the evidence and misapplied settled principles governing cases based on circumstantial evidence while constructing the alleged chain of circumstances.

15. Lastly, learned senior counsel submitted that the defence evidence probabalises the false implication of the appellant. In his statement under Section 313 Cr.P.C., the appellant denied any association either with the deceased or with RTS Transport Company and asserted that he had been illegally picked up by the police from Kanpur. The defence examined DW-1 Bhanu Pratap, who denied having met either the police officials or PW-4 and proved telegrams (Ex. DW-1/A) showing that representations had been sent alleging the illegal detention of the appellant since 05.10.2001. DW-1 also proved the existence of political rivalry between the family of PW-14 and that of the appellant and produced documents demonstrating business dealings between the appellant and Samrat Singh, the brother of PW-16. It was further submitted that the wife of the deceased had earlier filed Criminal Writ Petition No. 1015 of 2001 before this Court, pursuant to which FIR No. 440 of 2001 under Section 365 IPC was registered and only thereafter the offences were converted to Sections 365, 302 and 201 read with Section 34 IPC. On the strength of these circumstances, it was argued that the prosecution has failed to establish a complete and consistent chain of evidence, that the alleged



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extra-judicial confession is wholly unreliable, and that the appellant is entitled to the benefit of doubt and consequent acquittal.

### **SUBMISSIONS ON BEHALF OF THE STATE**

17. Mr Usman, learned Additional Public Prosecutor [“APP”], for the State submitted that the prosecution has successfully established a complete chain of circumstances pointing towards the guilt of the appellant. It was submitted that the appellant was employed as a driver with PW-4 Amit Kumar and was driving truck bearing registration No. HR-55-A-1534. On 24.01.2001, the appellant left Delhi for Agra with the deceased Dilbagh Singh, who was working as a helper on the same vehicle. On 25.01.2001, the appellant telephonically informed PW-4 that the goods had been unloaded at Agra and that he would return to Delhi on 27.01.2001. However, neither the appellant nor the deceased returned thereafter.

18. Learned APP further submitted that after waiting for several days, PW-4, along with a police official and another person, went in search of the appellant at his native village and thereafter to Urai, where he was informed that the appellant had allegedly been hospitalized. Despite these efforts, neither the appellant nor the truck could be traced. Subsequently, in mid-February 2001, PW-4 received information from the appellant’s brother that the truck had been found abandoned at Police Station Gur Sarai, U.P., following which the vehicle was released on superdari in favour of PW-4. Furthermore, that PW-4 had lodged a complaint regarding the missing truck on 04.02.2001. Thereafter, the family members of the deceased also approached the Delhi Police regarding the disappearance of Dilbagh



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Singh. As no effective action was taken, the wife of the deceased filed a writ petition seeking a writ of habeas corpus before this Court. Upon receipt of the said writ petition, Delhi Police registered the present FIR on 03.10.2001 and commenced investigation.

19. It was submitted that during investigation, a police team visited the village of the appellant, where PW-14 Dasrath disclosed that the appellant had made an extra-judicial confession before him admitting that he had murdered the deceased and thrown his body near Agra. Acting upon this information, the police traced the appellant and arrested him. Pursuant to his disclosure statement, the police were led to the place where the dead body had earlier been recovered by the U.P. Police as an unidentified body. The photographs, post-mortem report and inquest papers were thereafter obtained and the body was identified as that of Dilbagh Singh. Reliance was placed on the testimony of PW-4 Amit Kumar, who categorically deposed that the appellant had left Delhi with the deceased on 24.01.2001 and had informed him on 25.01.2001 about unloading the goods at Agra. PW-4 further stated that the appellant subsequently disappeared, the truck was recovered in an abandoned condition, and upon arrest, the appellant confessed to having killed Dilbagh Singh. PW-4 also proved the recovery of the blanket of the deceased from the house of the appellant pursuant to the disclosure statement made by the appellant.

20. It was contended that although PW-4 stated that the appellant was arrested from Kanpur whereas the Investigating Officer stated that he was arrested from Agra, the said discrepancy is inconsequential and has been correctly appreciated by the Trial Court. It was submitted



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that the Trial Court, after considering the testimonies of PW-5 and PW-15, rightly concluded that the appellant had been arrested from Agra and that the solitary statement of PW-4 regarding arrest from Kanpur does not demolish the prosecution case. Refuting the contention of the defence regarding the absence of transit remand, learned APP submitted that the appellant was produced before the competent court in Delhi within twenty-four hours of his arrest and, therefore, no transit remand was legally required. It was argued that transit remand becomes necessary only where the accused cannot be produced before the competent Magistrate within the prescribed period.

21. Learned APP further relied upon the testimony of PW-9, a police official from U.P., who proved that an unidentified dead body had been recovered on 27.01.2001 and that the clothes recovered from the body were preserved in the malkhana. PW-9 identified the clothes which were subsequently identified by the witnesses as belonging to the deceased. It was emphasized that PW-9 remained unshaken as he was not cross-examined by the defence. Reliance was also placed upon the testimony of PW-10, who handed over the original records relating to the recovery of the dead body, including the post-mortem report, photographs, DD entries, inquest papers and negatives to the Investigating Officer.

22. With respect to the extra-judicial confession, learned APP relied upon the testimony of PW-14 Dasrath. It was submitted that PW-14 unequivocally deposed that the appellant had admitted before him and other villagers that he had murdered the helper accompanying him and





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24. Lastly, learned APP submitted that the defence version regarding the arrest of the appellant from Kanpur is unsupported by reliable evidence. The sole defence witness, DW-1 Bhanu Pratap, admittedly had no personal knowledge regarding the arrest of the appellant. No independent witness from the alleged place of arrest in Kanpur where the Appellant was allegedly working was examined by the defence. It was therefore submitted that the Trial Court rightly rejected the testimony of DW-1 and correctly held that the appellant was arrested from Agra. On the basis of the aforesaid evidence and circumstances, learned APP contended that the prosecution has proved its case beyond reasonable doubt and that the findings recorded by the Trial Court on the material aspects of the prosecution case deserve to be upheld.

**ANALYSIS AND REASONING:**

25. We have given our anxious consideration to the arguments submitted by the learned Senior Counsel on behalf of the appellant and the learned APP on behalf of the State and have carefully perused the material on record.

26. It has come in the evidence of PW-8 Shabir that on 27<sup>th</sup> January, 2001, he had spotted a dead body in Village Saidalpur. He passed on the information to the police. PW-13 SI S.B. Singh deposed that on receipt of such information, he reached at the spot and took into possession the dead body *vide Panchnama* Ex. PW-13/A. The photograph of the body was taken, which is Ex. PW-10/G, and thereafter, the body was sent for post-mortem. PW-1 Smt. Sushma Devi, wife of the deceased, deposed that on 18<sup>th</sup> October, 2001, she



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came to Delhi and identified the photograph of her deceased husband in the police station. She also identified the blanket, pant and shirt of her husband in the police station. Similarly, PW-2 Jagdish Singh, brother of the deceased, identified the body from the photograph to be that of his brother Dilbagh Singh. He also identified the blanket, shirt and pant as belonging to his deceased brother. PW-12 Dr. S.C. Gupta deposed that on post-mortem examination, he found contusions with abrasions on the different parts of the body of the victim including on front of the neck. He proved the post-mortem report Ex. PW-12/A. As per his opinion, the death was due to Asphyxia, as a result of neck compression (strangulation). There is no cross examination of the family members i.e. PW-1 and PW-2 regarding the identification of the body from the photograph or even the doctor with regard to opinion given by him as to the cause of death. The identification of the body and the opinion of the doctor as regards the cause of death are therefore deemed to be admitted. It is thus proved beyond reasonable doubt that the recovered body was of Dilbagh Singh, who suffered a homicidal death.

27. Admittedly, there is no eye-witness of the occurrence. The conviction of the appellant rests entirely on circumstantial evidence and, therefore, each circumstance relied upon by the prosecution is required to be proved beyond reasonable doubt and to form a complete chain pointing only towards the guilt of the appellant.

28. The foundational circumstance sought to be established by the prosecution is that the appellant was employed as a driver with RTS Transport Company and had left for Agra along with the deceased on



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24.01.2001. Even though, the prosecution case is that one Rajender Singh was the owner of RTS Transport Company, where, the appellant Rajesh @ Gutka was employed as a driver, Rajender Singh was not produced as a witness, and instead, his son Amit, who appeared as PW-4, deposed that accused was driver with him and was given Tata 407 bearing No. HR55-A-1536. However, apart from the bare oral assertions of PW-4 Amit Kumar, no documentary evidence whatsoever was produced to establish the employment of the appellant. PW-4 candidly admitted during cross-examination that he possessed no record of employment, no attendance register, and no document showing that the appellant was working under him. He further stated in cross examination that he did not obtain any signatures of the appellant/other employees, as and when they were sent out of station. The Investigating Officer (PW-15) SI O.P. Thakur, also admitted that despite asking PW-4 to furnish proof of employment, none could be produced. Equally significant is the fact that no documentary evidence relating to the transportation assignment was brought on record. In the absence of any reliable documentary evidence proving that the appellant was the driver of the vehicle or that he was deputed with the deceased on the relevant date, particularly when the accused disputes such facts, the very foundation of the prosecution case remains unsubstantiated.

29. The prosecution further relied upon the circumstance that the appellant and the deceased were last seen together while proceeding towards Agra. However, this circumstance itself is rendered doubtful because the prosecution failed to establish the appellant's employment



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and presence on the truck beyond reasonable doubt. PW-4 claimed that the appellant telephonically informed him on 25.01.2001 that the goods had been unloaded at Agra and that he would return on 27.01.2001. No call detail record has been collected or produced before the Court to prove the receipt of any such call. Neither the consignee nor the person to whom the goods were allegedly delivered was examined. No delivery receipt, Call Detail Record or Bilti, transport document, freight receipt, gate pass or unloading record was produced by the Investigating Agency/police to evidence that the Appellant was indeed the one who delivered the goods. PW-15 expressly admitted that no record was collected from the place where the truck was allegedly unloaded and that no inquiry was made from the relevant check posts. Even, the wife and the brother of deceased Dilbagh Singh, while appearing as PW-1 and PW-2, have not deposed about the accused being the driver or the factum of the deceased and the appellant leaving together with the truck on 24<sup>th</sup> January, 2001. Consequently, there is no independent evidence proving that the appellant and the deceased actually reached Agra together or delivered the goods.

30. Section 106 of the Evidence Act shall apply and the onus to explain would shift on to the accused only after the prosecution succeeds in establishing the basic facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer a proper explanation about the existence of the said other facts, the Court can draw an appropriate inference against





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family implicating the appellant in the disappearance or murder of Dilbagh Singh. This contemporaneous conduct assumes considerable significance because the appellant was not even suspected by the deceased's family during the initial stages. Such circumstances substantially weaken the prosecution theory subsequently developed against the appellant.

32. The law laid down in *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116, mandates that the circumstances must form a chain so complete as to exclude every hypothesis except that of guilt. Quite recently, the Supreme Court in *Laxman Prasad v. State of M.P.*, (2023) 6 SCC 399, has reiterated the settled principle that in a case resting on circumstantial evidence, the chain of circumstances must be complete in all respects and must not only point towards the guilt of the Appellants but also exclude every other possible hypothesis of innocence.

33. The circumstances surrounding the recovery of the truck also cast doubt on the prosecution version. A bare perusal of the evidence of PW-4 indicates that information regarding the abandoned truck was received on 14<sup>th</sup> February, 2001 after the complaint of missing Truck was filed on 04<sup>th</sup> February, 2001 with the concerned Police Station and that the vehicle was recovered before any formal FIR concerning the truck or the missing helper Dilbagh Singh was lodged. It was stated by the witness PW-4 that the information of the truck lying abandoned at PS Gur Sarai was given to him by DW-1 Bhanu Pratap, but DW-1 who was examined as a defence witness stated otherwise and further stated that he did not know anyone named Amit. The



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complaint regarding the missing truck was lodged only on 04.02.2001, despite the truck along with its helper having been missing since 27.01.2001, reflecting an unexplained delay of eight days, as deposed by PW-4 and corroborated by the Status Report filed by the Delhi Police in the habeas corpus Writ petition filed by the deceased's family. Thereafter, the truck was traced on 14.02.2001 and released on 16.02.2001. Significantly, it was only after the vehicle had been recovered and released that PW-4 lodged a complaint against the appellant and the helper, Dilbagh Singh, on 29.03.2001. More importantly, the initial complaint was confined to the missing truck and did not raise any allegation regarding the disappearance or suspected foul play in respect of the deceased helper. Such unexplained delay assumes significance in a case resting exclusively on circumstantial evidence. The delayed reporting creates a possibility of embellishment and subsequent reconstruction of events. Therefore, this circumstance does not inspire confidence and cannot be treated as an incriminating circumstance against the appellant.

34. The prosecution has also relied upon the alleged recovery of a blanket belonging to the deceased from the house of the appellant pursuant to his disclosure statement. However, the evidentiary value of this recovery is extremely weak. The blanket was never subjected to any Test Identification Proceedings before a Magistrate. PW-1 and PW-2 themselves admitted that the blanket and clothes were merely shown to them by the police at the police station and were never identified through any legally recognized identification process or even in Court. PW-15 further admitted that identification of the



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exhibits was conducted in the police station and not before a Magistrate. The blanket was an ordinary article readily available in the market and no distinguishing feature was proved. In these circumstances, the alleged recovery cannot be treated as a reliable incriminating circumstance connecting the appellant with the crime. In *Thammaraya v. State of Karnataka*, (2025) 3 SCC 590, the Supreme Court recently while reiterating the settled principle of law *inter alia* held as under;

*“25. Furthermore, another very crucial missing link in the prosecution case that it failed to conduct the test identification parade (TI Parade) of the recovered articles, thereby, bringing the identification of the material objects in Court for the first time, is under a cloud of doubt. It is a case of sheer negligence and dereliction of duty on the part of the investigating agency and the Public Prosecutor for not conducting test identification parade (TI Parade). This Court shed light on the purpose of test identification parade (TI Parade) in Ramkishan Mithanlal Sharma v. State of Bombay [Ramkishan Mithanlal Sharma v. State of Bombay, (1954) 2 SCC 516], wherein it held as follows : (SCC p. 532, para 20)*

*“20. ... These parades are held by the police in the course of their investigation for the purpose of enabling witnesses to identify the properties which are the subject-matter of the offence or to identify the persons who are concerned in the offence. ... the identifying witnesses are explained the purpose of holding these parades and are asked to identify the properties which are the subject-matter of the offence or the persons who are concerned in the offence.”*

*26. This Court has further noted the significance of test identification parade (TI Parade) in Munna Kumar Upadhyay v. State*



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of A.P. [*Munna Kumar Upadhyay v. State of A.P.*, (2012) 6 SCC 174 : (2012) 3 SCC (Cri) 42] , wherein it was held : (SCC p. 197, para 66)

*“66. There was some delay in holding the identification parade. But the delay per se cannot be fatal to the validity of holding an identification parade, in all cases, without exception. The purpose of the identification parade is to provide corroborative evidence and is more confirmatory in its nature.”*

*27. Therefore, this material omission on the part of the investigating officer (PW 27) in not conducting a test identification parade (TI Parade) of the recovered articles, more particularly when the case of prosecution is based solely upon recoveries of these articles, has created holes in the fabric of the prosecution story, which are impossible to mend.*

*28. Every piece of relevant fact needs to be sewn via the golden thread of duly proved circumstances, in order to ultimately formulate the fabric of guilt. Sadly, in the present case, the facta probantia fails to sustain and support the alleged factum probando, rendering the prosecution's case miserably weak. Hence, the evidence led by the prosecution against the accused person is woefully short of the mandate to prove the case beyond reasonable doubt.”*

35. The next circumstance strongly relied upon by the prosecution is the extra-judicial confession made before PW-14 Dasrath Singh. It is settled law that an extra-judicial confession is a weak piece of evidence and requires strict scrutiny before being accepted. In the present case, PW-14 admitted that the alleged confession was made in the presence of several villagers, yet not a single independent person from the gathering was examined by the prosecution. PW-14 was



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unable to disclose the exact date of the confession or even the names of the persons before whom it was allegedly made. In cross examination, PW-14 stated that his wife is the *Pradhan* of the village. He admitted that the *Bhabhi* of appellant Rajesh was also one of the candidates for the post of *Pradhan* in *Panchayat* Elections. He admitted that his brother and the appellant were co-owners of one mini truck. Initially, he denied the suggestion that in the absence of the accused, his brother had sold the mini truck and did not pay the share of money to the accused, but later admitted that he came to know that an amount of Rs. 60,000/- remained unpaid to the accused out of the sale proceeds of the mini truck sold by his brother in the absence of accused. Furthermore, the defence produced evidence through DW-1 establishing pre-existing disputes between the appellant and the family of PW-14. The Appellant examined DW-1 Bhanu Pratap and provided evidence and relied upon telegrams and complaints marked as Ex. DW-1/A and also produced documents concerning the dispute relating to the jointly owned mini-truck involving the appellant and Samrat Singh, brother of PW-14. In such circumstances, where political rivalry and financial disputes are shown to exist, it appears improbable that the appellant would make any such confession of committing the murder to PW-14. Rather, in such circumstances, the possibility of PW-14, deposing falsely to implicate the appellant, cannot be ruled out. In our opinion, it would be wholly unsafe to base a conviction upon an uncorroborated extra-judicial confession allegedly made before a witness whose impartiality is seriously questionable. In *Sahadevan v. State of T.N.* (supra), the Supreme Court *inter alia*



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held that an extra-judicial confession, being a weak piece of evidence, must be scrutinized with great caution and can form the basis of conviction only if it is voluntary, truthful, inspires confidence, is free from material discrepancies or inherent improbabilities, and stands corroborated by a cogent chain of circumstances and other reliable prosecution evidence, duly proved in accordance with law. The Supreme Court in *Ratnu Yadav v. State of Chhattisgarh*, (2024) 15 SCC 184, *inter alia* held as under;

*“12. In para 16 of the decision of this Court in Nikhil Chandra Mondal v. State of W.B. [Nikhil Chandra Mondal v. State of W.B., (2023) 6 SCC 605 : (2023) 6 SCC (Cri) 63] , this Court held thus: (Nikhil Chandra Mondal case [Nikhil Chandra Mondal v. State of W.B., (2023) 6 SCC 605 : (2023) 6 SCC (Cri) 63] , SCC p. 610)*

*“16. It is a settled principle of law that extra-judicial confession is a weak piece of evidence. It has been held that where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. It has further been held that it is well-settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession. It has been held that there is no doubt that conviction can be based on extra-judicial confession, but in the very nature of things, it is a weak piece of evidence.”*

*13. The normal rule of human conduct is that if a person wants to confess to the crime committed by him, he will do so before the person in whom he has implicit faith. It is not the case of the prosecution that the appellant had a close acquaintance with PW 1 for a certain length of time before the incident.*



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*Moreover, the version of the witness in examination-in-chief and cross-examination is entirely different. Therefore, in our considered view the testimony of PW 1 is not reliable. Hence, the case of extra-judicial confession cannot be accepted.”*

36. It is a settled law that motive, by itself, cannot form the sole basis for recording a conviction and, at best, constitutes only one of the circumstances in a case resting on circumstantial evidence. Reliance can be placed upon, ***Gautam Satnami v. State of Chhattisgarh***, 2026 SCC OnLine SC 536 wherein it was observed by the Supreme Court that motive is a supporting factor which strengthens an otherwise complete chain of evidence but it cannot replace such a chain where other circumstances are missing or weak. Now, coming back to the present case in hand, even for such limited purpose, the prosecution must establish the alleged motive through reliable and cogent evidence. In the present case, the prosecution has conspicuously failed to do so. The only witness who sought to attribute a motive to the appellant was PW-15, the Investigating Officer on the basis of the information, which he acquired from the disclosure statement of the Appellant subsequent to his arrest, who deposed that the appellant had allegedly murdered the deceased because the latter intended to disclose to the employer that the appellant was earning money by unauthorized use of the truck. Significantly, this alleged motive was not spoken to by any other prosecution witness, including the prosecution's star witness PW-4 Amit Kumar, the employer, who would have been the most natural witness to establish such a circumstance. No independent evidence



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was led to show that the appellant was indulging in any such activity or that the deceased had threatened to expose him. The alleged motive, therefore, rests entirely upon the testimony of the Investigating Officer and appears to be a product of the investigation rather than a fact proved through substantive evidence. In the absence of any reliable evidence establishing motive, this circumstance also falls to the ground and constitutes yet another missing link in the chain of circumstances sought to be relied upon by the prosecution.

37. Prosecution is also relying upon the evidence of pointing out memo Ex. PW-4/E, prepared at the instance of the appellant, whereby, he pointed out the place of occurrence and disposal of the body. However, such pointing out memo was prepared on 07<sup>th</sup> October, 2001, that is, much after the recovery of the body on 27<sup>th</sup> January, 2001. The place of occurrence of recovery of the body thus already known to the police, and therefore, the pointing out of the place of occurrence/recovery of the body at the instance of the accused is of no help in establishing his guilt and is therefore discarded from consideration.

38. The cumulative effect of the aforesaid infirmities and irregularities demonstrates that the chain of circumstances relied upon by the prosecution is far from complete. The prosecution failed to prove that the appellant was employed as a driver with PW-4 or that he was deputed on the truck with the deceased. The alleged last seen circumstance is unreliable and unsupported by any independent evidence from Agra or any documentary evidence which shows that the Appellant and the deceased left for Agra together. The earliest



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allegations of the deceased's family were directed solely against the owners of the transport company and not against the appellant. The recovery of the blanket suffers from serious procedural defects and lacks evidentiary value. The extra-judicial confession is unsupported by independent corroboration and stands clouded by evidence of prior hostility. Each of these circumstances suffers from substantial doubt and, when examined collectively, they fail to establish a continuous and unbroken chain leading only to the inference of guilt of the appellant. In *Nusrat Parween v. State of Jharkhand*, 2024 SCC OnLine SC 3683, the Supreme Court held that it is a well-established principle that conviction on a charge of murder may be based purely on circumstantial evidence, provided that such evidence is deemed credible and trustworthy. In cases involving circumstantial evidence, it is crucial to ensure that the facts leading to the conclusion of guilt are fully established and that all the established facts point irrefutably to the accused person's guilt. The chain of incriminating circumstances must be conclusive and should exclude any hypothesis other than the guilt of the accused. In other words, from the chain of incriminating circumstances, no reasonable doubt can be entertained about the accused person's innocence, demonstrating that it was the accused and none other who committed the offence.

39. It is also well settled principle of criminal jurisprudence and held in a catena of decisions by this Court as well as the Supreme Court, that where two views are reasonably possible on the basis of the evidence on record, the view favourable to the accused must be adopted. The evidence adduced by the prosecution in the present case



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does not lead to the irresistible conclusion of guilt. Rather, it gives rise to substantial doubts regarding the appellant's involvement in the alleged offence. The deficiencies in proving the appellant's employment, the failure to establish the last-seen circumstance, the doubtful recovery, the unreliable extra-judicial confession, and the conduct of the prosecution witnesses collectively render the prosecution case susceptible to an alternative view consistent with the innocence of the appellant. In such a situation, the Court cannot substitute suspicion, however strong, for proof beyond reasonable doubt. The appellant is, therefore, entitled to the benefit of doubt. In *Sujit Biswas v. State of Assam*, (2013) 12 SCC 406, the Supreme Court held that Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that “may be” proved, and something that “will be proved”. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between “may be” and “must be” is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between “may be” true and “must be” true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. Applying the settled principle that when two views are possible, the one pointing towards the innocence of the accused must prevail, this Court holds that the prosecution has failed to prove its



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case beyond reasonable doubt. Consequently, the conviction of the appellant cannot be sustained and is liable to be set aside.

40. In view of the foregoing discussion, this Court is of the considered opinion that the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt. The learned Trial Court proceeded on assumptions and drew adverse inferences despite the existence of significant gaps in the prosecution evidence. The circumstances relied upon are neither fully proved nor capable of excluding every reasonable hypothesis consistent with the innocence of the appellant. The benefit of doubt, therefore, must necessarily enure to the appellant. Consequently, the present appeal deserves to be allowed.

41. The impugned judgment of conviction dated 12<sup>th</sup> September, 2003 and the order on sentence passed thereunder are hereby set aside. The appellant is acquitted of all charges. His bail bond is cancelled and surety stands discharged.

42. A copy of this judgment be sent to the learned Trial Court and Jail Superintendent for information and necessary action.

**RAVINDER DUDEJA, J.**

**NAVIN CHAWLA, J.**

**JULY 7, 2026/NA**