

Arun and ors. Vs. State

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Court : Delhi

Decided On : Mar-18-2014

Judge : G.P. Mittal

Appellant : Arun and ors.

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

4. h February, 2014 Pronounced on:

18. h March, 2014 + CRL.A. 773/2011 & Crl.M.(B).2332/2013 ARUN & ORS. Through Appellants Mr. S.S. Ahluwalia, Advocate for Appellant No.1 Ms. Nandita Rao, Advocate for Appellants No.2 & 3. versus STATE Through + Respondent Ms. Rajdipa Behura, APP CRL.A. 646/2011 PRITHVI RAJ Through Appellant Mr. Siddharth Aggarwal with Mr. Gautam Khazanchi, Advocates versus STATE + Through CRL.A. 1094/2011 Respondent Ms. Rajdipa Behura, APP KRISHAN KUMAR @ KRISHNA Appellant Through Mr. K. Singhal, Advocate versus STATE Through Respondent Ms. Rajdipa Behura, APP CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE G.P. MITTAL

JUDGMENT

G.P. MITTAL, J.

1. Appellants Arun Kumar, Ram Parkash @ Guddu, Krishan Kumar @ Krishna, Prithvi Raj and Rani impugn the judgment dated 26.02.2011 and the order on sentence dated 15.03.2011 passed by the Additional Sessions Judge (ASJ), West 02, Delhi whereby the appellants were convicted for the offence punishable under Section 302/ 34 read with Section 120B of the Indian Penal Code, 1860 (IPC) and were sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/- each. In default of payment of fine, each of the appellant was sentenced to undergo simple imprisonment for six months.

2. Succinctly stated, case of the prosecution is that Satdev Rathi (the deceased) was working as a Manager in a factory named K.N. Inter Plast Pvt. Ltd. owned by one Kuldeep Singh Dalal (PW-13). The five appellants were employed in the earlier said factory. It is case of the prosecution that 2-3 months before the incident, appellants Ram Parkash @ Guddu, Krishan Kumar @ Krishna and Prithvi Raj had consumed liquor in the factory while they were on duty and had then misbehaved with the deceased. On account of this misbehaviour, they were expelled from service.

3. It is further alleged that appellant Arun Kumar and Rani were in love with each other. One day, Rani and Tarun (brother of Arun) started a quarrel in the factory in a loud voice. They were called in the office and were advised to have patience. It is also alleged that the deceased once found appellants Arun Kumar and Rani in objectionable condition in a vacant room inside the factory. It is also alleged that thereafter appellant Arun Kumar stopped coming to the factory as he was under the impression that his services had been terminated. Thus, grievance of these two sets of appellants is alleged to have given them the motive to eliminate the deceased.

4. Hence, all the appellants allegedly entered into a conspiracy. The appellants decided that appellant Rani would lure the deceased to open fields where the remaining four appellants would finish him. In pursuance of the conspiracy, on 17.10.2008, appellant Rani asked the deceased to celebrate karvachauth and persuaded him to meet her (Rani) at Tikri border in the evening. As per the plan,

Rani met the deceased at Tikri border and took him to a Tur (Arhar) field. The remaining four appellants followed the two, keeping safe distance. Rani made the deceased undress himself and thereafter the appellants Arun Kumar, Krishan Kumar @ Krishna and Ram Parkash captured him while appellant Prithvi Raj kept a watch on the road. Thereafter, appellants Arun Kumar, Krishan Kumar @ Krishna and Ram Parkash inflicted knife blows on the deceased and after killing him made good their escape.

5. It is alleged that on 17.10.2008, it was karvachauth and PW-1s mother (Mrs. Sushila) had called up his father (the deceased) on his mobile number 9416052814 at about 6:00 p.m. to inquire about his return. His father told his mother that he would return in half an hour. Thereafter PW-1 went out to play. He returned at about 7:30-7:45 p.m. and his mother informed him of his father (the deceased) not reaching home. PW-1 tried to contact the deceased on his mobile phone but the same was found to be switched off. PW-1 also went in the night to the factory where the deceased worked but he could not get any clue of his father as he was informed by the guard that all the employees had left the office at closing time. Thus, PW-1 along with his other relations including PW-2 searched for his father the whole night but in vain.

6. On 18.10.2008 at about 7:15 a.m., PW-1 again started his search and ultimately at about 8:15 a.m., he reached Police Post Tikri. The police informed PW-1 that one dead body had been found at Nizampur road. While PW-1 and PW-2 were leaving from the Police Post, Kuldeep Singh Dalal (PW-13), owner of K.N. Inter Plast Pvt. Ltd. also reached the Police Post. They proceeded to the spot where the dead body was allegedly lying. On seeing the dead body, PW-1 identified it to be of his father. He made a statement Ex.PW-19/ A to the police on which an endorsement Ex.PW-24/A was made by S.I. Om Prakash (PW-24) and the same was transmitted to the Police Station for registration of an FIR.

7. On appellants pleading not guilty to the charge for the offence punishable under Section 302/ 34 IPC and Section 302/ 120B IPC, the prosecution examined 24 witnesses. In their examination under Section 313 of the Code of Criminal Procedure, 1973, the appellants while denying the incriminating evidence

produced by the prosecution against them, stated that they have been falsely implicated in the case.

8. Appellants Krishan Kumar @ Krishna, Ram Parkash and Prithvi Raj admitted that they were employed at M/s. K.N. Inter Plast Pvt. Ltd. They however, denied that they had ever consumed any liquor in the factory or that they were expelled from service. Appellant Ram Parkash while denying that he was ever expelled from the factory by the deceased stated that he had left the job on his own in the month of April, 2008. Similarly, appellants Prithvi Raj and Krishan Kumar @ Krishna also stated that they were never expelled from the service and that they had left the service with M/s. K.N. Inter Plast Pvt. Ltd. on their own in the month of June-July, 2008. At the same time, appellants Arun Kumar and Rani denied that they were ever seen in any obscene condition by the deceased or that they ever had any grievance against the deceased.

9. The appellants examined four witnesses in their defence. Shyam Lal (DW-1) was examined to prove that on the night of 19.10.2008, some police officials came in village Tikri Kalan and apprehended the appellants Ram Parkash and Prithvi Raj from their house and thus, DW-1 tried to falsify the prosecution version regarding these 2 appellants arrest on 20.10.2008 from village Tikri Kalan. Kamlesh (DW-2) is appellant Arun Kumars mother. She deposed that her son Arun Kumar was lifted by the police from their residence on 18.10.2008 at 6:30-7:30 p.m. She stated that she had given one mobile phone to appellant Rani as she used to work with her son Arun. In cross-examination, she denied that Arun was arrested on 20.10.2008 from Tikri Border. Vijay Kumar (DW-3) also corroborated DW-2 and deposed about apprehension of appellant Arun Kumar on 18.10.2008. Mukesh (DW-4), appellant Ranis brother testified that on 19.10.2008 at about 8:00 a.m., he was having breakfast with his sister Rani. Appellant Arun Kumar made a phone call on the mobile phone of his sister and told her that he wanted to meet her for five minutes at Baba Haridass Mandir. When they reached there, they were apprehended by the police; after 3-4 hours, the police officers released him but his sister Rani was falsely implicated in this case.

10. On appreciation of evidence, the Trial Court opined that the circumstantial evidence adduced by the prosecution was sufficient to draw an inference of guilt against the appellants for the offence of entering into a conspiracy and committing murder of the deceased. The appellants were thus, convicted and sentenced as stated earlier. Apart from recovery of the knives (Ex. P-1 to P-3) at the instance of appellants Arun Kumar, Krishan Kumar @ Krishna and Ram Parkash @ Guddu and some bloodstained clothes from appellant Arun Kumar, Krishan Kumar @ Krishna and Ram Parkash, the prosecution relied on the circumstance of last seen together and the motive of committing the crime in support of their case.

11. Before we dwell and analyse the circumstances pressed by the prosecution, we would like to refer to the evidence of some important witnesses examined by the prosecution.

12. Ajit Singh (PW-3) and Kuldeep Singh Dalal (PW-13) are the most crucial witnesses examined by the prosecution to prove that the deceased was seen alive last in the appellants' company on 17.10.2008 at about 7:30 p.m. They also tried to prove the motive for commission of the offence. Amit Rathi (PW-1) and Yudhvir Singh (PW-2) deposed about the search of the deceased the whole night of 17.10.2008 and discovery of the dead body on the morning of 18.10.2008. Dr. V.K. Jha (PW-8) had conducted post-mortem examination on the dead body of the deceased. Since this case rests on circumstantial evidence and the circumstance of last seen together is one of the most important circumstance relied on by the prosecution, his evidence assumes significance to determine the time of death and to test the veracity and credibility of the witnesses PW-3 and PW-13 on last seen together.

13. PW-13 deposed that the deceased was working as a Manager in his factory M/s. K.N. Inter Plast Pvt. Ltd. for about last ten years. On 17.10.2008, he was going to Bahadurgarh via Kanjhawla-Nizampur Road. At about 7:00 p.m., while going towards Rohtak road from village Nizampur, he noticed the deceased going towards Nizampur road along with appellant Rani. He also noticed the remaining four appellants, namely, Arun Kumar, Ram Parkash @ Guddu, Krishan Kumar @ Krishna and Prithvi Raj following them from a distance of about 50 mts. He

testified that appellants Arun, Ram Parkash @ Guddu, Krishan Kumar @ Krishna and Prithvi Raj were his exemployees. They had been expelled from the job due to their bad behaviour. He testified that Ram Parkash @ Guddu, Krishan Kumar @ Krishna and Prithvi Raj were expelled because they came to the factory under the influence of liquor and then misbehaved with the factorys Manager (the deceased). The deceased informed him about the incident and therefore he took the step of expelling them from the services in the end of June or beginning of July, 2008. He also testified that appellants Arun and Rani were seen in objectionable condition by the deceased. The deceased informed him about this act. Both (Arun and Rani) were warned (about their conduct) and appellant Arun himself stopped coming to work as he was under the impression that he had been removed from service.

14. Similarly, Ajit Singh (PW-3) on the appellants misconduct testified that about 2-3 months before the incident, appellants Ram Parkash @ Guddu, Krishan Kumar @ Krishna and Prithvi Raj consumed liquor in duty hours and misbehaved with the Manager (the deceased). Because of their misbehaviour, they were expelled from the services. He further stated that there was a love affair between appellants Arun and Rani. One day Rani and Tarun (brother of Arun) started a quarrel in the factory in a loud voice. They were called in the office and both were asked to behave themselves. Tarun and Rani were warned not to quarrel in the factory on account of their family matters. He added that the deceased had informed him that once he had seen appellants Arun and Rani in objectionable condition in a vacant room. Thereafter Arun was expelled from the services due to dereliction of duty and disobeying orders. On 17.10.2008, he had dropped the deceased at around 05:20 p.m. - 05:30 p.m. at Old Bank near MIE on his motorcycle.

15. On the aspect of recovery of the dead body of the deceased, PW-1 deposed that on 17.10.2008, it was karvachauth and his mother (Mrs. Sushila) had called up his father (the deceased) on his mobile number 9416052814 at about 6:00 p.m. to inquire about his return. His father had told his mother that he would return in half an hour. (Mrs. Sushila never appeared and deposed as a witness in the Court). Thereafter PW-1 went out to play. He returned at about 7:30-7:45 p.m. and he was informed by his mother that his father had still not returned from work. He

tried to contact his father on his mobile phone but the same was found to be switched off. After 30-45 minutes, he went to his fathers factory to inquire about him and the guard informed him that all the employees including his father had left at the closing hour of the factory. He stated that thereafter he searched for his father at his maternal grandfathers house at village Tikri and his cousin (his mothers sisters son), PW-2 also joined him in the search. They searched for his father in certain hospitals and also went to Police Post Bahadurgarh, Police Post MIE and Police Post Tikri. However, they could not get any information. They returned at mid-night. He further testified that on 18.10.2008 at about 7:15 a.m., he along with his cousin again went to various places in search of his father. He reached Police Post Tikri at about 8:15 p.m. and the police informed him that information had been received that a dead body was found at Nizampur road. While he was in the Police Post, Kuldeep Singh Dalal (PW-13) also reached there. They all went in PW-13s car to the place where the dead body was found lying. When they reached the fields, they found a dead body lying in one of the field which was identified by him to be that of his father. To the same effect is the testimony of Yudhvair Singh (PW-2), who is PW-1s cousin.

16. Although Dr. V.K. Jha (PW-8) was examined to prove homicidal death of the deceased as also the time of his death to connect the appellants with the offence, yet the post-mortem report (Ex.PW-8/ E) has created more confusion than fixing the time of death. The homicidal death of the deceased is not in dispute. However, in the post-mortem report, PW-8 opined the time since death to be 41 hours whereas in his testimony recorded in the Court, he gave the time of death as 22 hours before conducting of the post-mortem examination. He did not give any explanation as to why he changed the approximate time of death in the post-mortem report and in his deposition in the Court except that no precise time could be given.

17. It is well settled that where the prosecution case rests purely on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn must, in the first instance be fully established; the circumstances should be of conclusive nature; the circumstances taken together must unerringly point to the guilt of the accused; the circumstances proved on record must be incompatible

with the innocence of the accused and form the complete chain of circumstances and it must be proved that in all probabilities, the offence was committed by the accused. (Hanumant Govind Nargundkar & Anr. v. State of Madhya Pradesh, AIR 1952 SC343 and Sharad Birdhichand Sarda v. State of Maharashtra, (1984)4 SCC116.

18. The prosecution in order to connect the appellants with the commission of the offence and to exclude any other hypothesis except that the deceaseds murder was committed by the appellants, relied on the following circumstantial evidence: (i) Evidence of last seen together; (ii) Recovery of some bloodstained clothes at the instance of appellants and recovery of three knives/ dagger at the instance of appellants Arun, Krishan Kumar @ Krishna and Ram Parkash @ Guddu; and (iii) Motive for commission of the offence. LAST SEEN TOGETHER¹⁹ We have already extracted above the relevant portion of the examination-in-chief of PW-13 who has projected himself to be a witness of seeing the deceased alive last in the appellants company. As per Ajit Singh (PW-3), who was working as a Supervisor in M/s. K.N. Inter Plast Pvt. Ltd., Bahadurgarh, on 17.10.2008, he had dropped the deceased at Old Bank near MIE at about 05:20-05:30 p.m. He stated that the deceased had informed him that he had some work at Tikri. As stated earlier, PW-13 deposed that while he was returning to Bahadurgarh via Nizampur road at 7:00 p.m., he noticed the deceased going towards Nizampur road along with appellant Rani. He also noticed the remaining four appellants following them from a distance of around 50 mts. This witness was cross examined as to how he happened to be travelling in his car at Nizampur road leading to Bahadurgarh. As stated earlier, in his examination-in-chief PW-13 deposed as under:

....At about 7.00 p.m. I was going towards Rohtak Road from Nizampur village. Before Rohtak Road, I saw Satdev Rathi who was going towards Nizampur Road along with a lady namely Rani (Rani was also working in my factory at that time). The four persons namely Arun, Ram Parkash @ Guddu, Krishan @ Krishna and Prithvi Raj were also behind Satdev Rathi and Rani. (Distance between Satdev Rathi - Rani and Arun, Ram Parkash @ Guddu, Krishan @ Krishna and Prithvi Raj about 50 metres).

20. In his cross-examination, he deposed that he did not go to the factory on 17.10.2008. He contacted the deceased on his telephone 3-4 times on 17.10.2008. He went on to add that his last talk with the deceased took place at about 01:00-01:30 p.m. He gave his telephone number as 9811508854 and that of Late Satdev Rathi as 9416052814. He added that he had stored Late Satdev Rathi's mobile number in his telephone which he had brought even on the day of recording of his cross examination i.e. on 01.07.2009. In his further cross examination recorded on 14.04.2009, PW-13 was questioned as to the cause of his presence on Nizampur road where he allegedly saw the deceased and the appellants. He stated that he did not go to his factory on 17.10.2008 as he had some foreign guests staying with him to whom he was attending to. He deposed that he had taken his guests for shopping to Connaught Place and they were there in the market till about 5:30 p.m. whereafter, he was returning to his residence via Nizampur Road. He added that he had gone to that road several times before also where that day he saw the appellants with the deceased.

21. We have to test the veracity of PW-13's testimony. First of all, there are several good roads from Connaught Place to Bahadurgarh. The Court can take judicial notice of the fact that PW-13 could have straightway proceeded to his residence on Delhi-Rohtak Road which is a highway instead of straying to some smaller routes, that too in the evening hours. Even if it is assumed that for unexplained reasons, PW-13 did adopt the alleged route to his residence as stated by him, yet he was very well aware that the three appellants Ram Parkash, Krishan Kumar @ Krishna and Prithvi Raj had been expelled from the factory because of their misbehaviour with the deceased. Similarly, PW-13 was also aware that appellant Arun was also not reporting for work, after Rani and Arun Kumar were embarrassed. PW-13 is not a rustic villager. He owns a number of factories including one in Bahadurgarh and another in Noida. Had he really found the appellant Rani in the deceased's company followed by the remaining four appellants, it would have naturally aroused a great suspicion in his mind. The natural human conduct would have been to inquire from the deceased as to how he was going in the company of appellant Rani all alone and to warn him that the other four appellants, three of whom had been expelled from service for misbehaving with the deceased, were following him. Further, PW-13 was in the

company of some foreign guests as claimed by him. His wife was also sitting in the car. Even if PW-13 did not consider it appropriate or was in a hurry (though not claimed by him), what was least expected of him was to have called up the deceased and ask about his presence at the earlier said place at odd hours. PW-13 would have warned or atleast advised the deceased that he was being followed by four objectionable persons. It may also be noticed that PW-13 claimed that he remembers the deceaseds mobile number by heart and that he had also saved the same in his mobile phone which was still there in his mobile on the date of recording of his cross examination. Thus, the conduct of PW-13 defies natural human behaviour.

22. Not only this, as per the prosecution version, PW-1, the deceaseds son, met him (PW-13) in Police Post Tikri on 18.10.2008 at 8:15 p.m. PW1 and PW-13 say that they together alongwith PW-2 proceeded to the place where the dead body was lying, and PW-1 and PW-13 admit that on seeing the dead body, the same was identified by PW-1 to be that of his father. PW-13 stated in his examination-in-chief that on 18.10.2008 when he reached his factory at about 8:00 a.m., the guard at the factory informed him of deceased Satdev Rathi not reaching home the previous night. He stated that it immediately struck him that he saw Rani and four other appellants with the deceased the previous evening. He thus, immediately proceeded to Police Post Tikri. Hence, on reaching Police Post Tikri it would have been natural for PW-13 to have disclosed this important fact to the police. Even if this was not

1) and nephew (PW-2) reached the spot and found the deceaseds dead body, he would have immediately disclosed to PW-1 as also to the police officers that he had seen the deceased in the company of five appellants the previous evening. So much so that if this information had been given by PW-13 either to PW-1 or to the police, the case would have been registered on the statement of PW-13 and not on the statement of PW-1 wherein the names of the five appellants would have been mentioned as suspects. There is another aspect of doubt in the prosecution version. According to PW-13, he saw the deceased and appellant Rani walking on foot and at the same time he saw the four appellants at a distance of about 50 mts. following the deceased and appellant Rani. It is highly improbable and

unbelievable that if five appellants had entered into any conspiracy, the four appellants would be following the deceased and appellant Rani just at a distance of 50 mts. Obviously, the deceased himself could also have seen the other four just by turning back. Thus, the testimony of PW-13 defies human logic. Therefore, his statement that on 17.10.2008 at about 7:00 p.m., he saw appellant Rani along with deceased followed by the remaining four appellants is unbelievable and unacceptable.

23. The last seen together theory assumes importance only when the time of death of the deceased is sufficiently established and it is proved that the deceased was last seen alive in the company of the accused and there was no possibility of any other person coming in between the time when the deceased and the accused were seen together and the time of his death. In the instant case, the exact time or even approximate time of death has not been crystallised. A perusal of the post mortem report (Ex. PW-8/ A) shows that the post mortem on the dead body of the deceased was conducted on 18.10.2008 at 1:00 p.m. and the time since death was given as 41 hours. It would make the time of deceaseds death on 16.10.2008 at about 6:00 a.m. However, the deceased was admittedly alive till the evening of 17.10.2008. For unexplained reasons, PW-8 changed duration since death from 41 hours to 22 hours in his court deposition. If that is accepted, the time of death would be about 3:00 p.m. on 17.10.2008. That is also not acceptable as the deceased was allegedly seen alive on 17.10.2008 at around 07:00-07:30 p.m. by PW-13. It seems that Dr. V.K. Jha (PW-8) had performed his duties in a totally perfunctory manner as he appears to have given the time since death in the postmortem report only on the basis of brief facts forwarded to him as also on the basis of rukka where initially the time of incident was mentioned between 05:00 p.m. on 16.10.2008 to 07:00 a.m. on 17.10.2008. Thus, we are not inclined to rely much on the post mortem report (Ex. PW-8/ A) as also on the testimony of PW-8 regarding the time of the deceaseds death.

24. The prosecution version as also the last seen together theory falls flat for other reasons also. The prosecution has placed on record call records of phone number 9355732140 belonging to appellant Arun and the mobile number 9355733307 belonging to appellant Rani. The call record clearly shows that they were talking

time and again with each other on 17.10.2008 from 5:00 a.m. till 9:05 p.m. PW-13 claims to have seen Rani in deceaseds company at 7:00 p.m on 17.10.2008. There are calls between appellants Rani and Arun at 7:08 p.m., 7:09 p.m., 7:15 p.m., 7:19 p.m., 7:20 p.m., 7:29 p.m., 7:34 p.m., 7:50 p.m., 7:54 p.m. 8:03 p.m. and 9:05 p.m. on 17.10.2008. It is difficult to comprehend that when a lady was luring a person who was her superior (Manager) in the same factory, that person would allow the lady to talk to some other person so many times. Moreover, as per prosecution version, all the appellants were together after 7:30 p.m. Thus, there could not have been any occasion for them to talk on mobile phone.

25. There is another serious lapse in the investigation. As per the prosecution version, the deceased possessed a mobile phone. The deceaseds wife spoke to him at 6:00 p.m on 17.10.2008 and thereafter, his son also tried to speak to him. The deceased is stated to have informed his wife that he would be back home in half an hour and thereafter his mobile phone got switched off. However, for unexplained reasons, the call details of the deceaseds telephone were not obtained by the investigating officer. Since evidence of last seen together has been held to be otherwise unbelievable, this lapse on the part of the investigating officer further gives a dent to the prosecution version. RECOVERY OF INCRIMINATING ARTICLES²⁶ In addition to the evidence of last seen together, the prosecution also relies on the recovery of bloodstained knives Ex. P-1, P-2 and P-3 at the instance of appellants Arun Kumar, Krishan Kumar @ Krishna and Ram Parkash @ Guddu respectively at the time of their arrest. Also, according to the prosecution, appellant Arun Kumar was found to be wearing a black bloodstained pyjama.

27. Admittedly, no independent/ public witness was present at the time of alleged recoveries. Knife Ex. P-1 was allegedly got recovered by appellant Arun Kumar in pursuance of his Disclosure Statement Ex. PW-16/ 7 hidden in the bushes at South West Corner of the field where dead body of Satdev Rathi was found lying at Nizampur road. Similarly, knives Ex. P-2 and P-3 were allegedly got recovered by appellants Krishan Kumar @ Krishna and Ram Prakash respectively in pursuance of their Disclosure Statements Ex. PW-16/ 8 and Ex. PW-16/ 9 after digging up the place in the field of one Jai Singh. Knives Ex.P-1 to P-3 were

ordinary knives and they were not any valuable property. There was no reason for the appellants to have hidden these knives and that too in the open fields near the place of incident. Similarly, the abovesaid three appellants also told the I.O. that they were wearing the same clothes that they were wearing now at the time of commission of the offence. In addition, they allegedly got recovered some bloodstained clothes from the room of one Phool Singh and one Om Prakash Sharma. It is not understandable that if they had opportunity to wash the bloodstains off some of their clothes, why would they not wash the remaining ones and would conceal the same simply to get them recovered later on to the police.

28. In *Prabhoo v. State of U.P.*, AIR 1963 SC1113 recovery of a bloodstained shirt and a dhoti as also an axe on which human blood was detected was held to be extremely weak evidence to base conviction of the accused. In *Narsinbhai Haribhai Prajapati etc. v. Chhatrasinh & Ors*, AIR 1977 SC1753 recovery of a bloodstained shirt and a dhoti as also the weapon of offence, a dhariya were held to be weak evidence. In *Surjit Singh & Anr. v. State of Punjab*, AIR 1994 SC110 recovery of a watch stated to be that of a deceased and the dagger stained with blood of the same group as that of the deceased were held to be weak evidence. Similar view was taken by the Supreme Court in *Deva v. State of Rajasthan*, 1999 SCC (Cri) 41 and *Mani v. State of Tamil Nadu*, 2009 (17) SCC273 29. In view of the law laid down in *Prabhoo*, *Narsinbhai Haribhai Prajapati*, *Surjit Singh* and *Mani*, we are not inclined to attach much importance to the alleged recoveries effected at the instance of appellants Arun Kumar, Ram Parkash and Krishan Kumar @ Krishna. MOTIVE³⁰ The prosecution has led some evidence with regard to the motive. In their statements under Section 313 Cr.P.C., appellants Ram Parkash, Krishan Kumar @ Krishna and Prithvi Raj have denied that they ever misbehaved with the deceased after consuming liquor in the factory or that they were expelled from the services. They gave different dates for leaving the employment with M/s. K.N. Inter Plast Pvt. Ltd.

31. The prosecution version is that appellants Ram Parkash, Krishan Kumar @ Krishna and Prithvi Raj had been expelled from the factory because of their misbehaviour with the deceased after consuming liquor. Similarly, as per prosecution version appellants Rani and Arun Kumar were counselled by the

deceased for their objectionable behaviour in the factory and appellant Arun Kumar stopped reporting for work considering that he had been expelled, yet, employment records of the five appellants were not seized by the I.O. during the course of investigation. As per the prosecution case set up in the charge sheet which is reflected from the statements of the witnesses recorded under Section 161 Cr.P.C., the incident of the three appellants misbehaving with the deceased took place two to three years before the occurrence. However, in Court, evidence was led to the effect that the incident took place merely two-three months before the occurrence. The witnesses were also duly confronted with their statements under Section 161 Cr.P.C. Thus, in view of the prosecution version, seizure of the entire employment record to pin point the period of employment of the appellants was extremely important which was not done by the I.O. for the reasons best known to him. So much so that PW-13 had stated that on 24.10.2008, the police wanted to seize the record but he declined to part with the same on the ground that the same would be produced in the Court only, when required. If really there had been any record, the same would have been seized by the I.O. during the course of investigation.

32. Further, some computer generated salary sheets of the employees were also sought to be proved as Ex. PW-13/ A to Ex. PW-13/ D. The same reveal that appellant Rani received some salary for the month of October, 2008 whereas names of other appellants were not there. In the salary sheet for the month of June, 2008, names of Krishan Kumar @ Krishna, Arun Kumar and Prithvi Raj were there but name of appellant Ram Prakash was conspicuously absent. If these salary sheets are to be believed, they lend credence to appellant Ram Prakash's version that there was no incident of misbehaviour by him and others with the deceased and that he had left the services with M/s. K.N. Inter Plast Pvt. Ltd. in April, 2008 itself. It is well settled that an accused is not expected to prove his defence beyond shadow of reasonable doubt. Thus, the absence of appellant Ram Prakash's name in the salary sheet for the month of June, 2008 makes his defence plausible which again creates doubt in the prosecution version.

33. In view of the prosecution version, the employment records if seized would have provided some credence as to how and when the appellants' services were

terminated or any of them stopped reporting for work.

34. In the absence of seizure of the employment record, the same could not be verified. Whatever record/ computer generated salary sheets were produced, the same do not support the prosecution version. Similarly, as per the prosecution version, appellant Arun Kumar himself stopped coming to work whereas appellant Rani was still serving. Thus, there could not be a motive strong enough for appellants Arun Kumar and Rani to have entered into any conspiracy to commit the gruesome crime as alleged. Otherwise also, it is very well settled that motive, however, strong is not enough to base conviction of the accused. In *Sampath Kumar v. Inspector of Police, Krishnagiri*, (2012) 4 SCC124 while referring to *N.J.*

Suraj v. State, (2004) 11 SCC346 *Santosh Kumar Singh v. State*, (2010) 9 SCC747 and *Rukia Begum v. State of Karnataka*, (2011) 4 SCC779 the Supreme Court observed that motive alone can hardly be a ground for conviction. In paras 29 and 30, the Supreme Court held as under:

29. In *N.J.*

Suraj v. State, (2004) 11 SCC346 the prosecution case was based entirely upon circumstantial evidence and a motive. Having discussed the circumstances relied upon by the prosecution, this Court rejected the motive which was the only remaining circumstance relied upon by the prosecution stating that the presence of a motive was not enough for supporting a conviction, for it is well settled that the chain of circumstances should be such as to lead to an irresistible conclusion, that is incompatible with the innocence of the accused.

30. To the same effect is the decision of this Court in *Santosh Kumar Singh v. State*, (2010) 9 SCC747 and *Rukia Begum v. State of Karnataka*, (2011) 4 SCC779 where this Court held that motive alone in the absence of any other circumstantial evidence would not be sufficient to convict the appellant. Reference may also be made to the decision of this Court in *Sunil Rai v. UT, Chandigarh*, (2011) 12 SCC258 This Court explained the legal position as follows: (*Sunil Rai case*, SCC p. 266, paras 31-32)

31. In any event, motive alone can hardly be a ground for conviction.

32. On the materials on record, there may be some suspicion against the accused, but as is often said, suspicion, howsoever strong, cannot take the place of proof.

35. In this view of matter, even if it is assumed that the possibly some grievance existed, the same is not sufficient to base appellants conviction.

36. Non-seizure of the employment records, non-obtaining of the call details of the deceaseds mobile phone, non-recording of the statement of PW-13 at the time of recovery of dead body, discrepancy in the post mortem report and PW-8s testimony, though not significant individually, when read together with the gaping holes create serious doubt about the motive theory.

37. The appellants are alleged to have entered into a criminal conspiracy to commit the deceaseds murder. It is true that direct evidence of hatching a conspiracy is seldom available, yet at the same time, it is the bounden duty of the prosecution to prove the conspiracy by indirect or circumstantial evidence which must be clear, cogent and believable. That having not been done, it cannot be said that the appellants had entered into any criminal conspiracy to commit the murder of Late Satdev Rathi. As noticed above, the Trial Court has invoked both Sections 34 and 120B IPC and convicted the appellants. As per the charge sheet, all of them were present at the place of occurrence. However, for the reasons stated above, we have held that the prosecution has not been able to establish the said charges beyond reasonable doubt.

38. For the foregoing reasons, the appeals are bound to succeed; the same are accordingly allowed. The judgment and the order on sentence are accordingly set aside. The appellants are acquitted of the charges framed against them.

39. The appeals are allowed in above terms.

40. Pending applications also stand disposed of.

41. A copy of the order be transmitted to the Trial Court for information. (G.P. MITTAL) JUDGE (SANJIV KHANNA) JUDGE MARCH18 2014 vk

