SURAJDEO MAHTO AND ANR. A

v.

THE STATE OF BIHAR

(Criminal Appeal No. 1677 of 2011)

AUGUST 04, 2021 B

[N. V. RAMANA, CJI, SURYA KANT AND ANIRUDDHA BOSE, JJ.]

Evidence: Circumstantial evidence – Conviction on basis of – Permissibility of – On facts, prosecution case that appellant no. 1 lured the victim out of his house, remained with him all along, on the fourth day joined by appellant no. 2 thereafter, both conspired and murdered the victim – Conviction of appellant no. 1 and 2, u/s. 302 r/w 34 and 120B and sentenced accordingly – Appellant no. 1 also convicted u/s. 364 – Upheld by the High Court – On appeal, held: Upon considering the prosecution evidence in entirety, no reason to disbelieve the prosecution version of last seen theory against the accused – Medical evidence fully corroborates the prosecution story of murder of the victim having being taken place on the fourth day – Motive attributed to the appellants that they murdered the victim because he was allegedly having an illicit affair with the sister of appellant No.1, sufficiently proved by the prosecution – False information given by appellant No.1 and his post occurrence conduct of absconding and surrendering before the court only after coercive measures were taken, is relevant to prove an additional link in the chain of incriminating circumstances – As regard, appellant No.2, only substantial evidence against him is that he too was seen in the company of the victim and appellant No.1 on the fourth day – Mere suspicion cannot be accepted as impeccable evidence to prove his guilt beyond any doubt – Further, no allegation against appellant No.2 of being evasive or absconding post occurrence levelled – Thus, due to missing links in the prosecution case as regards 2nd Appellant, guilt of 2nd Appellant not proved beyond the pale of doubt – Thus, 2nd Appellant entitled to the benefit of doubt and is acquitted of the charges, while the conviction and sentence of appellant No.1 is upheld – Penal Code, 1860 – u/s. 302 r/w 34 and ss.120B and 364. C D E F G H

A *Principle of 'Last seen theory' - Explained.*

Motive – Proof of – Important piece of corroborative evidence – Explained.

Juvenile Justice (Care and Protection of Children) Act, 2000: s. 7A – Juvenility – Plea of – Held: Initial onus is on the accused to produce some cogent evidence to prima facie establish the juvenility on the date of commission of the offence – On facts, 1st Appellant raised plea of juvenility for the first time before this Court – Documents relied upon by 1st Appellant-School Leaving Certificate and Admit Card issued by the School Examination Board do not inspire any confidence and is not possible to verify the veracity of the two documents at this highly belated stage – Plea of juvenility raised by the 1st Appellant is rejected.

Partly allowing the appeal, the Court

HELD: 1. Although the powers vested in this Court under Article 136 of the Constitution are wide, this Court in a criminal appeal by special leave will ordinarily loath to enter into a fresh re-appraisement of evidence and question the credibility of witnesses when there is a concurrent finding of fact, save for certain exceptional circumstances. While it is difficult to lay down a rule of universal application, it has been affirmed time and again that except where the assessment of the High Court is vitiated by an error of law or procedure, or is based on misreading of evidence, or is inconsistent with the evidence and thus has led to a perverse finding, this Court would refrain from interfering with the findings of the Courts below. [Para 25][928-C-E]

2.1 The case of the prosecution in the instant case heavily banks upon the principle of 'Last seen theory'. The last seen theory is applied where the time interval between the point of when the accused and the deceased were last seen together, and when the victim is found dead, is so small that the possibility of any other person other than the accused being the perpetrator of crime becomes impossible. The fact of last seen should not be weighed in isolation or be segregated from the other evidence led by the prosecution. The last seen theory should rather be applied taking into account the case of the prosecution in its

entirety. Hence, the Courts have to not only consider the factum of last seen, but also have to keep in mind the circumstances that preceded and followed from the point of the deceased being so last seen in the presence of the accused. [Para 29, 30][929-F-G; 930-E-F]

2.2 The prosecution in the instant case undoubtedly established that the deceased was last seen alive in the company of the appellants, and has also adduced evidence about the events leading up to and following the point of last seen. The depositions of PW-2, PW-3A, PW-16 and PW-17 do suggest that prior to the point of last seen, the deceased was constantly in the company of Appellant No.1. PW-3 and PW-4 are the persons who lastly saw the deceased alive on 09.04.1987, and they categorically deposed that they had seen the deceased along with the appellants. Through the depositions of PW-1, PW-5, & PWs 10 to 14 the prosecution has attempted to shed light on the events that occurred post the point of last seen. [Para 31][930-F-H]

2.3 The submission that most of the prosecution witnesses were either related or close to the complainant party and their testimony could not be relied upon in the absence of corroboration by any independent witnesses, is without much substance. It is trite in law that the job of the prosecution is to put forth the best evidence that is collected during the investigation. Although it is ideal that the prosecution case is further substantiated through independent witnesses, but it would be unreasonable to expect the presence of third-parties in every case. The prosecution's case cannot be discarded merely on a bald plea of all witnesses being related to the complainant party. Hence, in order to draw an adverse inference against the non-examination of independent witnesses, it must also be shown that though the best evidence was available, but it was withheld by the prosecution. That apart, PW-3 saw A and the appellants on the outskirts of the village, whereas, PW-4 saw A and the appellants inside appellant No.2's house. Neither of these witnesses claim to have seen the deceased and the appellants at a public place. Thus, it would not be illogical to infer that there was no independent witness to this occurrence. Further, the deposition of both PW-3 and PW-4 seems

natural and nothing has been adduced in their cross-examination to disbelieve their testimonies. [Para 32, 33][931-A-E]

2.4 The appellants submitted that even if the deposition of PW-3 was considered true, he had seen A in the company of the appellants on 09.04.1987, which was two days before the discovery of the dead body. It was, thus, submitted that the intervening time period between the two events could not rule out the possibility of intervention by a third party and as such there wasn't a continuous chain of circumstances. While this submission seems attractive at the first instance, but, when considered in the light of testimonies made by the independent witnesses PW-6 and PW-8, it stands completely belied. The prosecution case is that both the appellants committed the murder on the night of 09.04.1987. PW-8, who discovered the body of A on 11.04.1987, deposed that he had heard rumors about the dead body the previous night itself, however, on account of it being dark and a forested area, he was only able to proceed to the spot the next day. Given that the body was lying on the spot at least since 10.04.1987, the instant crime could have been committed on or before 10.04.1987. The medical evidence in the instant case further braces the prosecution story. PW-6, the Doctor, examined the body of the deceased on 12.04.1987. In his opinion, the time elapsed since the death of A was 36 to 72 hours. Thus, the medical evidence fully corroborates the prosecution story of the murder having being taken place on 09.04.1987. The Courts below held that the murder of the deceased indeed took place on 09.04.1987. There is no reason to take a contrary view. [Para 34][931-E-H; 932-A-B]

2.5 Appellant No.1 has been unable to offer any explanation as to circumstances in which he departed from the company of the deceased. [Para 35][932-D]

2.6 As regard to the reliability of the depositions of PW-10 to PW-14, the primary submission is that except PW-12, none of the other witnesses were able to identify the present appellants; and that the testimony of PW- 12 seems doubtful as it was highly improbable that the witness was able to see appellant No.2 through the light of a lamp. Assuming that the depositions of PW-10,

PW-11, PW-13 and PW-14 do not add much value to the case in hand, the question whether PW-12 could or could not identify appellant No.2 is purely a factual issue and courts below have taken a concurrent view in relation thereto. PW-12 was able to identify appellant No.2 because of the chicken-pox marks on his face. Even in the initial statement recorded by the police, PW-12 had maintained that one of the two persons who he had interacted with on the night of 09.04.1987, had chicken-pox scars on his face. [Para 36][932-D-G]

2.7 Upon considering the prosecution evidence in its entirety and having meditated on the grounds raised by the appellants to every possible extent, there is no reason to disbelieve the prosecution version of last seen theory against the appellants. [Para 37][932-G-H]

3.1 If motive in a case is attributed to an accused(s) and thereafter proved, the probability of the crime being committed by the said accused is intensified. It is for this reason, that in cases of overwhelming circumstantial evidence, proof of motive will be an important piece of corroborative evidence, as well as, form a vital link in the chain of evidence. [Para 38][933-A-B]

3.2 The motive attributed to the appellants in this case is that they murdered the deceased because he was allegedly having an illicit affair with 'R', sister of appellant No.1. While none of the witnesses have specifically deposed about the deceased having an affair with R, the motive, as alleged, does find some corroboration in the deposition of PW- 1, PW-3A, and PW-16. It is revealed from the testimony of PW-3A, that initially there were cordial and friendly relations between the 1st Appellant and deceased's family but the same became sour after the month of February. PW-1 who is a fellow villager corroborated the testimonies of PW-3A. PW-16 categorically deposed that a Panchayat had been called in regards to the illicit relationship of the deceased with 'R'. [Para 39][933-B-D]

4.1 The fact of the deceased having an affair with the sister of appellant No.1 has of course not been established beyond doubt but the factum of calling Panchayat so that the issue does not

spiral out of control does suggest that appellant No.1 carried a motive to eliminate the deceased. The events had occurred in the year 1987, when the rural Indian society was irrepressibly conservative, and even the slightest rumor of extra- marital affairs could flare-up tensions. Considering these ground realities, the trial court correctly recorded that the motive as alleged had been sufficiently proved by the prosecution. The counsel for appellants has not mounted any substantial challenge on the point of motive, and as such, there is no reason to interfere with the indictment of appellant No.1 on the point of motive. [Para 40][933-D-G]

4.2 Both the witnesses PW-1 and PW-5 individually met appellant No.1 on 10.04.1987 and both of them enquired about the whereabouts of A. Appellant No.1 lied to PW-1 and told him that after viewing the Cinema, A alone had proceeded to Amwa whereas appellant No.2 had gone to visit Dopta. Even more curiously, appellant No.1 informed PW-5 that A had left for Delhi. It is clear that the false information provided by the first appellant was an attempt to hide his guilt by de-railing the search efforts that were being conducted. Appellant No.1 thereafter absconded and surrendered before the court only after coercive measures were taken. The false information given by appellant No.1 and his post occurrence conduct is relevant to prove an additional link in the chain of incriminating circumstances. [Para 41][933-G-H; 934-A-C]

4.3 There is, however, a qualitative difference in the evidence led by the prosecution to prove charges against Appellant No.2. The prosecution's case is that it was the 1st Appellant who allured the deceased and persuaded him to accompany the said appellant to watch cinema. It is neither their case nor have the prosecution witnesses deposed that appellant No. 2 was involved in the persuasive abduction of the deceased from his house on 05.04.1987. This has to be seen in the context of motive behind the offence. It is proved on record that the 1st Appellant had an axe to grind against the deceased who was allegedly having illicit relationship with his sister. There is no motive alleged or proved which would have swayed appellant No. 2 to commit murder of the deceased. Still further, prosecution

has led no evidence that there was any meeting of mind between the 1st and the 2nd Appellant on or before 08.04.1987, or that they hatched any conspiracy together to commit the murder of A. There is also no evidence on record to suggest that appellant No.1 disclosed his intention to commit murder of deceased to the 2nd appellant. [Para 42][934-C-F]

4.4 It is true that the prosecution has led evidence comprising the statements of PW-3 and PW-4 who had lastly seen the deceased alive on 09.04.1987 in the company of the 1st and the 2nd Appellants. However, until and unless the last seen theory is substantiated by other circumstantial evidence to constitute an unbreakable chain of events, the conviction cannot rest solely on the basis that the 2nd Appellant was also present along with appellant No.1 in the company of the deceased when they were seen together on 09.04.1987. [Para 43][934-F-G]

4.5 It is pertinent to mention that some incriminating material consisting of one pair of slippers, one handkerchief, a knife, jerrycan and two lungis were found and seized at the place of occurrence. While PW-16, namely, father of the deceased has identified one of the seized lungis belonging to appellant No.1, none of the recovered articles have been attributed to the 2nd Appellant. The only substantial evidence against the 2nd Appellant is that he too was in the company of the deceased and appellant No.1 on 09.04.1987, i.e., they were seen together lastly. Even if it is presumed that the deposition of PW-12 identifying appellant No.2 on the night of 09.04.1987 to be true, such evidence, may create a strong suspicion in respect of involvement of the 2nd Appellant in the murder of the deceased, but then, mere suspicion cannot be accepted as impeccable evidence to prove his guilt beyond any doubt. [Para 44][934-H; 935-A-C]

4.6 There is post occurrence circumstantial evidence led against appellant No.1, namely, that he did not disclose the whereabouts of the deceased and then surreptitiously disappeared from the scene till he surrendered in Court. There is no such allegation of being evasive or absconding post occurrence levelled against appellant No.2. There are, thus, missing links in the

prosecution case so far as the 2nd Appellant is concerned. Consequently, and for the reasons, the case of Appellant No.2 is distinguishable from that of Appellant No.1 and the prosecution has not been able to prove the guilt of 2nd Appellant beyond the pale of doubt. The 2nd Appellant is, thus, entitled to the benefit of doubt. [Para 45][935-C-E]

5.1 Section 7-A of Juvenile Justice (Care and Protection of Children) Act, 2000 sets out the procedure to be followed by a court to determine the claim of juvenility. Its proviso enables to raise the claim of juvenility before "any court" and at "any stage", even after the final disposal of the case. However, in order to take advantage of the provision, there lies an initial onus on the accused to produce some cogent evidence to *prima facie* establish the juvenility on the date of commission of the offence. [Para 46][935-E-F]

5.2 The 1st Appellant raised plea of juvenility for the first time before this Court. He has placed a School Leaving Certificate along with an Admit Card issued by the Bihar School Examination Board, wherein, appellant No.1's date of birth is claimed to be 01.03.1970. It has been asserted that the 1st Appellant was 17 years old at the time of occurrence. When the documents relied upon by 1st Appellant are analysed in the backdrop of these settled principles, the same do not inspire any confidence. The name of appellant No.1 does not appear on the documents, instead these belong to one 'SP'. It is nearly impossible to verify the veracity of the two documents relied upon by appellant No.1 at this highly belated stage. Further, the record of the trial court does suggest that the name of the 1st Appellant is 'SM' and not 'SP'. In the absence of any cogent material indicating that the subject-documents pertain to 1st Appellant only, no case to hold any fact-finding enquiry is made out. Consequently, reliance on the documents in question is not accepted and the plea of juvenility raised by the 1st Appellant is rejected. [Para 48][935-G-H; 936-E-G]

6. While the conviction and sentence of Appellant No.1 is upheld, the 2nd Appellant is acquitted of the charges. [Para 49][936-G-H]

Abuzar Hossain alias Gulam Hossain v. State of West Bengal **(2012) 10 SCC 489 : [2012] 9 SCR 244;** *Inspector of Police, Tamil Nadu v. John David* **(2011) 5 SCC 509 : [2011] 7 SCR 354;** *State of Rajasthan v. Kashi Ram* **(2006) 12 SCC 254 : [2006] 8 Suppl. SCR 501;** *Sukhar v. State of U.P.* **(1999) 9 SCC 507 : [1999] 3 Suppl. SCR 314;** *Badruddin Rukonddim Karpude v. State of Maharashtra* **(1981) Supp SCC 1;** *Ravinder Singh Gorkhi v. State of U.P.* **(2006) 5 SCC 584 : [2006] 2 Suppl. SCR 615;** *Sharad Birdhichand Sarda v. State of Maharashtra* **(1984) 4 SCC 116 : [1985] 1 SCR 88;** *Mohd. Younus Ali Tarafdar v. State of W.B.* **(2020) 3 SCC 747;** *R. Damodaran v. State Represented by the Inspector of Police* **(2021) SCC OnLine SC 134;** *Satpal v. State of Haryana* **(2018) 6 SCC 610 – referred to.**

Case Law Reference

[2012] 9 SCR 244	**referred to**	**Para 20**
[2011] 7 SCR 354	**referred to**	**Para 21**
[2006] 8 Suppl.SCR 501	**referred to**	**Para 21**
[1999] 3 Suppl. SCR 314	**referred to**	**Para 22**
(1981) Supp SCC 1	**referred to**	**Para 22**
[2006] 2 Suppl. SCR 615	**referred to**	**Para 23**
[1985] 1 SCR 88	**referred to**	**Para 27**
(2020) 3 SCC 747	**referred to**	**Para 27**
(2018) 6 SCC 610	**referred to**	**Para 29**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1677 of 2021.

From the Judgment and Order dated 20.05.2010 of the High Court of Judicature at Patna in Criminal Appeal No.273 of 1988.

Ms. Prerna Singh, T. Mahipal, Advs. for the Appellants.

Abhinav Mukerji, Mrs. Bihu Sharma, Ms. Pratishtha Vij, Advs. for the Respondent.

A The Judgment of the Court was delivered by

SURYA KANT, J.

1. Surajdeo Mahto (Appellant No.1) and Prakash Mahto (Appellant No.2) have laid challenge to the judgment dated 20.05.2010 passed by the High Court at Patna, whereby, the order of their conviction
B and sentence dated 13.05.1988 passed by the 3rd Additional Sessions Judge, Nawadah was confirmed. Both the Appellants have been convicted for offences under Section 302 read with section 34 of the Indian Penal Code [in short, "IPC"] read with Section 120-B of the IPC and have been sentenced to life imprisonment for each of the offences. Additionally,
C Appellant No.1 has also been convicted under section 364 IPC and has been sentenced to five years of imprisonment for the said offence, with a direction that the sentences will run concurrently.

FACTS

2. The prosecution case, in brief, is that on 05.04.1987, Arun
D (deceased) and Sunder Prasad (PW-17) were putting up in Arun's house at Manawan village when Surajdeo Mahto (Appellant No.1) and Raj Kumar approached Arun and asked him to accompany them to the Cinema at Nawada village. While Arun was reluctant initially to accompany them, he eventually agreed when Appellant No.1 volunteered to bear the
E expenses. Upon Arun's request, Sunder Prasad (PW-17) also agreed to go along with them to the Cinema. After the show, Raj Kumar and Sunder Prasad returned to Manawan village on 06.04.1987 whereas Arun and Surajdeo Mahto did not come back with them. As Arun did not return, Ramji Mahto (father of Arun; PW-16) enquired from Raj Kumar who told him that Arun and Surajdeo Mahto had gone to Arun's in-laws'
F place in Amwa village.

3. A few more days passed and Arun had not yet returned home, Arun's worried family, therefore, sent Raj Kumar to bring him back. Ramji Mahto also requested his fellow villager Kailash Mahto (PW-1) to join him in looking for Arun. They found out that Surajdeo Mahto and
G Arun had visited the latter's in-laws' place on 06.04.1987 and stayed there till 08.04.1987. It was further discovered that the duo had then proceeded to Dopta village wherein Appellant No.1's sister was married. Thereafter, Appellant No.1 returned to his village Manawan on 10.04.1987, but whereabouts of Arun were still unknown. When asked,
H Appellant No.1 did not provide any credible information about Arun,

instead, he too disappeared and was not seen for the next few days. Pursuant to Ramji's request, PW-1 visited Dopta on 10.04.1987 but he too was unable to track down Arun. Since Arun was still untraceable, Ramji Mahto, through his nephew Ishwari Mahto (PW-3A), sent information to the Police, which culminated in the lodging of Sanha Entry No. 227, dated 11.04.1987.

4. In the meantime, Ram Brikch Paswan (PW-8), Chowkidar, Circle No. 7, heard rumours of a dead body in Ram Sagar Ahar (Reservoir) near Kakolat. On 11.04.1987, he proceeded to the spot and discovered the dead body. He also found an iron dagger and two lungis near the body. The statement of Ram Brikch Paswan was subsequently recorded by the police and treated as a Fardbeyan. Thereafter, Ramchandra Singh (PW-18), Officer-In-charge, Govindpur Police Station reached the spot and prepared the inquest report in the presence of witnesses. Upon inspecting the place of occurrence, additional material such as one pair of slippers, one handkerchief, a knife and a jerrycan made of plastic were also discovered and seized. A seizure list was prepared in the presence of witnesses. The dead body was then sent for post mortem examination.

5. On 12.04.1987, Ramji Mahto (PW-16) received information that a dead body of a male person was brought in by the Govindpur Police Station. Subsequently, Ramji Mahto along with some co-villagers went to the Police Station and identified that the dead body was that of his son Arun.

6. The investigation then proceeded in light of the above-stated facts, and upon collection of substantial evidence, a charge sheet was filed against Surajdeo Mahto (Appellant No.1), Prakash Mahto (Appellant No.2), Chando Mahto, Shankar Mahto and Raj Kumar Mahto. The case was committed to the court of 3rd Additional Sessions Judge, Nawadah and charges were framed against the accused persons for offences under sections 364, 120-B and 302 read with section 34 of the IPC. The accused persons abjured their guilt and claimed trial.

7. In the eventual trial, a total of 18 witnesses were examined by the prosecution. No documentary evidence was relied upon by the prosecution. The case of the prosecution rested heavily upon circumstantial evidence, including deposition of Ramji Mahto (PW-16), father of the deceased. PW-16 in his deposition alleged that Surajdeo

A Mahto (Appellant No.1) had lured the deceased away on the pretext of watching cinema on 05.04.1987. PW-16 deposed that "***Arun told him that he was not ready to go. Surajdeo told him that he will bear the cost. Thereafter on being pressurized by Surajdeo, Arun went out with Surajdeo, Raj Kumar and Sunder***". PW-16 also deposed that it was at his instance that Ishwari Mahto (PW-3A) went and informed the B police on 11.04.1987 about Arun's disappearance, and on 12.04.1987 he visited Govindpur Police Station and identified the dead body of Arun. PW-16 further identified one of the seized lungis belonging to Suarjdeo Mahto (Appellant No.1). The cross-examination of PW-16 also brought to light the motive attributed to the accused persons: the relations between C the parties were strained after a Panchayati (village meeting) had been held in connection with the illicit relationship of the deceased with the sister of Appellant No.1.

8. Likewise, Ishwari Mahto (PW-3A) deposed that he had last seen Arun in the company of Appellant No.1, Raj Kumar and Sundar on D 05.04.1987, and he was informed by Appellant No.1 that they were going to see the cinema. Ishwari Mahto further shed light on the feud between the parties and he stated that "***Previously the families of Surajdeo and Arun had visiting and dining terms with each other, but it stopped after the month of Magh".*** Sunder Prasad (PW-17) corroborated the deposition of PW-16, and stated that Appellant No.1 E pressurized Arun to accompany him and Raj Kumar to watch Cinema. PW-17 also deposed to accompanying Appellant No.1, Arun and Raj Kumar to the Cinema and further revealed that after the Cinema, instead of returning back to their village, Appellant No.1 forced the group to visit Kumbhrawan village. PW-17 stated that upon Appellant No.1's F insistence, they spent the night in Prakash Mahto's house (Brother-in law of Surajdeo; Appellant No.1). The next day, i.e., 06.04.1987, when PW-17 insisted on returning back to the village, Surajdeo Mahto (Appellant No.1) informed him that he and Arun will be visiting Amwa Village.

G 9. Dilkeshwar Mahto (PW-2), Arun's father-in-law, deposed that Arun and Appellant No.1 visited his house in Amwa Village on the evening of 06.04.1987 and stayed there till 08.04.1987. He further deposed that "***On Wednesday, I asked Arun and Surajdeo insistently to stay further, but Surajdeo did not agree and took Arun with him saying that they had to go Dopta***."

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10. Bipat Mahto (PW-4), deposed that on Thursday, i.e., 09.04.1987, he received information from his grandson that Arun was in Kumbhrawan village and was staying at the house of Prakash Mahto (Appellant No.2). Since PW-4 was Arun's uncle and also resided in the same village, he and his wife went to invite Arun to their place. He stated, "***We met Arun, Prakash and Surajdeo at that place. I invited Arun to come to my place and take meal there. Prakash told me that he had arranged food for them, hence they would go after taking meal at his place***." He further stated that despite Appellant No.2's assurance, Arun did not come to their place. Later, when PW-4's wife went again to call Arun, she was informed by Appellant No.2's wife that Arun had gone back. Sheodani Mahto (PW-3), who is the son of PW-4 and the cousin of the deceased, also deposed about the presence of Arun in Kumbhrawan village on 09.04.1987. According to him, when he was returning back to the village, he saw Arun on the outskirts of the village in the company of Surajdeo, Prakash, Raj Kumar and Shankar, and upon asking them where they were going, Surajdeo informed PW-3 that all of them were going towards Kakolat village.

11. We may now consider the statements of Bharat Singh (PW-10), Kashi Mahto (PW-11), Ram Prasad (PW-12), Baleshwar Prasad (PW-13) and Mathura Saw (PW-14). PW-10 and PW-11 deposed that on the night of 09.04.1987, they had heard a motor vehicle (tractor) going in the direction of Kakolat. However, PW-10 and PW-11 had not seen the passengers in the vehicle. PW-12, PW-13 and PW-14 were all present near PW-14's shop in the late hours of 09.04.1987 and they deposed about seeing two persons returning from Kakolat. PW-12 went further and stated that he was able to identify the persons who had stopped near PW-14's shop. Upon seeing the accused persons in Court, PW-12 identified Appellant No.2 as one of the persons who had come to the shop that night. PW-12 in his cross-examination admitted that the police had not asked him to take part in a Test Identification Parade [in short, "T.I.P."]. It is pertinent to mention that this set of evidence only finds relevance because the dead body of Arun was discovered in Ram Sagar Ahar which was near Kakolat village.

12. The evidence of Kailash Mahto (PW-1) and Umeshwar Prasad (PW-5) also bears some relevance to the prosecution's case. PW-1 deposed that on 09.04.1987 he was requested by PW-16 to search for Arun. He further stated that the next day, i.e., 10.04.1987, he went to

A the market and there he found Appellant No.1. PW-1 claims that when he enquired about Arun's whereabouts from him, Surajdeo Mahto (Appellant No.1) told him that after viewing the cinema, Arun had gone to Amwa village whereas he went to Dopta village. PW-5 too has deposed that he met Surajdeo on 10.04.1987 at Barnwal Medical Hall at Hisua where Appellant No.1 told him that Arun had gone to Delhi.

B

13. Ram Brikch Paswan (PW-8), Chawkidar Circle No.9, was the one who discovered the dead body of Arun on 11.04.1987. In his cross-examination he deposed that he had heard rumors of a dead body in Ram Sagar Ahar on the night of 10.04.1987 itself, however, it being night time and the place being a forested area, he could go there on the

C following day only. PW-6, is the Doctor who conducted the post mortem examination of the dead body. Upon examining the injuries present on the deceased's body, PW-6 opined that the injuries were sufficient to cause death in the normal course of nature, and the time elapsed from death was 36 to 72 hours.

D

14. The case of the accused persons, as recorded in their statements under section 313 of the Code of Criminal Procedure, 1973 was one of denial. No other evidence was led by the defence.

15. The Trial Court was conscious of the fact that in order to prove the guilt of the accused by means of circumstantial evidence, the

E chain of evidence should be completed so as to exclude all the hypothesis of innocence of the accused. Upon extensively scrutinizing the deposition of witnesses, the Trial Court observed that there was a paucity of eyewitnesses to explain circumstances in which the deceased met his end and the evidence on record fell short of establishing the complicity

F of Chando Mahto, Shankar Mahto and Raj Kumar Mahto. The Court, however, held that the circumstantial evidence on record did suggest that Appellant No.1 lured the deceased out of his house on 05.04.1987; remained with him all along; Appellant No.2 then joined them on 09.04.1987; and thereafter the present appellants conspired and murdered the deceased near Kakolat. Negating the contentions raised by the

G defence, the Trial Court believed the testimony of PW-16 in toto and held that purported motive as well as the identification of incriminating material by PW-16 further established the guilt of the appellants. While the Trial Court observed that there were some inconsistencies in the case put forth by the prosecution, but those were held to be "*petty details*" and minor contradictions.

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16. The Trial Court further noted that Appellant No.1 had exhibited behaviour that could not have been considered normal. Judicial notice of the false and evasive replies given by Appellant No.1 to PW-1 and PW-5 when they inquired about the whereabouts of the deceased was also taken. The Court held that since various links in the chain of evidence have been satisfactorily proved, the false explanation given by Appellant No.1 could be construed as an additional link in the chain of evidence, which would lend further support to the prosecution case. The Court further observed that when enquiries were taking place, instead of helping in the search of Arun, Appellant No.1 absconded, and he surrendered before the court on 18.04.1987 only, when coercive measures were undertaken to compel his appearance. Lastly, unconvinced by the defense taken by the Appellant, the Trial Court opined that the plain denial of the prosecution allegations by the accused persons was nothing but an attempt to screen themselves from the "*rigours of legal punishment"*. The Trial Court thus held that the circumstantial evidence in the instant case was clinching, and consequently convicted the present appellants.

17. Discontented with their conviction, the appellants preferred an appeal before the Patna High Court. Upon a reappraisal of the evidence on record, the High Court observed that the prosecution witnesses were able to provide a date and stage wise testimony in order to prove the prosecution case. The High Court further laid emphasis on the false information provided by Appellant No.1 to PW-5. Considering these aspects, the High Court vide the impugned judgement dated 20.05.2010 affirmed the findings of the Trial Court and upheld the conviction and sentence of the appellants.

18. The aggrieved appellants are now before this Court.

CONTENTIONS

19. We have heard Learned Counsel for the appellants at considerable length. The principal contention is that the entire case rested on circumstantial evidence and there was no eye-witness to the alleged incident. Learned Counsel submitted that no independent witnesses had been examined by the prosecution and all the witnesses were either relatives or close friends of the complainant party. The Counsel further pressed that the Courts below have completely erred in relying upon the testimony of PW-10 to PW-14. As far as Appellant No.2 is concerned, it was submitted that only evidence against him was that of Sheodani Mahto

A (PW-3) and Baleshwar Prasad Yadav (PW-12). The Counsel asserted that PW-3 had seen the deceased in the company of Appellant No.2 two days prior to the recovery of the dead body, and hence the evidence of PW-3 did not support the prosecution case. Casting doubts on the credibility of the evidence of PW-12, it was claimed to be highly improbable that PW-12 was able to see the face of Appellant No.2 only B through the light of a lantern on a pitch-dark night. Learned Counsel further contended that the failure on the part of the investigating agency not to send the knife recovered at the spot of occurrence for forensic examination was fatal to the prosecution case. Hence, it was urged that the Courts below fell in grave error in convicting the appellants merely C on the basis of 'last seen theory'.

20. In all fairness, we may notice an additional plea taken by Appellant No.1, which has been raised for the first time before this Court. It was claimed that Appellant No.1 was a 'juvenile' on the date of occurrence. In support of such claim, Learned Counsel relied on the D copies of 'School Leaving Certificate' along with an 'admit card' issued by the Bihar School Examination Board, according to which Appellant No.1 was purportedly born on 01.03.1970. As the date of occurrence was between 09.04.1987 to 11.04.1987, it is submitted that Appellant No.1 was 17 years of age at that time and therefore, a juvenile. To further buttress this claim, Learned Counsel for the appellants drew our E attention to section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 as well as the decision of this Court in ***Abuzar Hossain alias Gulam Hossain v. State of West Bengal***[1].

21. On the other hand, Learned Counsel appearing for the State of Bihar submitted that there has been a concurrent finding of guilt by F two courts on minute examination of the evidence on record which does not warrant any interference by this Court. Relying upon ***Inspector of Police, Tamil Nadu v. John David***[2], it was urged that conviction in cases of circumstantial evidence is permissible. The State Counsel passionately argued that the chain of circumstances in the present case G is complete in every respect. He made pointed reference that *First*, the motive, as recorded by the Trial Court, was clearly established in the present case. *Second,* both the courts below have concurrently held that the deceased was last seen alive in the company of the Appellants.

[1] (2012) 10 SCC 489, ¶ 39

H [2] (2011) 5 SCC 509, ¶ 33 to 35

He cited ***State of Rajasthan v. Kashi Ram***[3], to urge that in situations when the deceased was last seen in the company of the accused, a presumption would arise that the said accused murdered the deceased. It was argued that presumption has not been dislodged by the Appellants in the present case. *Third*, the guilt of the appellants can be adduced from their conduct as not only did they lure the deceased on the pretext of watching the cinema, but also gave false and misleading information about the deceased's whereabouts. *Fourth*, the seizures/recoveries made during the investigation do establish the involvement of appellants, as one of the two lung is recovered at the place of occurrence was identified as that belonging to Appellant No.1. *Fifth*, the medical examination does establish that the death of the deceased was caused by unnatural means and, *Sixth*, the dead body which was recovered has been identified as that of Arun.

22. Learned State Counsel further canvassed that all the material witnesses, PW-1 to PW-14, have corroborated each other's versions. Drawing force from the decisions in ***Sukhar v. State of U.P.***[4] & ***Badruddin Rukonddim Karpude v. State of Maharashtra***[5], it was submitted that the principles of *res gestae* are applicable to the facts and circumstances of this case, and the statements made by one witness to another are admissible in evidence. He also urged that the absence of T.I.P. in the present case would not be fatal to the case of the prosecution[6].

23. As regard to the plea of Appellant No.1 being a juvenile raised for the first time before this Court, it was vehemently urged by the State Counsel that the first appellant deliberately waited till this belated point of time to raise the plea knowing fully well that in the event of an inquiry ordered by the Court, there would be no record available to contradict the documents put forth by him. He further pointed out certain patent discrepancies in the documents supplied by Appellant No.1, for instance, the documents did not bear his name, but instead the name of one 'Suryadev Prasad' was mentioned. In furtherance of his arguments, the Counsel submitted that the purported documents have not been proved in terms of section 35 of the Indian Evidence Act, 1872, [in short, "IEA"] and as such could not be accepted. Our attention was brought to the

[3] (2006) 12 SCC 254, ¶ 19-24
[4] (1999) 9 SCC 507, ¶ 5 to 10
[5] (1981) Supp SCC 1, ¶ 16
[6] Malkhansingh v. State of M.P., (2003) 5 SCC 746, ¶ 7, 8 to 16

decision of this Court in ***Ravinder Singh Gorkhi v. State of U.P.***[7], wherein, the plea of juvenility was rejected because, inter-alia, there was an unexplained inordinate delay in raising the plea.

ANALYSIS

24. We find that two questions fall for our consideration in the instant appeal; **(A)** Whether the circumstantial evidence led in the instant case is so impeachable that it establishes the guilt of the appellants beyond any reasonable doubt? **(B)** Whether Appellant No.1 was a juvenile on the date of the occurrence?

25. It may be highlighted at the outset that although the powers vested in this Court under Article 136 of the Constitution are wide, this Court in a criminal appeal by special leave will ordinarily loath to enter into a fresh re-appraisement of evidence and question the credibility of witnesses when there is a concurrent finding of fact, save for certain exceptional circumstances. While it is difficult to lay down a rule of universal application, it has been affirmed time and again that except where the assessment of the High Court is vitiated by an error of law or procedure, or is based on misreading of evidence, or is inconsistent with the evidence and thus has led to a perverse finding, this Court will refrain from interfering with the findings of the Courts below.

26. Regardless of such self-imposed restrain, and in the interest of justice, we have given thoughtful consideration to the rival submissions and have endeavored to peruse and discussed the entire evidence on record to ascertain whether or not the concurrent finding of conviction suffers from any perversity and/or whether the conviction of the appellants is legally and factually sustainable.

A. Whether the guilt of the accused has been proved beyond reasonable doubt?

27. This Court, in its much-celebrated judgment of ***Sharad Birdhichand Sarda v. State of Maharashtra***[8], has elaborately considered the standard necessary for recording a conviction on the basis of circumstantial evidence and has further held:

[7] (2006) 5 SCC 584, ¶ 39 to 41
[8] (1984) 4 SCC 116, ¶ 153

"153. xxx xxx xxx

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

xxx xxx xxx

(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."

These five cardinal principles have been reiterated on numerous occasions, including in the recent decisions in ***Mohd. Younus Ali Tarafdar v. State of W.B***[9] & ***R. Damodaran v. State Represented by the Inspector of Police***[10]. Keeping these conditions in mind, we shall now examine the case at hand.

28. It appears to us that the following circumstances need to be considered to arrive at the guilt of the appellants: (i) Last seen theory; (ii) Motive & (iii) false information provided and subsequent conduct of the appellants.

(i) Last seen theory

29. The case of the prosecution in the present case heavily banks upon the principle of 'Last seen theory'. Briefly put, the last seen theory is applied where the time interval between the point of when the accused and the deceased were last seen together, and when the victim is found dead, is so small that the possibility of any other person other than the accused being the perpetrator of crime becomes impossible. Elaborating on the principle of "last seen alive", a 3-judge bench of this Court in the case of ***Satpal v. State of Haryana***[11] has, however, cautioned that unless

[9] (2020) 3 SCC 747, ¶ 10
[10] 2021 SCC OnLine SC 134, ¶ 13
[11] (2018) 6 SCC 610, ¶ 6

A the fact of last seen is corroborated by some other evidence, the fact that the deceased was last seen in the vicinity of the accused, would by itself, only be a weak kind of evidence. The Court further held:

> "……..Succinctly stated, it may be a weak kind of evidence by itself to found conviction upon the same singularly. But when it
B is coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused owes an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death may have taken place. If the accused offers no explanation, or furnishes a wrong
C explanation, absconds, motive is established, and there is corroborative evidence available inter alia in the form of recovery or otherwise forming a chain of circumstances leading to the only inference for guilt of the accused, incompatible with any possible hypothesis of innocence, conviction can be based on the same. If
D there be any doubt or break in the link of chain of circumstances, the benefit of doubt must go to the accused. Each case will therefore have to be examined on its own facts for invocation of the doctrine."

30. We may hasten to clarify that the fact of last seen should not
E be weighed in isolation or be segregated from the other evidence led by the prosecution. The last seen theory should rather be applied taking into account the case of the prosecution in its entirety. Hence, the Courts have to not only consider the factum of last seen, but also have to keep in mind the circumstances that preceded and followed from the point of the deceased being so last seen in the presence of the accused.

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31. The prosecution in the present case has undoubtedly established that the deceased was last seen alive in the company of the appellants, and has also adduced evidence about the events leading up to and following the point of last seen. The depositions of PW-2, PW-3A, PW-16 and PW-17 do suggest that prior to the point of last seen, the
G deceased was constantly in the company of Appellant No.1. PW-3 and PW-4 are the persons who lastly saw the deceased alive on 09.04.1987, and they have categorically deposed that they had seen the deceased along with the appellants. Through the depositions of PW-1, PW-5, & PWs 10 to 14 the prosecution has attempted to shed light on the events
H that occurred post the point of last seen.

32. The contention that most of the prosecution witnesses were either related or close to the complainant party and their testimony could not be relied upon in the absence of corroboration by any independent witnesses, in our opinion, is without much substance. It is trite in law that the job of the prosecution is to put forth the best evidence that is collected during the investigation. Although it is ideal that the prosecution case is further substantiated through independent witnesses, but it would be unreasonable to expect the presence of third-parties in every case. This Court has consistently held that the prosecution's case cannot be discarded merely on a bald plea of all witnesses being related to the complainant party. Hence, in order to draw an adverse inference against the non-examination of independent witnesses, it must also be shown that though the best evidence was available, but it was withheld by the prosecution.

33. That apart, PW-3 saw Arun and the Appellants on the outskirts of Kumbhrawan village, whereas, PW-4 saw Arun and the appellants inside Appellant No.2's house. Neither of these witnesses claim to have seen the deceased and the appellants at a public place. Thus, it would not be illogical to infer that there was no independent witness to this occurrence. Further, the deposition of both PW-3 and PW-4 seems natural and nothing has been adduced in their cross-examination for us to disbelieve their testimonies.

34. The Counsel for the Appellants further assailed the last seen theory and submitted that even if the deposition of PW-3 was considered true, he had seen Arun in the company of the appellants on 09.04.1987, which was two days before the discovery of the dead body. It was, thus, argued that the intervening time period between the two events could not rule out the possibility of intervention by a third party and as such there wasn't a continuous chain of circumstances. While this argument seems attractive at the first instance, but, when considered in the light of testimonies made by the independent witnesses PW-6 and PW-8, it stands completely belied. The Prosecution case is that both the Appellants committed the murder on the night of 09.04.1987. PW-8, who discovered the body of Arun on 11.04.1987, deposed that he had heard rumors about the dead body the previous night itself, however, on account of it being dark and a forested area, he was only able to proceed to the spot the next day. Given that the body was lying on the spot at least since 10.04.1987, the instant crime could have been committed on or before

10.04.1987. The medical evidence in the present case further braces the prosecution story. PW-6, the Doctor, examined the body of the deceased on 12.04.1987. In his opinion, the time elapsed since the death of Arun was 36 to 72 hours. Thus, the medical evidence fully corroborates the prosecution story of the murder having being taken place on 09.04.1987. We also note that the Courts below have dealt with this issue elaborately and have held that the murder of the deceased indeed took place on 09.04.1987. We see no reason to take a contrary view.

35. Counsel for the State appears to be right in relying upon the decision of this Court in ***Kashi Ram (Supra)*** to assert that once the fact of last seen is established, the Accused must offer some explanation as to the circumstances in which he departed the company of the deceased. This position of law, as covered under section 106 of the IEA, was duly considered in the case of ***Satpal Singh (Supra)***, wherein, this Court clarified that if the accused fails to offer any plausible explanation, an adverse inference can be drawn against the accused. In the instant case also, Appellant No.1 has been unable to offer any explanation as to circumstances in which he departed from the company of the deceased.

36. As regard to the reliability of the depositions of PW-10 to PW-14, the primary contention is that except PW-12, none of the other witnesses were able to identify the present appellants. It was further contended that the testimony of PW-12 seems doubtful as it was highly improbable that the witness was able to see Appellant No.2 through the light of a lamp. Assuming that the depositions of PW-10, PW-11, PW-13 and PW-14 do not add much value to the case in hand, the question whether PW-12 could or could not identify Appellant No.2 is purely a factual issue and courts below have taken a concurrent view in relation thereto. Suffice to say that PW-12 was able to identify Appellant No.2 because of the chicken-pox marks on his face. Even in the initial statement recorded by the police, PW-12 had maintained that one of the two persons who he had interacted with on the night of 09.04.1987, had chicken-pox scars on his face.

37. Upon considering the prosecution evidence in its entirety and having meditated on the grounds raised by the appellants to every possible extent, we find no reason to disbelieve the prosecution version of last seen theory against the appellants.

(ii) Motive

38. If motive in a case is attributed to an accused(s) and thereafter proved, the probability of the crime being committed by the said accused is intensified. It is for this reason, that in cases of overwhelming circumstantial evidence, proof of motive will be an important piece of corroborative evidence, as well as, form a vital link in the chain of evidence.

39. The motive attributed to the appellants in this case is that they murdered the deceased because he was allegedly having an illicit affair with Rita, sister of Appellant No.1. While none of the witnesses have specifically deposed about the deceased having an affair with Rita, the motive, as alleged, does find some corroboration in the deposition of PW-1, PW-3A, and PW-16. It is revealed from the testimony of PW-3A, that initially there were cordial and friendly relations between the 1st Appellant and deceased's family but the same became sour after the month of February. PW-1 who is a fellow villager has corroborated the testimonies of PW-3A. PW-16 has categorically deposed that a Panchayat had been called in regards to the illicit relationship of the deceased with Rita.

40. The fact of the deceased having an affair with the sister of Appellant No.1 has of course not been established beyond doubt but the factum of calling Panchayat so that the issue does not spiral out of control does suggest that Appellant No.1 carried a motive to eliminate the deceased. We may not lose sight of the fact that the events had occurred in the year 1987, when the rural Indian society was irrepressibly conservative, and even the slightest rumor of extra-marital affairs could flare-up tensions. Considering these ground realities, the Trial Court, in our opinion correctly recorded that the motive as alleged had been sufficiently proved by the prosecution. We also note, that the Counsel for Appellants has not mounted any substantial challenge on the point of motive, and as such, we see no reason to interfere with the indictment of Appellant No.1 on the point of motive.

(iii) False information provided by Appellant No.1 and his subsequent conduct.

41. We may now briefly consider the false information provided by Appellant No.1 to PW-1 and PW-5. Both of these witnesses individually met Appellant No.1 on 10.04.1987 and both of them enquired about the whereabouts of Arun. Appellant No.1 lied to PW-1 and told

A him that after viewing the Cinema, Arun alone had proceeded to Amwa whereas Appellant No.2 had gone to visit Dopta. Even more curiously, Appellant No.1 informed PW-5 that Arun had left for Delhi. It is clear to us that the false information provided by the first appellant was an attempt to hide his guilt by de-railing the search efforts that were being conducted. Appellant No.1 thereafter absconded and surrendered before the court only after coercive measures were taken. We are, thus, inclined to agree with the State Counsel that the false information given by Appellant No.1 and his post occurrence conduct is relevant to prove an additional link in the chain of incriminating circumstances.

C 42. There is, however, a qualitative difference in the evidence led by the prosecution to prove charges against Prakash Mahto (Appellant No.2). The prosecution's case is that it was the 1st Appellant (Surajdeo Mahto) who allured the deceased and persuaded him to accompany the said appellant to watch cinema. It is neither their case nor have the prosecution witnesses deposed that Appellant No. 2 was involved in the D persuasive abduction of the deceased from his house on 05.04.1987. This has to be seen in the context of motive behind the offence. It is proved on record that the 1st Appellant had an axe to grind against the deceased who was allegedly having illicit relationship with his sister. There is no motive alleged or proved which would have swayed Appellant No. 2 to commit murder of the deceased. Still further, prosecution has E led no evidence that there was any meeting of mind between the 1st and the 2nd Appellant on or before 08.04.1987, or that they hatched any conspiracy together to commit the murder of Arun. There is also no evidence on record to suggest that Appellant No.1 disclosed his intention to commit murder of deceased Arun to the 2nd Appellant.

F 43. It is true that the prosecution has led evidence comprising the statements of PW-3 and PW-4 who had lastly seen the deceased alive on 09.04.1987 in the company of the 1st and the 2nd Appellants. However, until and unless the last seen theory is substantiated by other circumstantial evidence to constitute an unbreakable chain of events, the conviction G cannot rest solely on the basis that the 2nd Appellant was also present along with Appellant No.1 in the company of the deceased when they were seen together on 09.04.1987.

44. It is pertinent to mention that some incriminating material consisting of one pair of slippers, one handkerchief, a knife, jerrycan and H two lungis were found and seized at the place of occurrence. While

PW-16, namely, father of the deceased has identified one of the seized lungis belonging to Appellant No.1, none of the recovered articles have been attributed to the 2nd Appellant. The only substantial evidence against the 2nd Appellant is that he too was in the company of the deceased and Appellant No.1 on 09.04.1987, i.e., they were seen together lastly. Even if we were to presume that the deposition of PW-12 identifying Appellant No.2 on the night of 09.04.1987 to be true, such evidence, may create a strong suspicion in respect of involvement of the 2nd Appellant in the murder of the deceased, but then, mere suspicion cannot be accepted as impeccable evidence to prove his guilt beyond any doubt.

45. Further, there is post occurrence circumstantial evidence led against Appellant No.1, namely, that he did not disclose the whereabouts of the deceased and then surreptitiously disappeared from the scene till he surrendered in Court. There is no such allegation of being evasive or absconding post occurrence levelled against Appellant No.2. There are, thus, missing links in the prosecution case so far as the 2nd Appellant is concerned. Consequently, and for the reasons aforestated, we find that the case of Prakash Mahto (Appellant No.2) is distinguishable from that of Surajdeo Mahto (Appellant No.1) and the prosecution has not been able to prove the guilt of 2nd Appellant beyond the pale of doubt. The 2nd Appellant is, thus, entitled to the benefit of doubt.

B. Appellant No.1's plea of Juvenility

46. There is no gainsaying that section 7-A of Juvenile Justice (Care and Protection of Children) Act, 2000 [in short, "JJ Act"] sets out the procedure to be followed by a court to determine the claim of juvenility. Its proviso enables to raise the claim of juvenility before "any court" and at "any stage", even after the final disposal of the case. However, in order to take advantage of the aforesaid provision, there lies an initial onus on the accused to produce some cogent evidence to *prima facie* establish the juvenility on the date of commission of the offence.

47. In the instant case, the 1st Appellant has raised plea of juvenility for the first time before this Court. He has placed before us a School Leaving Certificate along with an Admit Card issued by the Bihar School Examination Board, wherein, Appellant No.1's date of birth is claimed to be 01.03.1970. It has been asserted that the 1st Appellant was 17 years old at the time of occurrence. Learned counsel for the appellants has also drawn our attention to the decision in ***Abuzar Hossain (Supra)***,

A wherein, this Court exhaustively dealt with the provisions and the scope of JJ Act and held as under:

> *"39.3. As to what materials would prima facie satisfy the court and/or are sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to what weight*
> B *should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rules 12(3)(a)(i) to (iii) shall definitely be sufficient for prima facie satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded under Section 313 of the Code is*
> C *too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility.* ***The credibility and/or acceptability of the documents like the school leaving certificate or the voters' list, etc. obtained after conviction would depend on the facts and circumstances of each case***
> D ***and no hard-and-fast rule can be prescribed that they must be prima facie accepted or rejected…."***
>
> *(Emphasis Supplied)*

48. When the documents relied upon by 1st Appellant are analysed in the backdrop of these settled principles, we find that the same do not
E inspire any confidence. The name of Appellant No.1 does not appear on the documents, instead these belong to one 'Suryadev Prasad'. It is nearly impossible to verify the veracity of the two documents relied upon by Appellant No.1 at this highly belated stage. Further, the record of the Trial Court does suggest that the name of the 1st Appellant is
F 'Surajdeo Mahto' and not 'Suryadev Prasad'. In the absence of any cogent material indicating that the subject – documents pertain to 1st Appellant only, no case to hold any fact-finding enquiry is made out. Consequently, we decline to place reliance on the documents in question and reject the plea of juvenility raised by the 1st Appellant.

G **Conclusion**

49. In light of the above discussion, the instant appeal is partly allowed. While the conviction and sentence of Surajdeo Mahto (Appellant No.1) is upheld and appeal qua him is dismissed, the 2nd Appellant (Prakash Mahto) is acquitted of the charges. The bail bonds furnished

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by the 1st Appellant are cancelled and he is directed to surrender to undergo remainder of the sentence. The 2nd Appellant's bail bonds are discharged. A

Nidhi Jain Appeal partly allowed.