

(2016) 10 AHC CK 0084

ALLAHABAD HIGH COURT

Case No: Criminal Appeal No. 3683 of 2008.

Surendra Nath Singh And Others
- Appellants @HASH State of U.P.

APPELLANT

Vs

RESPONDENT

Date of Decision: Oct. 21, 2016

Acts Referred:

- Penal Code, 1860 (IPC) - Section 147, Section 201, Section 302

Citation: (2017) 98 ACrC 429 : (2016) 11 ADJ 346 : (2017) 1 AllCrLRulings 84 : (2017) 1 AllJ 626

Hon'ble Judges: Bala Krishna Narayana and Arvind Kumar Mishra-I, JJ.

Bench: Division Bench

Advocate: B.N. Tiwari, Ajay Dubey, D.N.Pandey, Govind Saran Hajela, Lav Srivastava, P.S. Senger and Shashi Bhushan Kunwar, Advocates, for the Appellant; Govt. Advocate and I.K. Chaturvedi, Advocate, for the Respondent

Final Decision: Allowed

Judgement

Arvind Kumar Mishra, I, J. - Aforesaid two appeals arise out of common judgment passed in the Sessions Trial No.184 of 2003, State v. Surendra Nath Singh and others, therefore, both these appeals are being heard together and decided by this common order.

2. Heard Sri Kamal Krishna, learned Senior Advocate assisted by Sri Shashi Bhushan Kunwar, learned counsel for the appellants, Sri A.N. Mulla, Sri Sageer Ahmad and Smt. Manju Thakur, learned AGAs for the State and perused the record of this appeal.

3. By way of aforesaid two appeals the appellants have challenged judgment and order of conviction dated 31.5.2008 passed by the Special Judge/Additional Sessions Judge, Ballia in Sessions Trial No.184 of 2003, under Sections 147, 302, 201 IPC, Police Station Kotwali Shahar, District Ballia arising out of Case Crime No. 385 of

2001, whereby, the appellants, have been sentenced to one year imprisonment, each, under Section 147 IPC"; sentenced to imprisonment for life, coupled with fine Rs.5000/- with default stipulation for additional one year imprisonment under Section 302/149 IPC; 5 years imprisonment coupled with fine Rs.1000/- with default stipulation for two months additional imprisonment under Section 201 IPC.

4. Facts of the prosecution story as discernible from record appear to be that informant Achchhey Lal Giri son of Ram Sakal Giri resident of Gore Pokhar, Police Station Maniyer, District Ballia moved a written report addressed to Superintendent of Police, Ballia on 21.05.2001 alleging therein that his brother Suresh Giri is engaged in the work of contractor-ship, in the irrigation department. His brother Suresh Giri proceeded for Ballia on 14.05.2001 at about 8.00 a.m. from his village intimating the informant that he had some work in the Irrigation Department and he will also obtain his money from Babu Surendra Nath Singh son of Kashi Nath Singh of the Irrigation Department to whom he had earlier given some money. He also told that he would return till evening the same day, but he did not return till today i.e. up to 21.05.2001 which embarrassed the informant and his other family members. Condition of informant's brother is not normal because he has not informed about his condition (whereabout) to the family members. Therefore, information is being given for taking appropriate action. This written report is Exhibit Ka-2.

5. Contents of aforesaid report were taken down in the concerned General Diary of date 21.05.2001 at 2.20 p.m. at Police Station Kotwali. The relevant General Diary entry is Exhibit Ka-16.

6. Record also reflects that on 25.5.2001 one Chandra Bhan Giri son of Shivdas Giri, gave written information/application to the effect that the dead body of his cousin brother Suresh Giri, who was missing since 14.05.2001, has been found on the shore of river at Chandpur Ghat. Aforesaid contents were taken down in the General Diary of 25.05.2001 at Serial No.20 at 4.00 p.m. and information was given to the S.H.O. Kotwali through R.T. Set and the dead body was taken into possession/custody and the inquest for the same, was held on 25.5.2001, and it commenced around 4.00 p.m. In the opinion of inquest witnesses, it was suggested that dead body be sent for postmortem examination for ascertaining the real cause of death, therefore, necessary formalities were undergone and the relevant papers in that context, were prepared, which are photo-nash as Exhibit Ka-6, Specimen Seal Exhibit Ka-7, Police Form 13 Exhibit Ka-8, Letter to R.I. Exhibit Ka-9 and letter to CMO Exhibit Ka-10. Thereafter, the dead body was sent to the District Hospital, Ballia, for autopsy, where the Doctor G. Khan P.W.6, conducted autopsy. He noted following ante-mortem injuries on the cadaver of the deceased Suresh Giri:-

"Antemortem strangulation mark found in nature present on upper part of neck at head neck joint."

7. The time, since death, was stated to be more than one week, and in the opinion of the doctor, the cause of death was due to antemortem strangulation leading to asphyxia and death.
8. This postmortem report has been proved by Dr. G. Khan P.W.6 as Exhibit Ka-4.
9. Record further reflects that on information being received on 30.05.2001 by the Investigating Officer Gauri Shankar Arya P.W.8 that accused Surendra Nath Singh, has appeared in Court, the Investigating Officer, sought one day remand of accused Surendra Nath Singh on 04.06.2001, and after obtaining information from him reached at Kakarghatta Ghat around 5.00 p.m., where, the informant and other persons also arrived. Surendra Nath Singh pointed out in sandy and marshy water, some clothes purported to have been worn by the deceased Suresh Giri said to be "Kurta", "Pajama" and "Gamchha", which were lying over there, which clothes were identified by the informant and others, as clothes of deceased. A memo of the same was prepared by the Investigating Officer Gauri Shankar Arya P.W.8, which is Exhibit Ka-1. This recovery was effected on 04.06.2001. The site plan of this recovery memo exhibit Ka-14 has been proved by the Investigating Officer Gauri Shankar Arya P.W.8. The Investigating Officer also recorded statement of various witnesses, besides, doing other necessary work. He also prepared site plan of the place where dead body of Suresh Giri was found as Exhibit Ka-12. The Investigating Officer also prepared site plan of the place, where the deceased Suresh Giri, was stated to have been murdered inside the room of Surendra Nath Singh, which is Exhibit Ka-13.
10. After completing investigation, the Investigating Officer filed charge-sheet, Exhibit Ka-15 against the appellants under Sections 147, 302, 201 IPC.
11. Thereafter, the case of the appellants was committed to the Court of Sessions, from where, it was made over to the concerned trial court for conduction of trial and disposal.
12. The learned trial Judge heard the appellants on point of charge and found prima facie ground existing for framing charges under Sections 147, 302/149, 201 IPC, and accordingly, framed the charges vide order dated 24.3.2004. After framing charges under aforesaid sections of IPC, the same were read over and explained to the accused persons, who denied the charges and opted for trial.
13. The prosecution, in order to prove guilt of the accused examined as many as eight prosecution witnesses. Brief reference of the same is sketched herein under:-
14. Akshay Lal Giri PW-1 is the first informant, who moved application for disappearance of his brother-Suresh Giri. He has proved written report Exhibit Ka-2. Chandra Bhan Giri PW-2 is the witness of fact of identifying the dead body of Suresh Giri at the time of alleged recovery of the dead body. Manager Giri is PW-3. He is witness of fact and he is a clerk of some advocate and he also runs tea-stall near Zila Parishad Gate, Ballia. He has testified about fact that he saw the deceased in the

company of appellants on 14.5.2001 at about 5.00 P.M. at the shop near Panama Talkies. Chandra Shekhar Bhartiya is P.W.4. He was witness of fact that around 9 a.m. on 14.5.2001 he saw the deceased in a Maruti Car being accompanied by the accused persons. However, this witness has turned hostile and has been cross-examined by the prosecution. Akshay Kumar Singh is P.W.5. He is witness of fact that he participated in the "panchayat" that took place on 25.4.2001 near Panama Talkies. Dr. G. Khan is P.W.6. He has conducted autopsy on the dead body of deceased Suresh Giri and has proved postmortem examination report Exhibit Ka-4. S.I. Vijay Nath Tiwari is P.W.7. He has conducted inquest examination of deceased Suresh Giri and has prepared relevant papers and has proved the process undertaken by him. Gauri Shanker Arya is P.W.8. He is the Investigating Officer of this case and he has detailed the process undertaken by him for completing investigation of this case. He has filed charge-sheet Exhibit ka-15 and has also proved several other papers.

15. Thereafter evidence for the prosecution was closed and statement of accused persons was recorded under Section 313 Cr.P.C., wherein, they termed their implication false and submitted that there is no worthy testimony against them. It has been specifically stated that Suresh Giri the deceased use to participate in political activity of Rajdhari Singh-MLA of the area and the accused side opposed their political activity, therefore, they have been falsely roped in, in this case.

16. The learned trial court also recorded statement of Surendra Nath Singh and Preveen Kumar as CW-1 and CW-2, respectively, but the same has no relevance with the merit of this case because the statement relates to and was confined to point of juvenility of another co-accused, therefore, the same does not require any consideration at this stage. Defence has produced on its part, Jawahar Yadav D.W.1. He has testified about fact that he informed the police that he was Pradhan of his village Ramsher Garh and he informed about the dead body to the police. Thereafter Station Officer of the police station arrived at the spot, photographed the dead body, held inquest, and went away with the dead body. Ashok Kumar Upadhyay is D.W.2. He has also deposed on point that Suresh Giri was a Contractor of Irrigation Department and he used to work in other districts also apart from district Ballia. Ratan Kumar D.W.2 is witness of fact that no shop for paint ever existed near Panama Talkies.

17. Thereafter, the matter was posted for argument pros and cons between the parties and after considering the entire matter on its merit and on marshaling of facts and appraisal of evidenced so adduced, the learned trial court recorded aforesaid finding of conviction and imposed aforesaid sentences against the appellants.

18. Consequently, this appeal.

19. We have also considered the above submissions.

20. After weighing the entire factual and evidentiary material available on record and contemplating its nature and offshoots, the core consideration that arises for adjudication of this appeal, is confined to fact, as to whether, the prosecution has successfully established the chain of various circumstances, so complete as to brush aside, every hypothesis of innocence of the accused persons, pointing to only one and one thing that it were the accused and the accused persons alone, who committed the crime?

21. It has been claimed on behalf of the appellants that this case is based on circumstantial evidence and it is for the prosecution to prove and establish consistently the vital links of the chain of circumstances and if the chain of circumstances remains incomplete or there exists wide gap between the various vital links of the chain, which gives rise to possibility that apart from the accused persons other persons may also be the perpetrator of crime, then the outcome would be benefit of doubt to be given to the accused.

22. Learned counsel further contended that evidence brought on record must exclude every hypothesis of innocence of the accused and establish that it was the accused and accused alone who committed the crime. In this case, the last seen theory and motive for committing the crime, has not been proved. Not only this, the very identification of the dead body is dubious one. The recovery memo is full of legal infirmities. No copy of recovery memo Exhibit Ka-1 was ever handed over to the accused Surendra Nath Singh. The body itself was unidentifiable and this specific fact is established from the testimony of the doctor, who conducted autopsy on the dead body of deceased Suresh Giri. If the last seen theory, motive and recovery of dead body and the clothes worn by the deceased become dubious, then, no other thing will be counted in support of charge against the accused. In this case there are material contradictions in the statement of prosecution witnesses given before the trial court and given to the Investigating Officer under Section 161 Cr.P.C. The appeal is liable to be allowed.

23. Per contra, learned AGA has stated that all the links of the chain of circumstances including motive, last seen, recovery of dead body, recovery of clothes have been consistently proved and the chain is complete in itself, leaving aside every hypothesis of innocence of the accused. Evidence on record proves and establishes that the accused themselves have committed the offence to the exclusion of others, and the learned trial court has taken correct view of the evidence on record.

24. At the very onset, we notice that this is a case, which is based on circumstantial evidence. We are also conscious of fact that the present case is based on circumstantial evidence. It is boundant duty of the prosecution to complete the chain of circumstances in such a manner, as to point out only conclusion that it were the accused and accused persons alone, who committed the offence and there was no possibility that any person other than them, could have had committed such

offence. Law on the point is specific and well settled. Now, we have to look into the various circumstances, and we have to evaluate and appreciate the evidence and facts on record which may give thrust to the aforesaid premise both positive and negative, as to whether, the chain of the circumstances is complete or in-complete and if so its overall effect, we have before us, prosecution witnesses of fact five in number who are in all-Akshay Lal Giri P.W.1, Chandra Bhan P.W.2, Manager Giri P.W.3, Chandra Shekhar P.W.4 and Ajay Kumar P.W.5, rest of the prosecution witnesses are formal witnesses, therefore, testimony of aforesaid five prosecution witnesses of fact is quite relevant for assessing and evaluating exact position.

25. Here, in this case, the various circumstances, which require proof pertains to certain facts, which may be categorized for purpose of convenience by us.

Circumstances

(1) Evidence of fact that the deceased Suresh Giri left for Ballia on 14.5.2001 at 8 a.m. from his village Gore Pokher, Police Station Maniyer, (district Ballia) for city Ballia.

(2) That deceased was seen in the company of accused persons either on 14.5.2001 or afterwards till 21.5.2001 and thereafter, he was never seen in the company of any other person.

(3) Recovery of dead body and other material.

(4) Possibility of intrusion of any other person than the present accused persons, for committing the crime with conclusion that the accused alone committed the offence.

(5) Whether there is any gap or break in the aforesaid links of chain of circumstances.

Now, we may proceed with the facts and testimony available on record.

Akshay Lal P.W.1 is the brother of deceased. He has testified on factual aspect that his brother told him around 8 a.m on 14.5.2001 that he had to do some contractual work at Ballia and he has to take back money from Surendra Singh today. He also told him that he has to attend two marriage ceremonies at Ballia, therefore, possibility of his staying at Ballia is strongly felt and thereafter his brother left for Ballia. After elapse of 2-4 days when his brother did not return, this witness started searching for his whereabouts. He has further elaborated that his brother had lent Rs.60,000/- to Surendra Singh. When the efforts for searching could not succeed, a report was made to the police after elapse of 5-6 days, regarding disappearance of his brother, at police station Kotwali Ballia. However, it is admitted position in this case that no worthy paper regarding borrowing or lending transactions, in its original shape, has either been proved or presented for perusal of the Court. However, during trial one paper Exhibit Ka-3 purported to have an endorsement,

made by Surendra Nath Singh, the appellant, dated 25.4.2001 on stamped paper of Rs.20/-, has been moved, but, it is no where stated, as to when, this money was taken by Surendra Singh. Therefore, contention of the appellants to the effect that no worthy paper regarding appropriation or loaning transaction, has been proved by the prosecution, is upheld by us. This aspect of the case is vital for its reflection on the very motive, which was existing for committing the offence. May be that some loaning transaction was entered into, but it is obvious that no worthy paper whatsoever indicating/facilitating the loaning transaction, has been brought on record.

26. We may observe that in cases, like the present one based on circumstantial evidence, motive assumes greater importance in comparison to other cases, which are not based on circumstantial evidence. Here, the very motive behind the crime is stated to be lending of money Rs.60,000/- by Suresh Giri-the deceased to the accused Surendra Nath Singh. More-so, no such statement was recorded by the Investigating Officer Gauri Shanker Arya that any loaning transaction was ever entered on paper also. In this context, we may also observe that no such description regarding any panchayat held on 25.4.2001 has been made in the information Exhibit Ka-2. There is no description in the FIR that Rs. 60,000/- is to be obtained by the deceased Suresh Giri from accused Surendra Nath Singh. On the point of holding of Panchayat P.W.5 Ajay Kumar Singh has been produced. He has stated in his examination-in-chief that he was informed about holding of some Panchayat meeting by deceased Suresh Giri himself that today i.e. on 25.4.2001, Panchayat meeting will take place near Panama Talkies and he was required to remain present. The paper was executed in proof of loaning transaction on Rs.20 stamped paper. Pradeep Singh first endorsed on it and thereafter this witness also appended his endorsement on it. But he has also stated that Surendra Nath Singh and Suresh Giri did not make any endorsement on it in his presence. He has proved this paper as Exhibit Ka-3.

27. In this view of the matter, it is obvious that the executant of this paper Surendra Nath Singh did not append his signature on this paper Exhibit Ka-3 before Ajay Kumar Singh P.W.-5. This witness also express his ignorance about the fact, as to who wrote such words on this paper, and this witness went to the extent that he only made his endorsement on the paper because Pradeep Kumar had also made his signature on this paper and said that after appending his signature on this paper he went to his home. In this way, it is obvious that the entire process exercised before this witness in the context of Exhibit Ka-3 does not yield any worthy legal consequence and instead the paper loses its legal significance and the contents of Exhibit Ka-3 cannot be read in evidence as such. This witness has been confronted with glaring contradictions appearing in his testimony as given in the Court with the statement recorded under Section 161 Cr.P.C. and this witness could not assign any reason for such apparent contradictions. This witness was the only witness produced by the prosecution to prove motive part of this case, which on the above

scrutiny of facts and evidence, becomes obliterated, per se.

28. Now we may move on to another essential link of chain of circumstances, which relates to the fact of last seen when the accused were sighted with the company of deceased Suresh Giri. On point of last seen, we have testimony of Manager Giri P.W.3. He has stated in his examination-in-chief that he cannot say as to how Suresh Giri died. However, he has stated that accused Surendra Singh runs shop of paints near Panama Talkies and he is also employed in Irrigation Department and this witness is court "moharrir". On 14.5.2001, he saw Suresh Giri in the shop of Surendra Nath around 5.00 p.m. Besides Surendra Singh, his son Praveen Singh and his relative Dhananjay Singh his servant Gopal and his wife Shiv Kumar were also present in the shop and some conversation was going on between them in respect of loaning transaction (of Rs.60,000/-). Wife of Surendra Singh said that Rs.60,000/- will be given if he comes to their home and thereafter all the persons present departed for the house (of Surendra Singh) and this witness has further testified that he had gone to some PCO for giving telephonic call. In his cross-examination he has further testified that he works in the court as Moharir right from 10 a.m. to 4 p.m. daily and thereafter he runs his tea shop near gate of Zila Parishad. He has admitted in his cross-examination that Telephone Department is located beside Zila Parishad and there is telephonic facility, made available for the public and the counter of the same has also been made. He has stated that he had to give telephonic call to advocate Awadhesh Tiwari. He has further elaborated that one client Rajendra Giri was to institute a new case and for which necessary enquiry was sought but no such case has been instituted till date. He has further testified that he tried for about 20 minutes but the phone was not connected to Awadhesh Tiwari's phone. This Telephonic call was given by this witness from a local PCO, which is located near shop of Surendra Nath Singh. We have carefully scanned the remaining part of his cross-examination, wherein facts have been abundantly and specifically proved and also admitted to the ambit that to the ambit a number of PCOs for making telephonic call near and around the tea shop of this witness at the gate of Zila Parishad, Ballia and in the vicinity of Zila Parishad, but this witness could not assign any worthy reason as to how and why this witness instead of utilising services of nearby telephone booths, rushed to another public booth near Panama Talkies in the vicinity of Surendra Singh shop. It appears that this story was devised in order to assert fact that he heard wife of Surendra Singh saying to Suresh Giri that Rs.60,000/- will be given to him if he comes to their house. It is highly improbable that a person who is busy in giving telephonic call in a PCO, would also hear all the details of negotiation, which is going on in a secluded shop. For these specific reasons, we cannot believe such sketchy testimony on its face value, instead we are unable to hold that the witness is wholly reliable on the point of presence of deceased in such a shop at 5.00 P.M. on 14.5.2013. We have also waded through the record but we could not come across any specific testimony on the point of establishing fact of running of any shop of paint by Surendra Nath Singh. No factual

testimony whatsoever, has come forth, which may inspire confidence giving rise to possibility of running of such a shop. Therefore, the testimony of P.W.3 Manager Giri specifically on the point of last seen becomes irrelevant and wholly unreliable. Thus cumulative outcome of testimony of this witness, renders his testimony sketchy improved one and full of improbabilities and contradictions which terms his testimony not reliable.

29. Now, it would be appropriate to have discussion on another vital aspect of this case, which relates to fact of discovery of dead body and its identification by the witnesses. Particular testimony in this regard has emerged from the testimony of Chandra Bhan Giri P.W.2. He has stated in his examination-in-chief that he identified dead body of Suresh Giri, which was recovered from Chandpur Ghat. He deposed that he identified the body after watching the same very closely. He further deposed that besides him, Jumni Giri, Tarkeshwar Giri and Janardan Giri were also present over there. He further stated that on 4th June 2001, clothes of deceased were also recovered. He has stated that these clothes so recovered are "Kurta", "Payjama" and "Gamacha"- which were recovered at the pointing out of Suresh Singh. These clothes were given by Surendra Singh after picking them from the sandy waters/soil and he has supported preparation of recovery memo of clothes Exhibit Ka-1. We, without entering into other details of Exhibit Ka-1, the recovery memo, are of opinion that this document loses its legal force for the reason that the memo itself is silent on particular aspect of its copy being handed over to the accused and no such statement contained in this document Exhibit ka-1. One of the prosecution witnesses has said that when he arrived on the recovery spot, he saw Surendra Singh carrying "Gamacha" in his hand. The Investigating Officer Gauri Shanker Arya P.W.8, has stated in examination-in-chief appearing on page-37 of the paper book that after obtaining signature of accused Surendra Singh, a copy of the recovery memo was handed over to the accused. On what base, handing over of the copy of recovery memo to the accused is reasonably proved, has not been satisfactorily explained. More so, this recovery was made only on 4.6.2001 and till then the clothes were, though allegedly placed under sandy water, remained lying over there on that spot, right from 14.5.2001 till 4.6.2001, is well thought out process and the same is highly improbable story, to be believed at this stage. It would be appropriate to take note of testimony of the doctor witness G. Khan P.W.6. He has stated in his cross-examination in answer to specific question put to him about duration of postmortem examination from the time of possible death, then the doctor has stated in the last line of his testimony, in answer to the specific query that "yes" this duration may exceed one month's period. Not only this, he has also stated in his cross-examination that the skin of the dead body had peeled off from the different parts of the body and it was not possible to identify the dead body. We also notice that there are glaring contradictions on the point of identification of the dead body of Suresh Giri because there is no detailed description of the clothes which the deceased worn at the time when he left his house on 14.5.2001 around

8.00 a.m. Testimony on record, unambiguously establishes that photograph of the dead body was snapped but the same was never exhibited before the trial court so that identity of dead body could not be evaluated and assessed properly.

30. We on careful perusal of Exhibit ka-2, the written information do not come across any sort of description of deceased and his clothes, therefore, recovery of clothes as well as the dead body, under circumstances of this case, becomes dubious and cannot be accorded judicial sanction but on the contrary the fact of two specific recoveries of clothes and dead body are to be disapproved by us.

31. The contention raised in this regard on behalf of the appellants carries force and the same is sustained by us. This being a case based on circumstantial evidence, it was incumbent upon the prosecution to have established beyond doubt each link of the chain of circumstances from which conclusion of guilt must and should be drawn and any conclusion inconsistent with the guilt of the accused, would not serve the interest of justice and would be viewed adversely and benefit of doubt will always go to the accused.

32. Here, the various links in the chain of circumstances brought before the trial court, cannot be said to be consistently established and cannot be said to be inspiring confidence for excluding the hypothesis of the innocence of the accused. The hypothesis of guilt should be firmly established which in turn negates every possibility for the intrusion of any other person being the perpetrator of the crime-apart from the appellants. Here, we may observe that the various links of circumstances in the chain are not of conclusive nature and tendency and they suffer from inherent infirmities creating lot of gap between one vital link to another vital link of the chain and the chain of circumstances must be complete and should not leave any reasonable ground for drawing conclusion, consistent with the innocence of the accused and must show that in all human probability, the act has been done by the accused and accused alone. In this context, we have been vigorously persuaded by the appellants by floating argument that the circumstances are not conclusive in nature and the possibility of hypothesis of guilt of the accused and accused only to the exclusion of all other persons, has not been established in all human probability, that the accused and accused persons alone committed the crime and the learned counsel for the appellants has placed reliance on the case of **Sharad Birdhichand Sardar v. State of Maharashtra (1984) 4 SCC Page 116.**

33. In view of the discussion made herein above, we find that arguments advanced on behalf of the appellants, carry force and the same are sustained by us. One more aspect of this case is that Chandra Shakher Bhartiya P.W.4, who was witness of fact that in the morning hours of 14.5.2001 deceased was seen in the company of accused persons in a Maruti Car, but this witness has flatly denied having seen any such thing and he has been declared hostile by the prosecution and in his cross-examination, nothing substantial has emerged out. This witness has not supported claim of the prosecution. There were other witnesses of last seen

say-Subhas Yadav, Nandji Ram and Arvind but they have not been examined. The learned trial court could not address properly to the vital and specific circumstances of this case on the basis of material available on record and it only took parochial view of the case, and found the various links in from of circumstances to be conclusive and brushing aside every hypothesis of innocence of the accused persons, which on the face of it, is erroneous, perverse and which is liable to be set aside by us in this appeal, for the reason that there is wide gap between vital links of the chain of circumstances on crucial points and issues. In this view of the matter, it would not be desirable to enter into other ancillary aspect of this case right from the beginning up to the end as various circumstances of the chain have not been coherently established.

34. In the backdrop of aforesaid discussion, we are fully convinced that the prosecution has not been able to establish all links in the chain of circumstances and the chain remained incomplete. Learned trial court while appraising evidence and marshaling facts on record misread the evidence and based its conviction more on whims and imagination than on evidence on record, leaving aside the guiding principles to be applied in cases based on circumstantial evidence. In case evidence and circumstances of the case allude to alternative way to alternative hypothesis and give rise to possibility that the perpetrator of the crime can be another person also than the accused then benefit of doubt should and must be given to the accused persons.

35. Consequently, judgment and order of conviction dated 31.5.2008 passed by Special Judge/Additional Sessions Judge, Ballia in Sessions Trial No.184 of 2003, under Sections 147, 302/149, 201 IPC, Police Station Kotwali Shahar, District Ballia arising out of Case Crime No.385 of 2001 is hereby set aside and the aforesaid appeals are allowed. Accused-appellants are acquitted of all charges as above.

36. In this case, the accused-appellants are already on bail. They need not surrender in this case. Their bail bonds are cancelled and sureties are discharged. However, they shall furnish surety bonds in compliance with Section 437-A Cr.P.C.

37. Let a copy of this order be certified to the concerned trial court for its intimation and follow up action.