




**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Criminal Appeal No. 73/1996

Jaimal And Anr

----Appellant

Versus

State

----Respondent

For Appellant(s) : Mr. RDSS Kharlia
Ms. Kinjal Purohit

For Respondent(s) : Mr. Pawan Kumar Bhati, PP

HON'BLE MR. JUSTICE MANOJ KUMAR GARG
HON'BLE MR. JUSTICE RAVI CHIRANIA

JUDGMENT

REPORTABLE

RESERVED ON:- 04/09/2025

PRONOUNCED ON:- 09/10/2025

PER HON'BLE MR. RAVI CHIRANIA, J

The present criminal appeal has been filed under Section 374 Cr.P.C. by the accused-appellants Jaimal Ram and Bhagwana Ram to challenge the impugned judgment dated 18.01.1996 passed by Session Judge, Hanumangarh in **Sessions Case No. 63/94 (96/91) titled as "State vs. Jaimal and Anr"** whereby both the accused-appellants were convicted and sentenced which are as under:-

S. No.	Offence U/s	Sentence	Fine	Sentence in default of time
01.	302/34 IPC	Life Imprisonment	Rs. 2,000/-	2 years RI
02.	404 IPC	3 years RI	Rs. 500/-	6 months RI

The appeal was filed in the year 1996 and before hearing, status of both the accused were called from the learned Public



Prosecutor. The learned Public Prosecutor informed this Court on 24.01.2024 that both the accused are alive.

The brief facts as noted from the record of the learned trial court are that one Raja Ram lodged a verbal report on 22.09.1991 to SHO Police Station Dibi, District Hanumangarh on which FIR bearing No. 232/1991 was registered. The oral report, Exhibit P-1 is reproduced as under:-

"आज दिनांक 22.9.91 को वक्त 10 एएम पर श्री राजाराम पुत्र श्री बीरबल राम जाति जाट उम्र 26 वर्ष निवासी रामपुरिया ने हाजिर थाना होकर जुबानी सूचना दी कि आज सुबह करीब 8 बजे सी मेरे मिरी कुम्भाराम नायक ने मेरे घर आकर बताया कि सुबह उरे में वक्त करीब 6 बजे जब मैं वा अपना घियाड़िया बृजलाल चाय पी रहे थे तो पके खाले के नके की तरफ शोरगुल सुना तो हम दोनो नके के पास गए तो देखा कि एक आदमी आपके भाई हरिराम के खेत के कचे खाले के पास मरा पड़ा है जिसके गले पर रगड़क का निशान है व पानी से भीगा पड़ा है व मैंने व बृजलाल ने पड़ोसी मोहनसिंह के खेत में पानी लगा रहे उसके सिरियो रामाराम नायक व भानीराम चमार से पुछा तो उन्होने बताया कि इस आदमी को जयमल पुत्र हरिराम कुम्हार वा भगवानिया नायक जो हरिराम की ढाणी के पास रहता है ने मिलकर बेरड़ी के नीचे मारपीट किया व उसका थैला खोस लिया व इसको खाले में मारकर डाल दिया है तथा अपनी ढाणियो की तरफ भाग गए है वा इस मृत अज्ञात व्यक्ति का थैला खोसकर साथ ले गए है। हमने जाकर देखा तो यह आदमी खाला में पानी में मरा पड़ा था जिसको खाले से बाहर निकालकर लिटा दिया है लाश मेरे भाई हरिराम के खेत में खाला के पास पड़ी है। जयमल पुत्र हरिराम कुम्हार व भगवानिया नायक जो रामपुरिया की रोही में ढाणियो में रहते है ने मिलकर एक अज्ञात आदमी से थैला छिनकर कत्ल करके मेरे भाई हरिराम के खेत में खाला में डाल दिया है ईतला देता हूँ कार्यवाही की जावे।"

As per the oral report the complainant found the body of deceased in the agricultural field of Hari Ram. The FIR was registered against the named person i.e. the appellants herein. The police conducted the investigation and arrested accused-appellants herein and filed the charge-sheet against them. The prosecution to prove its case produced 16 witnesses and exhibited 40 documents in documentary evidence. In defence the statement of accused persons were recorded under Section 313 Cr.P.C. as well as of three defence witnesses. The learned trial court after considering the statement of all the witnesses, documents





exhibited by the prosecution and statement of accused as recorded under Section 313 Cr.P.C, and three of defence witnesses, passed the judgment dated 18.01.1996, impugned in the present appeal, whereby the accused-appellant were punished for offence under Section 302 r/w 34 IPC and 404 IPC as mentioned in the above paras.

The learned counsel for the appellant Mr. RDSS Kharlia along with Ms. Kinjal Purohit, submitted that they have preferred the present appeal on the following grounds.

- "1. Because, the learned trial court has erred in convicting and sentencing the appellants.*
- 2. Because there is admittedly no direct evidence of the crime. Circumstances relied upon by the learned court below are not made out. Under these circumstances, the case for conviction is not made out.*
- 3. Because, the Extra Judicial Confession relied upon by the learned trial court, is not a piece of evidence, which should have been relied upon. This is a totally fabricated evidence. Witnesses have been doubted and therefore, the evidence deserves to be discarded.*
- 4. Because the P.W.1 Rajaram the first informant has clearly deposed that these witnesses have come to him and has stated that they wanted to help the prosecution. In the face of this witness their testimony could not have been relied.*
- 5. Because the circumstances of last seen has been found to be established on the basis of the evidence of the father of the deceased. No identification parade was held. It is the admitted case that the witness had seen the accused for the first time when the accused allegedly went to his shop. Next time they were seen by him in the Court. This makes his evidence unreliable.*
- 6. Because the Photo Graphs have been held to be of the spot, where the dead body was found. There was no spot near the dead body, which has the resemblance of the back ground of the photographs, the I.O. could have said so but there is nothing on record to suggest the same. Wrong reliance has been placed on the photographs.*
- 7. Because the First Information Report was a post investigation document. According to the prosecution*



witnesses the author of the First Information Report. He can not be held to be a witness who would say lie on this court.

8. Because the manner in which the investigation has taken place, it can be termed to be an unfair investigation.

9. Because, the recoveries alleged to be made at the instance of the accused are false recoveries. If the information is recorded on 28th and the recoveries are made on 30th then there is no other conclusion then that the recoveries were false.

10. Because the statement of P.W.1, Rajaram makes it clear that the Camera was not recovered at the instance of the accused and it was at the behest of witness that the same was planted.

11. Because, the person whom the watch was recovered, could have been produced to prove that the watch was given to him by the appellants, but this was not done, it shows that the recovery was false.

12. That the other grounds will be narrated at the time of arguments.”

On the basis of the above grounds, as raised in the appeal, learned counsel for the appellants submitted that the named FIR was lodged by complainant against the accused-appellants on the basis of the **information as given to him by one Raja Ram Nayak and Bhani Ram** who stated that the deceased was killed by the accused-appellants. They snatched his bag and then fled away.

According to learned counsel for the appellants, a perusal of the FIR shows that the servant of the complainant namely Kumbha Ram informed him that he heard about the incident orally around 6:00 a.m. in morning which he (servant Kumbha Ram) further communicated to complainant around 08:00 a.m. and thereafter he (complainant) reached the spot where already persons gathered. The complete case/ FIR was instituted by complainant who is not an eye-witness, but on the basis of narrations of Raja Ram Nayak and Bhani Ram. Learned counsel pointed out that though the informant Raja Ram Naik and Bhani





Ram stated to have witnessed the incident, as per complainant, but they did not inform the police about the incident, rather it is complainant, who on his own lodged the oral report on which FIR bearing No. 232/1991 was registered. The learned counsel seriously questioned the conduct of the complainant as even though he was not an eye-witness but his act of lodging the named FIR reflects that the it was lodged with ulterior motives. He submitted that as the oral report was lodged by the complainant based on narration of Raja Ram Nayak whose statement was recorded as PW-1, therefore, the statement, being relevant, are reproduced as under:-

"आज से करीब 7-8 माह पहले की बात है मेरा सीरी कुम्भाराम नायक सुबह 8 बजे के करीब मेरे पास आया व कहा कि आज सुबह जब वह तथा उनका मजदूर बृजलाल चाय पी रहे थे तो पक्के खाले के नक्के की तरफ शौरगुल सुनकर नक्के के पास गये तो एक आदमी की लाश आपके भाई हरीराम की लाश कच्चे खाले के पास पडी थी, जिसके गले पर रगडक के निशान है। लाश पानी से भीगी हुई है। इस पर उसने व बृजलाल ने खेत पडौसी मोहनसिंह के खेत में पानी लगा रहे उसके सीरी राजाराम नायक व भानीराम कुम्हार से पुछा तो उन्होने बतलाया कि इस आदमी को जयमल पुत्र हरीराम कुम्हार व भगवानीया नायक जो हरीराम की ढाणी के पास रहता है उन्होने मार दिया है। जयमल व भगवानीया ने बेरडी के नीचे उसका थैला खोस लिया व मारपीट किया व मारकर खाले मे डाल दिया व अपनी ढाणी की तरफ भाग गये व मृतक का थैला छीन कर ले गये।

प्रतिपरीक्षा द्वारा वकील मुलजिमान

यह सही है कि पुलिस मे जब मै घटना की ईतिला देने गया तब उन्होने कहा कि पहले मौका देख लेते है फिर पर्चा दर्ज कर लेगे। इस पर पहले उन्होने मौका देखा व फिर आकर प्रथम सूचना प्रदर्श पी-1 थाने मे दर्ज की। यह सही है कि नारायणसिंह व जयचन्द गवाहान इस घटना के दो तीन दिन बाद मेरे पास आये थे, उन्होने मेरे पास गांव मे आकर कहा कि आप इस मुकदमा में मुस्तगीस हो। आप थाने मे चलो हम कुम्हार समाज के नेता है, हमे गवाह बनना है और उन्होने यह भी कहा था कि हम इस चीज की गवाह बनेगे कि मुलजिमान हमारे पास आये व हमारे सामने जुर्म का इकबाल किया। मैने कहा कि मै तो झूठी कार्यवाही के लिए थाने नहीं जाता आप खुद ही थाने जाओ। जब ये दोनो गवाहान मेरे पास आये तब वे आज जो फोटो प्रदर्श पी-7 मैने देखी है यह भी साथ लाये थे व कहा था कि ये थाने मे पेश करनी है, यह सही है। यह भी सही है कि उस वक्त उनके पास एक थैला जिसमे कैमरा था, साथ लाये थे व कह रहे थे कि थाने मे पेश करना है। हम मौके पर गये तब मृतक के जिस्म पर घडी व सोने की चैन थी।

Learned counsel referred, at the cost of repetition, to the facts as stated in the cross-examination by PW-1, in which he





stated that **police first inspected the place of incident and thereafter, registered the FIR in the police station.** This witness admitted that 2-3 days after the incident, PW-13 and PW-14, told him that they are leaders of *kumhar's samaj* and wanted to be witnesses in the case and would state against the accused-appellants and would also state that both the accused-appellants accepted their guilt before them. Learned counsel further pointed out the specific line that initially the complainant refused, however, he was swayed away by their persuasion and believed their story as they were carrying a bag in which there was one camera which they wanted to handover to the police. By referring to the facts as stated by PW-1, in the cross-examination, learned counsel submitted that **intentionally, without any basis, PW-13 and PW-14 namely Jai Chand and Narayan Singh stepped in and insisted PW-1 that they want to support his case by giving some evidence.** The admitted fact that **they were carrying a bag with a camera inside shows that they came with evidence to plant, to falsely implicate the accused-appellants.**

The counsel further submitted that as the FIR was lodged on the information of Kumbha Ram (servant of complainant) and therefore, he referred to the statement of PW-3 Raja Ram and PW-4 Brij Lal as complainant witnesses the incident. The statement of both the witnesses shows that they were **declared hostile by the prosecution and destroyed the complete basic story as orally reported to the police by PW-1.** PW-4 specifically stated in examination-in-chief **"मैंने हरि राम के खेत के खाले**





के पास कोई लाश किसी व्यक्ति की नहीं देखी थी। Even after the complete denial by PW-2 and PW-4, of having seen the body of the deceased in the agricultural field, still PW-1 falsely stated that they informed him about the accused-appellant, shows that the complete case as lodged against them is fake on the face of record. The learned counsel submitted that as many as five witnesses were declared hostile by the prosecution namely PW-2, PW-3, PW-4, PW-5 and PW-6 who were presented as important witnesses by the prosecution. Without any basis the named FIR was lodged against the appellants on the basis of unverified version of PW-2 and PW-4 who denied the complete story of PW-1 and therefore, it is clear without any iota of doubt that appellants are innocent and falsely implicated in the case.

Ignoring the above clear denial, learned trial court passed the impugned judgment which is contrary to law. The learned counsel further submitted that the statement of PW-15 Atar Singh, the Investigating Officer is also relevant and so **relevant lines from his statement** are reproduced as under:-

"दिनांक 22/9/91 को मैं थानाधिकारी टीबी में तैनात था। उस रोज श्री राजाराम ने थाना हाजिर होकर जुबानी इतिला दी। जिसको उसके बोले अनुसार लिखा गया। जो जो एफ आई आर प्रदर्श पी-1 है जिस पर ई से एफ स्थान मेरे हस्ताक्षर है।

जिरह वकील मुलजिम :-

यह कहना गलत है कि मैंने पहले घटनास्थल का नक्शा मौका देखकर फिर एफ आई आर बाद में दर्ज की हो। मेरी तपतीश के दौरान जयमल व नारायण सिंह गवाहान के नाम जब मैं अभियुक्तों की तैलाश कर रहा था जब दिनांक 23/9/91 को पतारसी के दौरान पता चला की अभियुक्तगण थालडका की तरफ कोई जयचन्द नाम के आदमी के पास आने जाने का मालूम हुआ तब जयचन्द से मुकदमा में तपतीश करनी जरूरी समझकर उससे तपतीश की। व जयचन्द से तपतीश के दौरान गवाहान नारायणसिंह का भी पता चला। यह मुझे आज ध्यान नहीं कि जयचन्द व नारायण सिंह गवाहान को मैंने थाने पर बुलाकर तपतीश की थी या मैं उनके गांव जाकर तपतीश की थी। दिनांक 23/9/91 को मैं थालडका गया था परन्तु जयचन्द मिला नहीं फिर 24 तारीख को बुलाने के लिए आदमी भेजा था इन गवाहान के कितने बजे मैंने बयान लिये थे यह मुझे ध्यान नहीं। यह कहना गलत है कि इन गवाहान ने फरीयादी राजाराम को गवाह बनने के लिए कहा हो





और राजाराम ने इनकार कर दिया इस पर इन गवाहान को मैंने गवाह रखा हो। यह कहना गलत है कि मृतक के शरीर पर घड़ी व चैन हो। जब मैं मौके पर गया मिली हो और यह कहना भी गलत है कि इस घड़ी व चैन को अभियुक्त से बाद में गलत रूप से बरामदगी दर्शाई हो। यह कहना गलत है कि नारायणसिंह व जयचन्द के पास कैमरा फोटो हो और वे पहले इनचीजों को लेकर राजाराम के पास गये हो व बाद में मेरे पाय लेकर आय हो। और यह भी कहना गलत है कि इन चीजों की बरामदगी अभियुक्ता से गलत दर्शाई हो। यह सही है कि मुलजिम ने मुझे कैमरा बरामद करवाये जाने की सूचना दी थी परन्तु जब मुलजिम से इस कैमरे की बरामदगी की गई थी तब कैमरे में फलश लाईट अटैच थी रील अन्दर थी व कैमरा बैग में रखा था। यह सही है कि मैंने रेहडी वाले अशोक कुमार से यह बयान रिकार्ड नहीं किये क्योंकि मैंने यह बयान रिकार्ड करने उचित नहीं समझे। मैंने अशोक कुमार घड़ी वाले से बरामदगी किये जाते समय वहां बस अड्डे पर उपस्थित लोगों को गवाह रखा है। यह कहना गलत है कि मैंने मुलजिमान को पांच छः दिन थाने में बैठाये रखा हो

The counsel specifically pointed out the cross-examination of the Investigating Officer, Atar Singh (PW-15) and submitted that PW-15 denied that he first inspected the place of incident and then registered the FIR whereas PW-1 in his cross-examination specifically stated "यह सही है कि पुलिस में जब मैं घटना की इतिला देने गया तब उन्होंने कहा कि पहले मौका देख लेते हैं फिर पर्चा दर्ज कर लेंगे। इस पर पहले उन्होंने मौका देखा व फिर आकर प्रथम सूचना प्रदर्श पी-1 थाने में दर्ज की।". This serious contradiction in the statement of PW-1 and PW-15 shows that the Investigating Officer has not acted in an fair manner and the investigation since inception was not fair. The Investigating Officer further stated that he investigated the facts from PW-13 Jai Chand and PW-14 Narayan Singh as he came to know, during the investigation, that they (PW13 and PW-14) have relevant information. PW-15, as per learned counsel, on the basis of above lines, submitted that **he denied the fact that Narayan Singh and Jai Chand had any photo camera and they came to him along with complainant.** The relevant lines, as referred by learned counsel from cross-examination of PW-15 are "यह कहना गलत है कि नारायण सिंह व जयचन्द के पास कैमरा फोटो हों और वे पहले इन चीजों





को लेकर राजाराम के पास गए हों व बाद में मेरे पास लेकर आए हों।” This statement of Investigating Officer is completely false, incorrect and contradictory because, as already pointed out in the above paras, learned counsel submitted that PW-1, the complainant, in his cross-examination stated “यह सही है कि नारायण सिंह व जयचन्द गवाहान इस घटना के दो-तीन बाद मेरे पास आए थे, उन्होंने मेरे पास गांव में आकर कहा कि आप इस मुकदमा में मुस्तगीसक हो आप थाने में चलो हम कुम्हार जाति के नेता हैं, हमें गवाह बनना है और उन्होंने यह भी कहा कि हम इस चीज की गवाह बनेंगे कि मुलजिम हमारे पास आए व हमारे सामने जुर्म का इकबाल किया.....” “जब ये दोनों गवाहान मेरे पास आए तब वे आज जो फोटो प्रदर्श पी-7 मैंने देखी है यह भी साथ लाए थे व कहा कि थाने में पेश करनी है, यह सही है। यह भी सही है कि उस वक्त उनके पास एक थैला था जिसमें कैमरा था, साथ लाये थे व कह रहे थे कि थाने में पेश करना है।” Accordig to learned counsel, the serious contradiction in the statement of PW-1 and PW-15 shows that **Investigating Officer was acting in collusion with PW-13 and PW-14 to falsely implicate the accused-appellants and it is a clear case of planting of evidence against the accused-appellants by Investigating Officer, PW-15, in collusion with PW-13 ad PW-14.** The learned counsel further submitted that the Investigating Officer stated that on the accused information, as received under Section 27 of Evidence Act, he recovered the camera. According to PW-15 there was a reel inside the camera. The counsel further submitted that PW-1, whose statements were recorded by the trial court on 22.05.1992 stated that **PW-13 and PW-14 were carrying a camera but the contradictory facts, as stated by the Investigating Officer in his statement before the trial court recorded on 18.11.1995, has put serious question mark on his conduct and declares the**



entire investigation and recovery of camera as made him shows collusion between them.

The learned counsel then referred to alleged recovery made by the Investigating Officer of camera along with reel for which the recovery memo Exhibit P-22 was prepared on 30.09.1991. This Exhibit P-22 was **not admitted by the accused in the trial and a note in this regard was also mentioned on Exhibit P-22.** The learned counsel submitted that one Nemi Chand S/o Rameshwar Singh and Narayan Singh S/o Chunni are recovery witnesses to Exhibit P-22. The counsel further submitted that **Nemi Chand was not produced in evidence by the prosecution** and as far as Narayan Singh is concerned his statement was recorded and he has already pointed out the conduct of PW-14 regarding the planting of evidence of camera from the testimony of PW-1. Therefore, the recovery of camera as tried to proved by the prosecution is false and baseless and further this declares the recovery as fake and destroys the complete foundation of prosecution story.

The counsel further submitted that other recovery memos, as prepared by the Investigating Officer, were also not admitted by the accused-appellants and a note in this regard (not admitted) was specifically mentioned on respective memos, exhibited in the trial. Learned counsel further submitted that the accused Bhagwana Ram denied giving any information under Section 27 of the Indian Evidence Act to Investigating Officer. The accused were falsely shown to have been arrested on 27.09.1991. The counsel further submitted that the police prepared Exhibit P-17, dated 30.09.1991, which is recovery memo of one HMT watch.





The recovery witnesses of Exhibit P-17 are Sharwan Kumar S/o Pukhraj and Govind Ram S/o Shankar Lal, but they were **not produced in evidence by the prosecution to prove the recovery of HMT watch**. The counsel submitted that as all important witnesses turned hostile, the statement of complainant PW-1 and Investigating Officer, PW-15 are contradictory to each other and this, therefore, declares complete case of the prosecution as false and even the alleged recovery of camera from the accused shown by Exhibit P-22 is also false as same was planted. This fact has been pointed out learned counsel from the cross-examination of PW-1 i.e. complainant. Therefore, no recovery was made from accused-appellant rather it was planted by PW-13 and PW-14 in collusion with PW-15. Therefore, the complete case is false.

After this, the learned counsel referred to the statement of PW-8 who is the brother of the deceased, who in his examination-in-chief stated that he saw the body of his deceased brother, Mangal Sain, and at that time there was no watch, no chain on his body and also the camera. He further stated that the police recovered the HMT watch from one rehdiwala namely Ashok Kumar Sindhi. The counsel then referred to the cross-examination of this witness PW-8 who stated "घड़ी की बरामदगी कत्ल होने से सात-आठ दिन पश्चात् हुई थी... बस अड्डे के अंदर घुसने पर पश्चिम की ओर से घड़ी बरामद की थी". According to learned counsel this witness PW-8 stated false and incorrect fact regarding the recovery of watch and further that when he saw the body, there was no watch, chain and camera on the body **whereas PW-1 in his cross-examination stated "हम मौके पर गये तब मृतक के जिस्म पर घड़ी व सोने की चैन थी"**, therefore,





there are serious contradictions regarding watch and the chain in the statement of PW-1 & PW-8, who are the brothers of the deceased-Mangal Sain and present on the spot at the same time. Therefore, the recovery of HMT watch, as stated to have been made by the police on the information of the accused-appellants, is false and statement of PW-8 cannot be relied upon for the conviction of the accused-appellants. Learned counsel further submitted that **PW-8 stated that police recovered the watch from one Ashok Kumar Sindhi, near Bus Stand Hanumangarh, however, the statement of Ashok Kumar Sindhi were not recorded during trial as he was not produced in evidence by the prosecution, due to non-recording of the statement of important witnesses Ashok Kumar Sindhi, the complete recovery of the watch becomes doubtful and that is why the accused-Bhagwana Ram rightly denied the recovery memo Exhibit P-17 as prepared on 30.09.1991.**

Learned Counsel further submitted that rest of the witnesses also failed to make any incriminating statements against the accused-appellants and therefore, whatever they stated in their statement before the learned trial court was not sufficient to record the conviction of the appellants. He further pointed out that PW-13 Jai Chand stated in his examination-in-chief that both the accused persons informed him that they have killed the deceased-Mangal Sain and requested him for a compromise or settlement in the matter. This witness in cross-examination stated that deceased-Mangal Sain is the relative of Narayan Singh, PW-14 and he is also, as per the details mentioned in the statement recorded





by learned trial court is of the same caste i.e. "**kumhar**" stated "यह सही है कि मुलजिमान द्वारा मेरे से कत्ल कर दिये जाने की बात जब बताई थी तो मैंने उन्हें थाने पर चलने को नहीं कहा". This fact of compromise was informed, as per the PW-13, to him in the morning around 08:00 a.m., however, he did not inform this fact to complainant Raja Ram, brother of the deceased and, this further shows that this **witness was planted to support the false story of extra judicial confession and this witness further connects himself to PW-14 Narayan Singh. According to learned counsel, PW-13 Jai Chand, PW-14 Narayan Singh and PW-1 Raja Ram belongs to same caste and in collusion with PW-15, Investigating Officer,** complete false acquisition was designed in the case. According to learned counsel PW-14, Narayan Singh, is an important witness in this case. Witness PW-14 in his examination-in-chief stated that both the accused-appellants confessed to him that they killed the deceased and they narrated him the reason and the manner in which they killed the deceased. By referring to the cross-examination of PW-14, the learned counsel submitted that as per PW-13 Jai Chand, the accused-appellants confessed their guilt to him around 08:00 a.m. and thereafter they went to PW-14 Narayan Singh around 10:00 a.m. **Despite this, both PW-13 and PW-14, they did not lodge any report and same was lodged by PW-1.** The counsel submitted that conduct of PW-13 and PW-14 was seriously contradictory and further comes into question when their statement are read along with statement of PW-1, the complainant. He further submitted that PW-14 went to the police station without any reason and basis and further, as per





prosecution, at the behest of the accused-appellants one safa, camera and HMT watch were recovered after 7-8 days **whereas as per PW-1, PW-14 was carrying the camera in his bag which he wanted to hand over to the police, which he did also and by this is how they planted evidence in collusion with the Investigating Officer, PW-15. The prosecution this way tried to prove the guilt of accused-appellants.** Counsel referred to the relevant lines from the cross-examination of PW-14 which reads as "ये बात सही है कि मुलजिमान द्वारा बताई गई बात मैंने थाने में बताये जाने के अलावा और किसी को नहीं बताई थी। थाने पर इस घटना की बात बताये जाने के बाद मैंने इस घटना का जिक्र मृतक के परिवार वालों को भी किया है". the serious unwanted interference and intentional involvement of PW-14 in the case and his designed narration about alleged extra judicial confession of the accused-appellant is illegal on the face of record. PW-1 by his cross-examination has declared the complete testimony of PW-14 as doubtful and contradictory and therefore, evidence of PW-14 cannot be read and relied upon for the purpose of conviction of the accused-appellant in the present case.

The counsel further submitted that the present case is not based on eye-witness rather it is a case based on circumstantial evidence. The deceased died due to strangulation, however, not a single witness was able to prove the presence and involvement of accused-appellant beyond reasonable doubt. He further submitted that when the statement of PW-1, PW-14 and PW-15 are full of contradiction and infirmities and further their statement declares the complete recovery as illegal being planted, then the finding of the learned trial court regarding the conviction are erroneous. The learned trial court,





according to learned counsel, without any basis ignored the serious contradictions in the statement of PW-13 and PW-14 read with PW-1 and PW-15. **Further the learned trial court ignored the important fact that the statement of Ashok Kumar Sindhi from whom the HMT watch was recovered as per PW-15 was not reproduced in evidence to prove the recovery. When the recovery is itself doubtful, as visible from the record, then by not examining the same in right perspective, the learned trial court committed the grave illegality.** Learned counsel further submitted that trial court by its findings tried to cover up the serious lacunae, as left by the PW-15 Investigating Officer and then by prosecution during the trial, by recording self satisfaction. It is the duty of the trial court to see that prosecution proves the case about the guilt with support of material witnesses and the recovery of the articles beyond reasonable doubt. Therefore, the complete case is based on no evidence rather full of contradictions and infirmities. Further, according to learned counsel, as the present case is based on circumstantial evidence, the law laid down by the Hon'ble Supreme Court in the case of **Sharad Birdhi Chand Sarda Vs. State of Maharashtra (1984) 4 SCC 116** should have been followed by the learned trial court while recording the conviction of the accused-appellant. In last the learned counsel submits that the present appeal deserves to be allowed and the judgment passed by the learned trial court dated 18.01.1996 deserves to be quashed.

Per Contra, the learned Public Prosecutor Mr. Pawan Kumar Bhati, strongly supported the judgment of the trial court and





countered the arguments as raised by Dr. RDSS Kharlia, counsel for the appellants. The learned Public Prosecutor submitted that the complainant in his oral report dated 22.09.1991 named the accused-appellants and therefore, their involvement was informed to the police at the inception of case. He further submitted that the recovery of camera, HMT watch and other articles proved their involvement without any doubt in the present case. He further submitted that for such a heinous offence like Section 302 IPC, where the prosecution has proved the case beyond the reasonable doubt there should not be any interference in the judgment of conviction for any minor contradictions, infirmities etc. when the evidence is sufficiently recorded and considered by the learned trial court while recording the conviction.

Heard learned counsel for the parties and perused the record. We may now deal with the arguments raised by the counsel Dr. RDSS Kharlia in the further paras.

According to learned counsel for the appellants, the present case is based on circumstantial evidence as the evidence of PW-1, PW-2 and PW-4, failed to prove the presence of the accused-appellants at the time of alleged incident. The impugned FIR as registered by PW-1, the complainant is based on information as given to him by one Raja Ram and Brij Lal whose statements were recorded as PW-2 and PW-4, however, both these persons denied having seen any body in their field. They even refused to recognize Raja Ram PW-3 and Mani Ram and therefore, according to learned counsel the complete story of the prosecution is false. While considering the above arguments of the learned counsel for the accused-appellants, this Court noted that PW-1, Raja Ram son





of Birbal stated that he was informed about the incident by Raja Ram Nayak and Bhani Ram and therefore, it is clear from the statement of PW-1 that he is not an eye-witness. The facts, as noted by this Court from the statement of PW-2 and PW-4, are that both the witnesses completely denied the incident and therefore, the act of PW-1 of naming both the accused-appellants in the FIR loses its basis and declares that on unconfirmed information or hearsay basis he named the appellant and no real witness, who saw the incident, named the accused-appellant in his testimony before trial court, therefore, this reaches to the definite conclusion that the presence of the accused-appellant at the time of alleged incident has not been proved by the prosecution or rather prosecution failed to prove their presence at the time of alleged incident through the statement of PW-1, PW-2 and PW-3. Further PW-13 and PW-14 namely Jai Chand and Narayan Singh are also not eye-witnesses, however, they entered into the story of the prosecution on their own by stating that accused-appellants confessed their guilt before them. On this basis the prosecution tried to believe and levied to prove the story of extra judicial confession as made by accused-appellants to PW-13 and PW-14. This Court minutely examined the statement of PW-13 and PW-14 while parallelly reading the statement of PW-1 and noted that PW-13 and PW-14 played an intentional active role being the caste leaders, in showing the involvement of accused-appellants in the alleged incident. Their act of persuading PW-1 and their conduct of carrying the bag with the camera, as stated by PW-1 in his cross-examination, leads to definite conclusion of this Court that PW-13 and PW-14 planted the evidence to falsely accuse the accused-





appellants in the present case. While recording the above finding, this Court also records that the recovery of camera, Exhibit P-22, seriously disputed by accused- Bhagwana Ram (**note mentioned in Exhibit P-22**) in which Jai Chand and Narayan Singh were shown as recovery witness, however, the conduct of Narayan Singh has already been noted by this Court from the cross-examination of the complainant PW-1, which is a clear act of PW-14 of planting the camera as an evidence against the accused-appellants. Further the recovery witness Nemi Chand S/o Rameshwar Singh was not produced in evidence to prove this recovery, therefore, the recovery of camera has not been proved by the prosecution and similarly the recovery of the HMT watch has not been proved as same was recovered from one Ashok Kumar Sindhi who was not produced in evidence by the prosecution (**the person from whom the alleged HMT watch was recovered by the police and but not produced in evidence**) so, non-recording statement of the person Ashok Kumar Sindhi, declares the recovery of HMT watch as fake and this has further declared the complete recovery made in the case as fake and put serious question mark on the conduct of the Investigating Officer. This Court further noted that Exhibit P-17, the recovery memo of HMT watch, bears the witness of one Sharwan Kumar S/o Pukhraj and Govind Ram S/o Shankar Lal but both these persons were not produced in evidence by the prosecution. This Court noted from the record of the learned trial court that the accused-appellant Bhagwana Ram disputed/not admitted Exhibit P-17 (recovery sealed camera reel and its opening), Exhibit P-18 site memo recovery HMT watch, arrest





memo Exhibit P-19, arrest memo accused-Jaimal, arrest memo, accused- Bhagwana Ram Exhibit P-20, recovery memo registered of photo studio exhibit P-21, recovery memo camera with reel exhibit P-22, recovery memo one shirt-pent, one vest, one underwear and one pair of shoes exhibit P-24, recovery memo one shirt accused-Jaimal, Exhibit P-25, Exhibit P-27, Exhibit P-28, Exhibit P-29, Exhibit P-31, Exhibit P-32 and Exhibit P-33. **The fact that the accused- Bhagwana Ram has not admitted all the above recovery memos and connecting documents, seriously declares the conduct of the Investigating Officer a serious doubtful as he failed to conduct the fair and impartial investigation in the matter. The collusion between the Investigating Officer and PW-13 and PW-14 is clearly visible and it is a classic case of planting the evidence in the case against the accused-appellants.**

On the basis of serious contradictions regarding the recovery camera and HMT watch from the statement of PW-1, PW-8, PW-13, PW-14 and PW-15, this Court has reached to the definite conclusion that prosecution failed to prove the alleged recoveries from the accused-appellants and the benefit of this goes in favor of accused-appellants. This Court has recorded in the above paras that on account of PW-2 and PW-3 been declared hostile, on the basis of which PW-1 lodged the named FIR against the accused-appellants proves that there is no eye-witness of the alleged incident and it is a case based purely on circumstantial evidence. The law in regard to circumstantial evidence is well settled and the five golden principles as laid by the Hon'ble Supreme Court in the case of **Sharad Birdhi Chand (supra)** are as under:-





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*¹⁹ 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.

The prosecution has failed to follow the above principles. The case is based on circumstantial evidence and the learned trial court committed a serious mistake by not conducting the trial of





the case considering it to be the case based on circumstantial evidence. The complete trial is faulty and conviction as recorded is erroneous.

PW-13 and PW-14 by their testimony has tried to prove that both the accused-appellants confessed their guilt before them and therefore, as per the prosecution this case is based on extra judicial confession.

The learned counsel also referred to the judgment of the Hon'ble Supreme Court passed in the **Panchoo Vs. State of Haryana reported in 2011 (10) SCC page 165** where the Apex Court examined the issue of extra judicial confession. Para 16 and 28 of the judgment are reproduced as under:-

"16. The extra-judicial confession made by A-1, Pratham is the main plank of the prosecution case. It is true that an extra-judicial confession can be used against its maker, but as a matter of caution, courts look for corroboration to the same from other evidence on record. In Gopal Sah v. State of Bihar¹ this Court while dealing with an extra-judicial confession held that an extra-judicial confession is on the face of it, a weak evidence and the courts are reluctant, in the absence of a chain of cogent circumstances, to rely on it for the purpose of recording a conviction. We must, therefore, first ascertain whether the extra-judicial confession of A-1, Pratham inspires confidence and then find out whether there are other cogent circumstances on record to support it.

28. This Court in Haricharan case clarified that though confession may be regarded as evidence in generic sense because of the provisions of Section 30 of the Evidence Act, the fact remains that it is not evidence as defined in Section 3 of the Evidence Act. Therefore, in dealing with a case against an accused, the court cannot start with the confession of a co-accused; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the





conclusion of guilt which the judicial mind is about to reach on the said other evidence.”

Hon'ble Supreme Court in the case of **Sehdevan and Ors. Vs. State of Tamil Nadu** in a criminal appeal No. 1405/2008 decided on 08.02.2012 again examined the issue of extra judicial confession in depth, the relevant paras of the judgment are reproduced as under:



"18. Accepting the admissibility of the extra judicial confession, the Court in the case of Sansar Chand v. State of Rajasthan 2010 (4) R.C.R. (Criminal) 825: 2010 (6) Recent Apex Judgments (R.A.J.) 235: MANU/SC/0869/2010: (2010) 10 SCC 604 held that:

29. There is no absolute rule that an extra judicial confession can never be the basis of a conviction, although ordinarily an extra judicial confession should be corroborated by some other material. [Vide Thimma and Thimma Raju v. State of Mysore, Mulk Raj v. State of Uttar Pradesh, Sivakumar v. State SCC paras 40 and 41: AIR paras 41 & 42), Shiva Karam Payaswami Tewari v. State of Maharashtra and Mohd. Azad v. State of West Bengal]

30. In the present case, the extra judicial confession by Balwan has been referred to in the judgments of the learned Magistrate and the Special Judge, and it has been corroborated by the other material on record. We are satisfied that the confession was voluntary and was not the result of inducement, threat or promise as contemplated by Section 24 of the Evidence Act, 1872.

19. Dealing with the situation of retraction from the extra judicial confession made by an accused, the Court in the case of Rameshbhai Chandubhai Rathod v. State of Gujarat 2009 (3) R.C.R. (Criminal) 618: 2009 (4) R.A.J. 370: MANU/SC/0663/2009: (2009) 5 SCC 740, held as under:

It appears therefore, that the Appellant has retracted his confession. When an extra judicial confession is retracted by an accused, there is no inflexible rule that the court must invariably accept the retraction. But at the same time it is unsafe for the court to rely on the retracted confession, unless, the court on a consideration of



the entire evidence comes to a definite conclusion that the retracted confession is true.

20. Extra judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. The extra judicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility. The extra judicial confession should inspire confidence and the court should find out whether there are other cogent circumstances on record to support it. [Ref. Sk. Yusuf v. State of West Bengal MANU/DE/2040/2011: 2011 (5) R.C.R. (Criminal) 762: 2011 (5) Recent Apex Judgments (R.A.J.) 308: MANU/SC/0701/2011 : (2011) 11 SCC 754 and Pancho v. State of Haryana MANU/SC/1275/2011: 2011 (4) R.C.R. (Criminal) 665 2011 (5) Recent Apex Judgments 481: (2011) 10 SCC 165

21. Upon a proper analysis of the above referred judgments of this Court, it will be appropriate to state the principles which would make an extra judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra judicial confession alleged to have been made by the accused.

The Principles

(i) *The extra judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.*

(ii) *It should be made voluntarily and should be truthful.*

(iii) *It should inspire confidence.*

(iv) *An extra judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.*

(v) *For an extra judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.*





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

Hon'ble Supreme Court in the recent case of **Shanti Devi Vs. State of Haryana, Criminal Appeal No. 2861/2025** decided on **06.08.2025** in para 29 discussed and examined the evidentiary value of circumstantial of extra judicial confession which, has very weak evidentiary value and should be relied upon with great care and caution. Relevant para of the judgment is as under:

"29. *The law on the evidentiary value of extrajudicial confessions is well settled that such a confession has very weak evidentiary value and should be accepted with great care and caution. This Court in Sahadevan vs. State of Tamil Nadu MANU/SC/0499/2012 : 2012:INSC:209 : (2012) 6 SCC 403 undertook a thorough examination of the jurisprudence on the evidentiary value of extrajudicial confessions and laid down certain guiding principles, which are reproduced hereinbelow:*

22. *Upon a proper analysis of the above-referred judgments of this Court, it will be appropriate to state the principles which would make an extrajudicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. these precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused.*

The Principles

(i) *The extra-judicial confession is a weak evidence by itself. It has not be examined by the Court with greater care and caution.*

(ii) *It should be made voluntarily and should be truthful.*

(iii) *It should inspire confidence.*

(iv) *An extra-judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.*

(v) *For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.*

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

This bench in the case of **Kishanlal Vs. State of Rajasthan, DB Criminal Appeal No. 278/1996** decided by judgment dated 22.08.2025 also relied upon the judgment passed





by Hon'ble Supreme Court in the case of **Sehdevan (supra) and Shanti Devi (supra)** while examining the issue of extra judicial confession.

Considering the above judgments, this Court noted that PW-13 and PW-14, without any basis and justification entered into this case and persuaded the PW-1 that they would support his case being the leaders of the caste. The conduct of PW-13 and PW-14 as demonstrated by the complaint in his cross-examination in such circumstances the alleged extra judicial confession as made to PW-13 and PW-14 by accused-appellant cannot be believed, rather the alleged extra judicial confession is to be discarded at the threshold as the Hon'ble Supreme Court in the case of **Sendevan (supra) and Shanti Devi (supra)** repeatedly cautioned that the extra judicial confession being a very weak piece of evidence should be taken as a base for conviction utmost great care and caution only when it is supported by other corroborated evidence of the prosecution. The extra judicial confession should be relied upon for the purposes of the conviction only then there are no material contradictions and discrepancies in the testimony of the material witnesses of the prosecution as before the trial Court. If there are serious contradictions and infirmities the trial court should desist from recording the conviction. Despite above specific and clear law in regard to the extra judicial confession, the learned trial court committed serious mistake while recording the conviction in the present case.

On the basis of the above discussion and after considering arguments of the respective counsels, this Court has already recorded in the above paras that the present case is based on





circumstantial evidence and the prosecution failed to connect the chain of evidence of witnesses and the recoveries to prove the guilt of the accused-appellant. Further, this Court noted material contradictions in the statement of PW-1 read with statement of PW-8, PW-13, PW-14 and PW-15 which has destroyed the complete foundation of the case of the prosecution and therefore this Court has reached to a definite conclusion that prosecution has failed to prove its case beyond reasonable doubt against the accused-appellant. Consequently, the present appeal deserves to be allowed and the same is hereby allowed. The impugned judgment dated 18.01.1996 passed by the learned trial court is quashed and set aside.

The appellants are already on bail. Their bail bonds stands discharged. The record of the trial court be sent back forthwith.

Keeping in view the provision of Section 437-A Cr.P.C./481 B.N.S.S, accused-appellants are directed to furnish a personal bond in a sum of Rs. 25,000/- and a surety bond of the like amount, before the learned trial court, which shall be made effective for a period of six months, to the effect that in the event of filing of Special leave Petition against this judgment or for grant of leave, the accused-appellant, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court as soon as they would be called upon to do so.

(RAVI CHIRANIA),J

130-Jatin/-

(MANOJ KUMAR GARG),J

