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CNR: UPAN010002682011

IN THE COURT OF THE SESSIONS JUDGE, AMBEDKAR NAGAR

Present: Chandroday Kumar, H.J.S., JO Code: UP06553

Sessions Trial No.: 151/2011

State — Prosecution

Versus

1. Rikki @ Aditya, son of Umashankar
2. Sheru @ Sher Bahadur Singh, son of Daya Shankar
3. Saddam @ Irfan, son of Salim

Residents of Village Sehari, Police Station Jaitpur, District Ambedkar Nagar — Accused

Case Crime No.: 160/2011
Offence: Section 302, Indian Penal Code
Police Station: Jaitpur
District: Ambedkar Nagar

Prosecution Counsel: Shri Govind Srivastava, DGC (Criminal)
Defence Counsel: Shri Pawan Kumar Yadav, Advocate

JUDGMENT

Introduction

1. Case Details: This judgment arises from Sessions Trial No. 151 of 2011, State vs. Rikki alias Aditya & Others, in the Court of Sessions Judge, Ambedkar Nagar, U.P. The case emanated from FIR No. 160/2011 lodged at Police Station Jaitpur on 16.04.2011 by the informant Mahavir Singh (PW-1) regarding the death of his brother Brishbhan Singh alias Bakhan Singh. The FIR was registered under Section 302 of the Indian Penal Code, 1860 (IPC) (punishment for murder), later with an addition of Section 120B IPC (criminal conspiracy). The FIR named three accused: (1) Rikki alias Aditya (since deceased during trial), (2) Sheru alias Sher Bahadur Singh, and (3) Saddam alias Irfan. It was alleged that on the night of 15/16.04.2011, these accused, due to a prior quarrel, conspired together with unknown persons to murder Brishbhan Singh by breaking into the compound of a mobile tower where he was on duty and brutally assaulting him, resulting in his death.

2. Investigation and Committal: The police investigated the case, prepared a site plan of the scene and recovery memos of evidence, and upon completion

of the investigation, filed a charge-sheet (No. 52/2011) against all three accused under Sections 302 and 120B IPC. Since the offence is exclusively triable by the Court of Session, the case was committed to this Court by the Chief Judicial Magistrate on 10.08.2011 after supplying copies of documents to the accused as required under Section 207 of the Code of Criminal Procedure, 1973 (CrPC). Cognisance was taken and charges were framed under Section 302 IPC (read with Section 120B IPC) on 14.07.2011. The accused Sheru and Saddam pleaded not guilty and claimed a trial.

3. Proceedings: During the pendency of the trial, co-accused Rikki, alias Aditya, died on 06.11.2024. In view of his death, the case against Rikki was abated by order of this Court. The trial thus continued only against the surviving accused Sheru and Saddam (hereinafter "accused persons").

The prosecution examined 10 witnesses (PW-1 to PW-10) in support of its case, including family members of the deceased (PW-1 Mahavir Singh – informant and brother of deceased; PW-2 Bajrangi Singh – another brother; PW-8 Priyanshu Singh – nephew; PW-9 Smt. Seema Singh – widow of the deceased), witnesses to inquest/recovery (PW-3 Ram Suresh; others), the doctor who conducted the post-mortem (PW-4 Dr. Sati Ram), the Head Constable who registered the FIR (PW-5 HC Ramchandra Yadav), and the investigating officers (PW-6 SI Ram Prasad Pandey and PW-7 Retd. SI Bhagwan Sharan Mishra who conducted the initial investigation, and PW-10 Inspector Manoj Kumar who completed the investigation and filed the charge-sheet). The documentary evidence exhibited by prosecution includes: the written complaint (Ex. Ka-1), inquest report (Ex. Ka-2), seizure memos of blood-stained soil, etc. (Ex. Ka-3), post-mortem report (Ex. Ka-4), site plan of place of occurrence (Ex. Ka-11), recovery memo of weapon (Ex. Ka-12) and its site plan (Ex. Ka-13), addition of Section 120B GD entry (Ex. Ka-14), charge-sheet (Ex. Ka-15), and other relevant papers.

4. After the closure of prosecution evidence, the statements of both accused were recorded under Section 313 CrPC. The accused denied all incriminating evidence and pleaded innocence. In sum, they stated that the prosecution's story was false and concocted due to village rivalry; they asserted that the deceased was murdered by unknown persons in the night, and later, after deliberation and legal advice, a false case was lodged to implicate them. They alleged they had been framed out of enmity and claimed to have no role in the offence. The accused did not lead any defence evidence, oral or documentary.

5. Arguments: Learned District Government Counsel (Prosecution) and the learned defence counsel were heard at length. The prosecution argued that the evidence on record forms a complete chain of circumstances proving beyond a reasonable doubt that Sheru and Saddam, in furtherance of a conspiracy, committed the murder of Brishbhan on the fateful night. The defence, on the other hand, contended that the case was rife with delays, contradictions and insufficient evidence: the FIR was lodged after the post-

mortem with due deliberation, casting doubt on its spontaneity; the prosecution witnesses (being relatives) gave contradictory statements; there is no independent eyewitness; no credible motive was established against the accused; the alleged recovery is unreliable; and overall the circumstantial evidence is incomplete and does not exclude other hypotheses. It was urged that the accused are entitled to the benefit of doubt and acquittal.

6. Having considered the submissions and the evidence on record, this Court now proceeds to frame the points for determination and give its findings.

Points for Determination

Based on the charge and rival contentions, the following Points for Determination arise for adjudication:

1. Whether the death of Brishbhan Singh was homicidal in nature, i.e. caused by deliberate injury and not by accident or suicide?
2. Whether the accused Sheru alias Sher Bahadur Singh and Saddam alias Irfan, acting individually or in conspiracy (Section 120B IPC) with each other and/or others, committed the murder of Brishbhan Singh on the night of 15/16.04.2011, and if so, whether they are guilty of the offence under Section 302 IPC?

7. The above points are addressed and answered below, in light of the evidence and applicable law.

Appreciation of Evidence

Re: Point No.1 – Nature of Death (Homicide)

There is no real dispute that Brishbhan Singh's death was a result of homicide. The medical and forensic evidence clearly establishes that he died due to fatal injuries inflicted on him. PW-4 Dr. Sati Ram conducted the autopsy on 16.04.2011 and noted multiple ante-mortem wounds, including a large depressed wound on the head, and opined that death was caused due to shock and haemorrhage from the head injuries. The post-mortem report (Ex. Ka-4) confirms that the injuries were inflicted before death and were sufficient to cause death in the ordinary course of nature. The inquest (Ex. Ka-2) was held on the morning of 16.04.2011 itself in the presence of panch witnesses (including PW-2 and PW-3), who also observed the severe head wounds and opined that it appeared to be a case of murder, recommending a post-mortem to ascertain details.

Moreover, PW-1 (the informant and brother of the deceased) found the deceased's body lying on a cot at the tower site with bleeding head injuries on the morning of 16.04.2011. None of the defence suggestions indicates any possibility of accidental death or self-harm. Indeed, the circumstances (body found with head bashed, blood at the scene, fence broken, etc.) overwhelmingly indicate foul play. The Court, therefore, has no hesitation in holding that Brishbhan's death was homicidal. Point No.1 is answered in the affirmative.

(Having established that Brishbhan Singh was the victim of a homicide, the core question is whether the prosecution has proven beyond a reasonable doubt that the two accused on trial are the perpetrators of that murder. The evidence on Point No.2 is thus examined in detail.)

8. Re: Point No.2 – Alleged Involvement of Accused in Murder

This case is based entirely on circumstantial evidence. There is no direct eyewitness to the murder in the tower compound during the night of 15/16.04.2011 – a fact acknowledged by the prosecution. The prosecution relies on a chain of circumstances to connect the accused to the crime, chiefly: **(a) Motive and prior threats** – a serious altercation on 15.04.2011 between the deceased and the accused, during which the accused allegedly threatened to kill or "remove" the deceased; **(b) Opportunity** – the accused being local residents who could access the tower at night; **(c) Conduct after the incident** – the accused were arrested soon after and allegedly made a confession leading to recovery of the murder weapon; and **(d) Circumstances of the crime** – the tower fence found broken and the manner of assault suggesting a planned attack by persons familiar with the victim's routine. The Court will consider whether all these circumstances have been proved and, if so, whether they form a complete and unbroken chain pointing only to the guilt of the accused, to the exclusion of any other hypothesis (Five Golden Principles for Cases Based on Circumstantial Evidence in Criminal Law – **Sharad Birdhichand Sarda vs State of Maharashtra AIR 1984 SC 1622**).

9. (a) Prior Incident, Motive and Threats:

It is undisputed that earlier on the day of the incident (15.04.2011), there was a quarrel between the deceased Brishbhan and the accused persons in the village. The genesis was a road speed-breaker near PW-2 Bajrangi's house. The evidence shows that on 15.04.2011, in the afternoon, the accused Rikki, Sheru and Saddam forcibly dug up/removed a brick speed-breaker on the village pathway, to which Brishbhan (elder brother of PW-2) objected. PW-2 (Bajrangi) and PW-8 (Priyanshu, son of PW-2) both testify that the accused trio became angry at Brishbhan's protest and got into a heated fight. According to these witnesses, the accused threatened Brishbhan in ominous terms, saying "अब इनको रास्ते से हटाना पड़ेगा" ("Now we will have to remove him from our way"), indicating an intention to eliminate him. Family members intervened at that time and defused the quarrel.

10. The above incident is proved through consistent testimonies of PW-1, PW-2 and PW-8, as well as the statement of PW-6 (IO SI Ram Prasad), who recorded the witnesses' versions during the investigation. Thus, the prosecution has established an immediate motive in the form of this dispute and the accused's uttered threat. However, it must be noted that both PW-1 and PW-2 admitted that aside from this quarrel, they had no longstanding enmity or land dispute with the accused persons. In cross-examination, PW-2 Bajrangi stated, "there was no property or personal enmity with the

accused" and that he had not witnessed the accused actually assault the deceased (since PW-2 was away in Delhi at the time of the incident). This moderates the force of the alleged motive – it was a sudden provocation and not part of any longstanding feud.

11. Moreover, the defence has highlighted an alternative angle emerging from the evidence: the role of one Krishna Yadav. PW-2 and PW-8 revealed that Krishna Yadav had previously been the watchman for the very Airtel tower on the informant's field, but some months before the incident, Brishbhan (deceased) took over that role after their father's death. Krishna Yadav thus lost his position and, as per PW-2, "he held a grudge against my brother". Tellingly, after Brishbhan's murder, Krishna Yadav was re-engaged as the tower guard. This suggests that another person may have had a motive to see Brishbhan removed. The investigation itself considered a conspiracy angle involving others: PW-6 (the IO) deposed that statements were recorded indicating "unknown person's instigation or conspiracy by an unknown person", and Section 120B IPC was added on 17.04.2011 on the suspicion that the three accused had acted "at someone's behest". However, no chargesheet was filed against any such alleged conspirator (like Krishna Yadav or others).

12. In light of these facts, while the accused certainly had a potential motive (anger from the daytime altercation), the possibility of other perpetrators with equal or greater motive cannot be ruled out. The motive circumstance alone, therefore, does not unerringly point towards the accused to the exclusion of all others. It is a double-edged circumstance – it provides a reason for the accused to commit the crime, but also introduces the likelihood that someone else (e.g. the displaced tower guard) might have exploited the situation to commit the murder, especially since the accused had no prior enmity and nothing to gain directly from Brishbhan's death, whereas another person might have had a tangible benefit (regaining the job).

13. (b) Last Seen / Opportunity and Scene of Crime Circumstances:

There is no "last seen together" evidence placing the accused with the deceased at or near the time of murder. In fact, by the prosecution's own case, the deceased was alone inside the locked tower compound at night. The tower compound's main gate was found locked from inside on the morning of 16.04.2011, when family and villagers gathered after discovering the body. Entry was gained only by breaking open the lock in the presence of the police and villagers. However, it was observed that a portion of the peripheral wire mesh (jali) on the east side of the tower compound had been cut or torn open, which is presumably how the assailants entered and exited. This indicates the murder was committed by intruders who stealthily broke the fencing to access the victim. The accused, being co-villagers, could have known the layout and Brishbhan's habit of sleeping at the tower, but crucially, no witness saw any of the accused near the tower that night. The village is small, yet no independent resident came forward to say they saw Sheru or Saddam heading to or from the tower at odd hours. The prosecution tried to gather

mobile phone Call Detail Records of suspects (as PW-6 mentioned), but ultimately no such evidence was produced by PW-10 (the second IO) – he admitted that despite attempts, "no evidence from the mobile call details could be obtained" to link the accused, and the "FSL report of forensic analysis was not received" during the investigation.

14. Thus, on the aspect of opportunity and presence at the crime scene, the evidence is essentially neutral. The time of death (night) and the fact that the assailants likely entered surreptitiously mean several possibilities remain: it could have been the accused (due to the grudge from earlier), or it could equally have been some other person(s) taking advantage of the situation. There is no identifying evidence, such as fingerprints, footprints, DNA, or eyewitness identification, to place the accused at the scene. The case, therefore, hinges not on direct presence but on subsequent conduct and circumstantial links.

15. (c) Conduct of Accused and Alleged Recovery of Weapon:

The accused were arrested on 17.04.2011. The prosecution heavily relies on an incriminating disclosure and recovery to connect the accused to the crime. PW-6 SI Ram Prasad (initial IO) testified that upon interrogation, the accused Sheru and Saddam (along with Rikki) confessed to the murder and offered to lead the police to the hidden weapon, a bamboo stick (lathi) used to kill the deceased. Acting on this information, PW-6 took the accused to a location near Begikol pond, in a grove on the west side, where, from under bushes, the accused produced a bloodstained bamboo "danda" (stick). This stick was seized and sealed on the spot (Recovery Memo Ex. Ka-12), and a site sketch was prepared (Ex. Ka-13). In court, PW-7 (Retd. SI B.S. Mishra) identified the produced bamboo stick as the same weapon recovered on the accused's "nishandehi" (pointing out).

16. This piece of evidence, if reliable, is a circumstance that might indicate the accused knew where the murder weapon was hidden, suggesting their complicity. However, the Court must approach this extra-judicial confession and recovery with caution. The so-called confession was made while in police custody and is inadmissible except to the extent it leads to a discovery of fact (Section 27 of the Evidence Act). What is admissible is only that the accused led the police to recover a stick from a particular place. For this to have value, the recovery should be credible, and the article should be meaningfully connected to the crime.

17. Several factors weaken this evidence:

Lack of independent witnesses: The recovery memo (Ex. Ka-12) was witnessed only by police personnel (PW-7 and other constables). No independent public witness was present for the seizure of the stick, even though villagers were presumably available. This diminishes the evidentiary weight of the recovery, as it raises the possibility that it could be planted or, at least, not conclusively linked to the accused.

Forensic link missing: Crucially, no forensic report was produced to confirm that the bamboo stick was stained with the blood of the deceased or human blood at all. PW-10 (IO Inspector Manoj) candidly admitted that he sent the recovered weapon and blood samples to the Forensic Science Laboratory, but the FSL report was not received by the time of filing the charge-sheet, and indeed no such report was ever tendered in evidence. Thus, there is no scientific confirmation that the stick was the murder weapon or that it bore traces connecting it to the victim. In the absence of an FSL report, the recovery is of dubious value – it is merely a stick that anyone could have used.

Probative value: Even if we assume the recovery is genuine, it shows, at best, that the accused had some knowledge of the stick's location. Given that the accused were in custody for days and the village was small, the probative value is limited without further corroboration. The Hon'ble Supreme Court has repeatedly cautioned that discovery evidence must be scrutinised carefully, and a recovery alone cannot sustain a conviction unless firmly corroborated (Pl. see **Parubai vs The State Of Maharashtra AIR 2021 SUPREME COURT 3784**). Here, the recovery does little to exclude the possibility that someone else committed the murder and the accused were made scapegoats.

18. In sum, the conduct of the accused post-incident does not furnish any clinching evidence of guilt. They were promptly arrested (which is natural in a suspected murder), and the prosecution could not demonstrate any consciousness of guilt, such as absconding (indeed, the accused and their families stayed away from the village only because they allegedly feared retaliation from the deceased's family, as per PW-9's testimony). No stolen property or personal items of the deceased were recovered from them. The alleged confession to police, being inadmissible, is not evidence of guilt; the only resultant fact—the recovery of a lathi—suffers from the deficiencies noted.

19. (d) Testimonies of Material Witnesses (Reliability and Contradictions):

The prosecution's main witnesses are the relatives of the deceased – PW-1 Mahavir (brother), PW-2 Bajrangi (brother), PW-8 Priyanshu (nephew), and PW-9 Seema (widow). As interested witnesses, their evidence must be evaluated with caution, especially given the absence of an independent eyewitness. Minor discrepancies in witnesses' statements do not necessarily destroy credibility, but material contradictions or improvements can be fatal to the prosecution's case (Pl. see **Edakkandi Dineshan@ P.Dineshan vs State Of Kerala 2025 SCC OnLine SC 28 dated 06.01.2025**). Here, unfortunately, the key witnesses' testimonies suffer from serious inconsistencies and a lack of firsthand knowledge:

20. PW-1 (Mahavir Singh) – the informant who lodged the FIR – initially painted a picture as though he knew the accused had committed the murder, detailing how they allegedly conspired with others to break into the tower and kill his brother. However, PW-1 did not witness the incident at all. In his

chief examination, he admitted he was at home that night and found the body in the morning. Strikingly, in cross-examination, PW-1 claimed for the first time that he "saw the murder incident" and had written in the FIR what he saw. He said, "I had seen the incident. Whatever I saw, I got written in the FIR." This was immediately exposed as false when he was confronted with the fact that he was not present at the tower at night. Ultimately, PW-1 conceded, "It is correct that I did not see the accused persons assaulting with my own eyes". He also admitted that the written report was not in his own handwriting but was drafted by one Sitaram (a relative) at his instance, and that he took Sitaram along to the police station to lodge the report. These admissions show that PW-1 had no direct knowledge of the assailants and that the FIR was the result of deliberation (with the help of a legally trained relative) rather than a spontaneous eyewitness account. The contradiction seriously impeaches his credibility – falsely asserting he saw the murder when he did not. This casts a shadow on the reliability of his entire testimony. It suggests that his accusation against the accused is based on suspicion arising from the prior quarrel and what he "thought" must have happened, rather than on direct evidence.

21. PW-2 (Bajrangi Singh) – the elder brother of the deceased – arrived at the village only after the murder (he was in Delhi on 15.04.2011). In chief, he repeated the story of the quarrel and emphatically stated that during the night, the accused entered through the broken fence and killed his brother as part of a conspiracy. However, in cross-examination, PW-2 candidly admitted that he was not present during the incident and had not witnessed anything: "It is correct that on the night of the incident, I was in Delhi… I reached home around 7:30 AM. I did not see the incident occurring or the accused beating (the deceased) with my eyes. I gave my statement based on what people told me". He further conceded, "I did not see the accused planning or committing any murder, nor did anyone tell me that". Thus, PW-2's testimony that the accused committed the murder is entirely hearsay and assumption, not based on personal knowledge. He, too, being a brother, naturally suspected those who had quarrelled with Brishbhan, but he offers no direct evidence. PW-2 also corroborated that there was no prior enmity with the accused and that another person (Krishna Yadav) had reasons to be hostile to the deceased. His evidence, while truthful about what happened before and after the murder, does not actually implicate the accused except by repeating village talk and suspicion.

22. PW-8 (Priyanshu alias Himanshu Singh) – a nephew of the deceased (and son of PW-2) – was a young man who was present in the village on 15.04.2011. He corroborated the quarrel and threat made by the accused that afternoon. He was also the first to discover something was wrong on the morning of 16.04.2011: he went to the tube-well/tower early and saw his uncle lying injured, and he raised the alarm. However, PW-8 did not witness the murder; he arrived only to find the aftermath. His testimony is valuable for confirming certain facts (e.g., the lock was broken open in the morning, a crowd gathered,

etc.), but as to the culprits, he, like others, only suspected the accused based on the prior incident. Being a young family member, his impressions are not independent. Notably, PW-8, in cross-examination, admitted that the deceased (his uncle) had indeed built a speed-breaker, which triggered the quarrel, and also stated that the accused persons' family members fled the village out of fear of PW-2's family after the incident, indicating a deep factional feud in the village. There is a hint that the case may be influenced by such rivalry (referred to as "party-bandi" or group rivalry in the village), as suggested in some defence suggestions. This further underscores the need for caution in relying on interested testimony.

23. PW-9 (Seema Devi) – the widow of the deceased – turned hostile (or at least non-supportive) to the prosecution. Her testimony is quite revealing: She did not inculpate the accused at all. On the contrary, she stated that she was not present at the tower, did not see who killed her husband, and in fact never learned who the killers were. She said the police never even recorded her statement during the investigation. She further disclosed that after her husband's death, her relationship with her brother-in-law, PW-2 Bajrangi, deteriorated severely – she alleged Bajrangi and his family beat her and drove her out of the home over property disputes (as the deceased's land and job would have passed on to her). She testified that she had ongoing disputes with PW-2 regarding the deceased's property and that he had even assaulted her, due to which she was living at her own parents' house. This testimony indicates internal discord within the deceased's family, which could colour the evidence. PW-9's version suggests that the family of the deceased was divided and that PW-2 (who is spearheading the prosecution) might have had his own interests (property) and grudges, raising the possibility that the accused were named also as a result of internal family machinations. Importantly, PW-9 stood firm that she had no knowledge of the assailants and that "suspicion, however strong, cannot compel me to name anyone falsely." Though the Court treats her evidence with caution (in part because she is a hostile witness), her statement that she cannot say the accused did it bolsters the defence case that there is reasonable doubt about the perpetrators.

24. From the above analysis of the witnesses, it is evident that no prosecution witness actually saw the accused committing the crime. The case against the accused rests on circumstantial inferences drawn by interested relatives who had reasons to suspect the accused due to the quarrel, but who also made numerous contradictory and exaggerated claims (such as PW-1 falsely claiming to be an eyewitness). The witnesses' credibility is seriously undermined on material particulars. Their evidence does not inspire confidence as would the testimony of a wholly reliable witness. At best, their statements raise a suspicion towards the accused, but suspicion, however strong, cannot take the place of proof.

25. (e) Delay in FIR and Possibility of Afterthought:

The defence also questioned the timing and manner of the FIR registration. The incident occurred during the late night of 15/16 April 2011, but the FIR (Ex. Ka-10) was lodged at 8:00 AM on 16.04.2011 (as per PW-5, who registered it). On its face, this is a prompt lodging – merely a few hours after the incident was discovered at dawn. However, the defence pointed out that, by the informant's own admission, he did not immediately rush to the police but first consulted a relative (a Government employee), prepared a written report, and informed the police only after daylight. It was argued that this gave time for "suvichar" (deliberation) and possibly tutoring or embellishment in naming the accused. The record shows that PW-1 indeed had the FIR written by Sitaram (his brother's brother-in-law, an educated man) and that he, along with Sitaram, went to the police station around 7:00-8:00 AM. This sequence suggests the initial accusation was not a spontaneous outcry but a considered statement.

26. Does this amount to an unreasonable delay or deliberation that fatally affects the case? In law, a prompt FIR lends credibility, whereas an unexplained delay can raise suspicion of embellishment. In **Thulia Kali v. State of T.N. 1973 AIR 501**, the Hon'ble Supreme Court observed that delay in lodging an FIR, if unexplained, may create a chance for concoction or exaggeration, casting doubt on the prosecution's case. Here, the FIR was lodged within a few hours of first knowledge of the crime, but there was a delay in the sense that PW-1 did not narrate the events immediately in his own words; instead, he waited until a formal written complaint was made. The explanation is that the family was occupied with the inquest and in shock; also, PW-1 might not have been sufficiently literate, so he sought help to draft the complaint clearly. The Court finds that this short delay, by itself, is not inordinate, but it does reflect that the accused's name was named after some consultation (indeed, legal consultation, if we consider Sitaram's background). This underlines that the case against the accused was based on suspicion and village gossip (of the quarrel) rather than direct evidence. The promptness of the FIR is neutralised by the fact that it was not based on eyewitness information but on what the family thought must have happened. Therefore, while the FIR delay here is not strongly relied on by this Court to discard the prosecution case (since a few hours' delay is not uncommon and has been satisfactorily explained by the need to write a proper complaint), the circumstances in which the FIR was lodged confirm that the foundation of the case is circumstantial and inferential, requiring careful scrutiny.

27. Legal Position on Circumstantial Evidence & Benefit of Doubt:

Before reaching the final findings, it is apposite to recall the well-settled legal standards applicable to cases based on circumstantial evidence. The Hon'ble Supreme Court, in a catena of decisions – including the seminal cases of Hanumant Govind Nargundkar v. State of M.P. (AIR 1952 SC 343) and Sharad Birdhichand Sarda v. State of Maharashtra (1984) – has laid down stringent requirements that must be fulfilled before a conviction can be based solely on circumstantial evidence. It is worth reproducing the five golden principles

(the "panchsheel") for proof by circumstantial evidence, as set out in Sharad Birdhichand Sarda, which in turn echo the principles in Hanumant:

1. The circumstances relied upon must be fully established. Each fact forming the chain of circumstances must be proved by credible evidence as per the law. No circumstance can be assumed or inferred without proof.
2. The proven circumstances should be conclusive and point only to the guilt of the accused. In other words, the facts established should be consistent only with the hypothesis of the accused's guilt and inconsistent with any other reasonable hypothesis (such as the innocence of the accused).
3. The circumstances should be of such a character that they exclude every reasonable possibility except that of guilt of the accused. There must be no plausible alternative explanation for the chain of events other than the involvement of the accused.
4. All the circumstances should be linked together in a continuous chain, such that the entire chain of evidence is complete and does not leave any reasonable ground for a conclusion consistent with the innocence of the accused.
5. When the chain is complete, it must lead to the irresistible conclusion that the accused and nobody else is the perpetrator of the offence. The Court must be satisfied that, in all human probability, the act could not have been done by any person other than the accused.

Additionally, the Court must guard against the danger that conjecture or suspicion might be mistaken for proof. As observed in Hanumant's case, "in cases dependent on circumstantial evidence, there is always the danger that the conjecture may take the place of legal proof", so the Court must carefully evaluate whether the circumstances proven really satisfy the above tests.

28. It is also a fundamental tenet of criminal jurisprudence that the accused is presumed innocent until proven guilty beyond a reasonable doubt. The burden of proof is wholly on the prosecution and never shifts. If there is any reasonable doubt, the accused gets the benefit of the doubt as of right. In fact, "another golden thread running through criminal jurisprudence is that if two views are possible on the evidence – one pointing to guilt and the other to innocence – the view favourable to the accused should be adopted". The Hon'ble Supreme Court (per Justice H.R. Khanna in **Kali Ram vs State of H.P., (1973) 2 SCC 808**) emphasised that this principle is especially applicable in circumstantial cases – unless the circumstances are wholly consistent with only the accused's guilt, the court must refrain from convicting and must give the benefit of doubt. It was also cautioned that courts should not permit the distance between "may be true" and "must be true" to be bridged by guesswork. Mere suspicion or probability cannot substitute for the rigorous proof needed. "Suspicion, however grave, cannot take the place of proof beyond a reasonable doubt".

29. Findings and Conclusion

Evaluating the evidence on record against the aforementioned legal yardsticks, this Court finds that the prosecution has failed to establish the guilt of the accused Sheru and Saddam beyond a reasonable doubt. The chain of circumstances advanced by the prosecution is incomplete and far from conclusive. The Court's findings on the key issues are summarised as follows:

Homicide: It is proven that Brishbhan Singh died by homicidal violence (severe head injuries). However, who perpetrated that violence remains unproven by credible evidence.

Circumstantial Chain: The circumstances proven (motive from a quarrel, opportunity, recovery of a stick, etc.) do not form a complete and unbroken chain leading only to the hypothesis of the accused's guilt. On the contrary, there are considerable gaps and alternative possibilities. For instance, the motive evidence is equivocal—the accused quarrelled, but another person (Krishna Yadav) also had a motive and opportunity. No circumstance directly connects the accused to the crime scene at the crucial time. The recovery of the alleged weapon is not corroborated by forensic proof or independent witnesses. No single circumstance or combination of them irresistibly points to the accused to the exclusion of all others. The circumstances leave reasonable grounds for a conclusion consistent with innocence (such as an unknown assailant or instigator).

30. Witness Reliability: The main witnesses are interested family members whose testimony was marred by material contradictions, admissions of not seeing the incident, and evident speculation. The star witness (informant) turned out to be unreliable on the critical question of identifying the assailants, as he admittedly did not witness the murder despite initially implying he had. Another key witness (PW-2) also had no direct knowledge and relied solely on hearsay. The only neutral eyewitnesses would be none (since none exist) – hence, the case lacks the assurance of any disinterested observation. Given such evidence, it would be wholly unsafe to base a conviction. The evidence not only fails to fulfil the required standard for proof beyond a reasonable doubt, but indeed raises doubts.

31. Benefit of Doubt: The accused are entitled to the benefit of every reasonable doubt. Here, the doubts are not trivial or fanciful, but are born out of the prosecution's own evidence and the inherent deficiencies in the case. As discussed, the law mandates that where two reasonable conclusions can be drawn – one of innocence, one of guilt – the courts must err on the side of innocence. In the present case, the evidence at best raises suspicion against the accused (due to the prior quarrel), but suspicion is not proof. The distance between "may have committed" and "have committed" is not bridged by the kind of reliable evidence that law requires. In fact, the circumstances and contradictions raise a strong likelihood that the truth of who actually killed Brishbhan is unknown – it could have been the accused, but it also could have

been someone else. When there is a reasonable possibility of innocence, the accused cannot be convicted.

32. In conclusion, this Court finds that the prosecution has not proved its case against Sheru alias Sher Bahadur Singh and Saddam alias Irfan to the hilt as required by law. The evidence is insufficient and lacking in credibility to warrant their conviction under Section 302 IPC (whether individually or with the aid of Section 120B IPC). The circumstantial evidence falls short of the mandatory test laid down by the Hon'ble Supreme Court in Sharad Birdhichand Sarda and related precedents for sustaining a conviction on circumstantial facts. Therefore, giving the benefit of doubt to the accused, the Court answers Point No.2 in the negative – i.e., it is not proven beyond a reasonable doubt that Sheru and Saddam are the persons who caused the death of Brishbhan Singh.

33. Before parting, it is indeed unfortunate that a heinous crime has gone unpunished. However, as the law emphasises, "the guilt of the accused must be proved beyond a reasonable doubt, because a reasonable doubt is possible, not because the accused must positively prove innocence". Courts cannot convict on moral conviction or suspicion alone. As was eloquently observed in **Sarwan Singh Rattan Singh v. Punjab AIR 1957 SUPREME COURT 637**, that grave suspicion cannot take the place of proof, and the courts must ensure that the distance between 'may be true' and 'must be true' is covered by reliable evidence. Here, that distance is not covered. Consequently, the only just outcome is to acquit the accused.

Order

In view of the above findings, accused (1) Sheru alias Sher Bahadur Singh s/o Dayashankar, and (2) Saddam alias Irfan s/o Saleem, are found not guilty of the charge under Section 302 IPC (read with Section 120B IPC) and are hereby acquitted.

Compliance of Section 437-A CrPC: The acquitted persons are directed to furnish personal bonds of ₹20,000/- each with one surety each in the like amount, under Section 437-A CrPC, binding them to appear before the High Court in the event the State files an appeal against this judgment, such bonds to remain in force for six months.

Additional Directions: The seized articles (if any) shall be dealt with in accordance with law and proper procedure (e.g. disposal or release, as applicable). The accused individuals are on bail. The bail bonds of the accused are cancelled, and sureties discharged.

Pronounced in open court on the 16th day of October, 2025.

(Chandroday Kumar)
Sessions Judge,
Ambedkar Nagar (U.P.).