

Suresh Chand Vs. State

Suresh Chand Vs. State

SooperKanoon Citation : sooperkanoon.com/1171006

Court : Delhi

Decided On : Jul-21-2014

Judge : G. S. Sistani

Appellant : Suresh Chand

Respondent : State

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A. 1041/2010
Judgment Pronounced on 21st July, 2014 % SURESH CHAND Through: Mr.Ajay Verma, Adv. Appellant versus STATE Through : Respondent Ms.Rajdipa Behura, APP for State. CORAM: HON'BLE MR. JUSTICE G.S.SISTANI HONBLE MR. JUSTICE G.P.MITTAL G.S.SISTANI, J1 Challenge in the present appeal is to the judgment dated 16.7.2009 and the order on sentence dated 31.7.2009 passed by learned Additional Sessions Judge by which the appellant has been sentenced to imprisonment for life with fine of Rs.3,000/-, and in default of fine, simple imprisonment for another period of three months for the offence under Section 302 IPC.

2. The appellant was married to one Ms.Madhu; out of the wedlock four children were born.

3. The version of the prosecution as noticed by the trial court is that on 26.8.2006 at around 7:28 a.m. an information was received at the Police Station Ashok Vihar

vide DD Nos.10A and 11A about the recovery of a dead body of one lady lying in Jhuggi No.F-356, Jailerwala Bagh, Delhi. The head of deceased Madhu was found crushed and one blood-stained stone was lying on the table nearby when Inspector S.K. Sharma along with ASI Balwan reached the spot. Deepak Kumar, son of the deceased was present at the spot, who informed the police that his father had killed his mother. Statement of Deepak Kumar was recorded by Inspector S.K. Sharma. Brother of the deceased and one daughter of the deceased, Poonam, were also present at the spot. After preparation of the Rukka, FIR was got registered, crime team was called; spot was inspected; photographs were taken; a site plan was prepared and blood-stained sheet, stone and mat below the dead body along with blood samples were seized from the spot by the I.O. Photograph of the deceased with one Sanjay was also seized from the spot. The dead body was got identified by children of the deceased, namely, Deepak Kumar and Poonam.

4. It is the case of the prosecution that the search for the appellant was started, the police was informed by the brother of the deceased, Prakash that accused Suresh was sitting near mazaar Jailerwala Bagh, Delhi, consequently the accused was apprehended at the instance of Prakash; and his disclosure statement was recorded. The accused informed that he had hidden his blood stained clothes under the Charpai at the roof of his Jhuggi, the clothes were recovered at his instance and seized by the police. The accused was also got medically examined. Postmortem of the body of the deceased was conducted on 28.8.2006. The weapon of offence i.e. stone was also produced before the doctor; the exhibits were sent to the FSL.

5. The prosecution has examined 17 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C.

6. Counsel for the appellant submits that the judgment passed by the learned trial court is erroneous, contrary to the facts of the case and not sustainable in the eyes of law. The trial court has failed to appreciate the evidence and material on record. It is also the case of the appellant that the story of the prosecution is false, fictitious and fabricated and the appellant has been falsely implicated in the case.

It is also the case of the appellant that the judgment is based on conjectures, surmises and assumptions and not supported from the facts and circumstances of the case.

7. It is strongly urged before this court that the trial court has wrongly placed reliance on the evidence of PW-1, Deepak Kumar, whereas both Deepak Kumar and the appellant were sleeping on the roof of the Jhuggi and Deepak Kumar was not an eye-witness. It is also submitted before this court that as per the evidence of Deepak Kumar, after he discovered that his mother had been brutally murdered, he informed his father, who was sleeping on the roof top and in case the appellant had committed the murder, he would have run away from the spot and not come and slept on the roof. Counsel further submits that the trial court has failed to appreciate that Poonam, daughter of the deceased was sleeping in the same Jhuggi on the bed and she did not hear any noise when the deceased had been murdered. It is further submitted that when the information was passed to the Police, the appellant was not named as the person who had killed the deceased Madhu.

8. Learned APP for the State has submitted that the prosecution has been able to prove its case beyond any shadow of doubt. As per the evidence of PW-1, Deepak Kumar, son of the deceased, on the night of the incident his mother and father had quarreled over a boy named Sanjay, who used to visit their house; his father did not like Sanjay meeting his wife and on this account there used to be frequent quarrels between his father and mother. On the fateful night, his parents were quarrelling on the same issue. PW-1 has also deposed that he had told his father that his mother was lying dead and his father had simply said WOH TO AISI HI THI AUR USKE SATH AISE HI HONA THA.

9. Counsel further submits that the trial court has failed to appreciate that the facts and evidence on record do not conclusively prove the guilt of the appellant.

10. Counsel further submits that the trial court has failed to take into consideration that PW-1, Deepak Kumar had noticed the dead-body at 6:00 a.m. and the police was informed around 7:00 a.m., but the daughter, Poonam was woken up by Police only after 8:00 a.m.

11. Counsel further submits that the conduct of the appellant would show that he did not run away from the spot. It is also stated that the brother of the deceased, PW-3, has clearly stated that his sister was of a bad character and he has also disputed that he was present at the time when the recoveries were made.

12. Counsel for the appellant further submits that there are many contradictions in the evidence of the witnesses.

13. Learned counsel for the appellant contends that the judgment and order on sentence cannot be sustained in the eyes of law as the appellant has been held guilty on the basis of circumstantial evidence in which the chain of circumstances is not complete. Moreover the circumstances suggest the possibility of non-involvement of the appellant in the present case.

14. Learned APP for the State submits that PW-2, who is also the son of the deceased, had also stated that Sanjay used to come and meet his mother often at their Jhuggi and on this issue there used to be frequent quarrels between his parents. Counsel further submits that the photograph of Sanjay and deceased was also found at the spot, which would show that there was a strong motive with the appellant for the murder of Madhu, deceased who was the wife of the appellant.

15. Counsel further submits that the recovery of blood stained clothes was made on the basis of a disclosure statement made by the appellant. The recovery was witnessed by PW-3, brother of the deceased and further as per the FSL report, blood group A was found on the clothes of the deceased as also the clothes of the appellant.

16. Learned APP for the State also submits that as per the FSL report, the blood on the stone as also blood on the appellants and victims clothes was the same. It is also stated by learned APP for the State that the evidence of the prosecution and the complete chain of events clearly establish the guilt of the appellant beyond any reasonable doubt.

17. We have heard learned counsels for the parties and carefully examined the evidence and the record of the trial court. The appellant has been convicted by the

trial court on the basis of circumstantial evidence.

18. It is the case of the appellant that the appellant has been falsely implicated in this case and the trial court has wrongly placed reliance on the evidence of PW-1, Deepak Kumar, the son of the deceased, who was not an eyewitness. It has also been argued that the appellant was not named in the information passed on to the Police as to the person who had killed the deceased. It has also been urged before this Court that the real brother of the deceased had testified that his sister was of a bad character and he has not supported the case of the prosecution that he was present at the time when the recoveries were made from the appellant.

19. PW-1, Deepak Kumar, son of the deceased has testified that he was residing in Jhuggi along with his brother, two younger sisters and parents. On the night of the incident, his parents had a quarrel over a boy named, Sanjay, who used to visit their house, which was not liked by his father; and his father had asked his mother not to meet Sanjay. It has also been deposed that his parents would often quarrel over this issue. On the fateful night, his parents were quarrelling when he went to the roof of the jhuggi and slept after taking dinner. In the morning he found his mother dead. The dead body was lying on the floor on a sheet. Face of his mother was totally crushed and beyond recognition. A stone was also lying there with blood stains on it. On seeing this, he went to his father, who was sleeping on a cot on the roof of the jhuggi, and informed him that his mother was lying dead downstairs; his father told him that the deceased was like this and she was suppose to meet the same fate [WOH TO AISI HI THI AUR USKE SATH AISE HI HONA THA].. He informed his mausi, Raj Kumari, who came with him and saw the dead body. Thereafter he started crying and many people gathered at the spot. The police also reached at the spot and his statement was recorded as Ex.PW1/A. PW-1 identified his signatures at point A-1 and also identified the dead-body. PW-1 has also deposed that when the police reached the spot, his younger sister, Poonam was sleeping on the bed and on seeing them, she also started crying. Police also made enquiries from her as well. Deepak Kumar has also deposed that at the place of occurrence, a photograph of his mother along with Sanjay was hanging on the wall and it was the said photograph which his father had asked to be removed and thrown out, but his mother did not agree.

20. PW-1 has also testified that he was present at the time of quarrel before he went upstairs. The Police had seized and sealed the blood stained bed sheet, stone and photograph. He identified his signatures on the seizure memo as Exhibit C-1. PW-1 also identified the seized articles and also identified the photograph, which was recovered from the spot of his deceased mother with Sanjay (Exhibit P-1). During cross-examination, PW-1 testified that the quarrel between his parents took place at about 8.00 p.m., a day earlier. He had gone to bed at about 10.00 p.m. and he found his mother dead at 5.00 a.m., the next morning.

21. PW-2, Keshav, is also one of the children of the appellant and the deceased. This witness was thirteen years of age at the relevant time. It has been observed by the learned Judge that on enquiries having been made from the witness, the court was satisfied that this witness was capable of understanding things and also the sanctity of an oath. PW-2, Keshav, testified that he was residing in a jhuggi in Jailerwala Bagh along with two younger sisters, one elder brother and his parents. He testified that a boy Sanjay, used to come to meet his mother at the jhuggi and sometimes even spent nights. On this issue, there used to be a quarrel between his parents and the boy Sanjay, even used to beat his father. PW2 has also testified that on the day of the incident, he came to his house between 8.00-9.00 p.m. and went to the roof to sleep after eating his food. His brother, father and one sister, Neeraj, were also sleeping on the roof of the jhuggi while his sister, Poonam, was sleeping in the room along with his mother. In the morning, he was woken up by his brother and when he came down, he found his mother dead. Her face was totally crushed. He was informed by the Police officials that his father had murdered his mother. He also testified that a photograph of his mother and Sanjay was hanging on the wall of the room where his mother was found dead. His father had objected to the photograph but she did not remove the same. The witness identified the photograph as Exhibit P-1. During cross-examination, PW-2 denied the suggestion that no quarrel took place in his presence.

22. PW-3, Sh.Prakash, brother of the deceased Madhu, testified that the deceased was his younger sister and she was residing along with the appellant and her children. He further testified that she was a lady with a bad character and was having an illicit relation with a boy named Sanjay. He also testified that the

deceased did not cook food for her husband and although he had advised her to desist from such an affair but she did not pay any heed to his suggestion and she used to maltreat her husband. This witness has also testified that he was informed by his nephew, Deepak, on 26th August, 2006, that somebody has killed his mother. He had identified the dead body of the deceased and on his pointing out, the accused (appellant herein) was arrested by the Police from mazaar. He identified his signatures on the arrest memo (Ex.PW-3/A) and the personal search memo (Ex.PW-3/B). He also testified that the appellant had made a disclosure statement which was recorded by the Police (Exhibit PW-3/C). He also testified that the appellant had led the Police to the jhuggi from where his clothes were recovered from the roof. He identified his thumb impression at point A-1 on the seizure memo (Exhibit PW-3/D). PW-3 further identified the clothes of the appellant, which were seized by the Police in his presence as Ex.P-6. It may be noticed that during crossexamination, this witness testified as under:

Police had reached the spot on 26th of August at about 8.00 AM. I cannot say till when the Police remained there. Nothing was done in my presence by the Police. No safari suit was recovered in my presence by the Police. Voluntary, police obtained my signatures on some blank papers in the Police Station.

23. PW-4, ASI Balwan Singh, testified that he along with the I.O. had reached the spot of the incident in the morning of 26.8.2006. This witness has testified that at about 3.00 p.m. the brother of the deceased, namely, Prakash, met the I.O. and informed him that the husband of the deceased was sitting at Sports Complex, near mazaar, Jailerwala Bagh, and he had confessed that he committed the murder of Madhu due to her illicit relations. He further testified that he along with the I.O. and Prakash reached at Sports Complex near Mazaar and on pointing out of Prakash the appellant was arrested by the I.O. His disclosure statement was recorded as Exhibit PW-3/C. On the basis of the disclosure statement, the appellant took them to jhuggi No.F-356 and from its roof one cream colour safari suit with blood stains, kept under the broken Palang, which he was allegedly wearing at the time of the murder was found and the same was sealed. At the time of post mortem, blood samples of the deceased were handed over to the I.O. This witness also identified the stone which was recovered from the spot (Exhibit P-2)

and also identified other articles seized including clothes of the deceased and the safari suit with blood stains.

24. The prosecution also examined PW-8, Dr.Upendra Kishore, Assistant Professor, MAMC, Delhi, who conducted the post mortem on the body of the deceased Madhu. He described the external ante-mortem injuries and also internal injuries on the deceased. He opined that the injuries could have been caused by the stone produced in Court.

25. PW-12, Poonam, daughter of the deceased, testified that one Sanjay used to come to meet her mother. On 25.8.2006 a quarrel took place between her parents, although she did not know the cause of the quarrel. She went to sleep at about 8.00 p.m. and on the next morning when she was woken up by the Police she saw her mother lying dead on the floor. This witness was cross-examined as she had re-sited from the previous statement made before Police.

26. PW-16, Dr.K.K. Srivastava, Senior Scientific Officer, (Biology)-Cum-Ex. Govt. Chemical Examiner, FSL, Rohini, Delhi, testified that reports, Exhibit PW-16/A and Exhibit PW-16/B, were signed by him at point A.

27. PW-17, Inspector S.K. Sharma, testified that he reached the spot of the incident on 26.8.2006. The dead body of one lady, Madhu, wife of Suresh Chand, was lying on the floor. Her head was crushed and one blood stained stone was found lying on the table near the body. Deepak, son of the deceased, informed him that his father had killed his mother. He further testified that statement of Deepak Kumar was recorded (Exhibit PW-1/A). One photo of the deceased Madhu with one Sanjay was also taken into possession. This witness has also testified that Prakash, the brother of the deceased, had informed him that the husband of deceased, Suresh was sitting near mazaar and he was feeling guilty for killing his wife. He along with the Police party and Prakash reached the mazaar and apprehended the appellant. The statement of the appellant was recorded. His personal search was conducted. During disclosure the appellant had informed that he had hid the blood stained clothes under the charpai at the roof of his jhuggi. The same were recovered at his instance vide seizure memo and pointing out memo Exhibit PW-3/D.

28. In the statement of the appellant recorded under Section 313 Cr.P.C. he stated that his wife had been killed by Sanjay, Sagar and Laxman and his wife had illicit relations with Sanjay.

29. The evidence of PW-1 and PW-2, both the sons of the deceased would show that the deceased was residing along with her family in the jhuggi. A day before the incident the couple had quarreled on account of a photo of the deceased Madhu along with Sanjay, which had been hanging on the wall of the jhuggi. Both the children testified that the parents had quarreled over the boy named, Sanjay, who used to visit their house. Their father did not like Sanjay visiting the house and on this account there used to be frequent quarrels between the couple. Their father had asked Madhu to remove her photograph with Sanjay hanging on the wall of the jhuggi, which the mother did not agree to.

30. The brother of the deceased has also testified that his sister was having an illicit relation with a boy named Sanjay. He has gone to the extent of calling his sister a lady of bad character. Although PW-12, daughter of the deceased was declared as a hostile witness but she also testified that on 25.8.2006 a quarrel took place between her parents. During cross-examination by APP she denied that her mother had any relation with Sanjay but she did not deny that a photograph of her mother with Sanjay was hanging on the wall of the jhuggi and her father had objected to the photograph. Based on the evidence of PW-1, PW-2 and PW-12, it is clearly established that the appellant was last seen together with the deceased at the spot of the incident. It is clearly established beyond any shadow of doubt by the evidence of the children of the deceased that on the night of the incident their parents were quarreling and the reason was a photograph of the deceased along with Sanjay, which had been put on the wall of the jhuggi. The appellant had asked his wife to remove the photograph, which she refused. It is also established on record that the couple would often quarrel on account of the relationship between the deceased and Sanjay, and Sanjay would even sometimes spend nights at the jhuggi. Based on the evidence of PW-3, PW-4 and PW-12, it is not only established that the appellant was last seen with the deceased, it also stands established that there was a strong motive in this case for the appellant to kill his wife.

31. The evidence of PW-2 is corroborated by the evidence of PW-3 that the cause of quarrel between the couple was a boy named Sanjay. PW-3, the brother of the deceased, has testified that his sister was a lady of bad character and she was having an illicit relation with the boy Sanjay. Further, as per his testimony, he had requested his sister with folded hands to desist from such an affair but she did not agree. PW-3 is an important witness. The appellant was arrested by the Police on the pointing out of PW-3, Sh.Prakash. PW-3 has testified that on his pointing out, the accused (appellant herein), whom he identified in Court was arrested by the Police from mazaar. He also testified that the arrest memo and personal search memo (Exhibits 3-A and 3-B) bear his thumb impressions at point A-1. This witness has also testified that the accused (appellant herein) had made a disclosure statement (Exhibit PW-3/C), which was recorded by the Police, which bears his thumb impression at point A-1 and further the accused (appellant herein) had led the Police to the roof of his jhuggi from where his bloodstained clothes were recovered. The clothes were seized and sealed vide Exhibit PW-3/D. He identified his thumb impression at point A-1. It may however, be noted that further examination-in-chief of PW-3 was deferred from 8th October, 2007 to 26th July, 2008, when this witness further testified and identified the clothes of the accused (appellant herein) having blood stains, which were seized vide seizure memo Ex.PW-3/D and the same was marked as Exhibit P-6 but during cross-examination on the same day, this witness testified that nothing was done in his presence by the Police nor safari suit was recovered and his signatures were obtained on some papers in the Police Station. The cross examination of this witness cannot come to the aid and rescue of the appellant in view of the categorical stand taken by him in his examination-in-chief and secondly, both PW-4 ASI Balwan Singh and PW-17 Insp.S.K.Sharma have testified on the same lines as this witness has testified, thus it would show that this witness was won over by the appellant during the period 8th October 2007 to 26th July 2008.

32. PW-4, ASI Balwan Singh, has testified that the brother of the deceased came to the spot, met the I.O. and informed the I.O. that Suresh Chand, appellant herein, who was the husband of the deceased was sitting at Sports Complex, near mazaar, Jailerwala Bagh, and he had confessed to committing the murder of Madhu due to her illicit relation with Sanjay. This witness also testified that he

along with the I.O. and Prakash reached the spot, arrested the accused vide memo Ex.PW-3/A, his personal search was conducted vide memo Ex.PW-3/B and his disclosure statement was recorded (Exhibit PW-3/C). Further this witness has corroborated that on the basis of the disclosure statement, accused took them to the jhuggi and from its roof one cream colour safari suit, which was kept under a broken palang, was produced before the I.O., on which blood stains were found and which he was allegedly wearing at the time of the murder.

33. Evidence of PW-17 also corroborates the evidence of PW-4, ASI Balwan Singh, and PW-3, Prakash, who has deposed on the lines of deposition made by PW-4 with respect to the pointing out of appellant by his brother-in-law near the mazaar and also with regard to personal search and arrest memo and disclosure statement. Based on the evidence of PW17 Inspector S.K. Sharma, PW-4 ASI Balwan Singh read with the evidence of PW-3, who is none other than the brother of the deceased, the prosecution has been able to establish beyond any doubt that after committing the murder, the appellant had absconded and was arrested on the pointing out of his own brother-in-law PW-3.

34. The evidence of PW-3 is truthful and trustworthy inasmuch as that he has condemned his own sister as being a lady of a bad character, who was having an illicit relation with a boy named Sanjay. He pointed out in his evidence that she would not cook for his husband and despite his repeated requests with folded hands, she did not desist from her behaviour. It is this witness, who has truthfully deposed that he pointed out to the appellant near the mazaar. The appellant was arrested in his presence. Disclosure was made in his presence. The appellant led the Police to the jhuggi where the clothes were recovered from the roof of the jhuggi. The clothes were seized vide Exhibit PW-3/D. He identified his thumb impression at point A. He also identified the blood stained clothes. There is no contradiction or variance in the evidence of all the three witnesses i.e. PW-3, PW-4 and PW-17 with respect to the arrest of the appellant and with respect to his disclosure statement pointing out of the clothes, which were within his special knowledge and the blood stained clothes have been identified by all the three witnesses.

35. PW-1, who was the first to find his mother lying in the pool of blood has testified that a stone with blood stains was lying in the room. PW-2 has also testified that he had seen his mothers face totally crushed. PW-4 has also testified that blood stained stone was lying near the dead body of the deceased, which was seized and sent for examination.

36. As per the evidence of PW-8, Dr.Upendra Kishore, Assistant Professor, MAMC, Delhi, who had conducted the post-mortem on the body of the deceased, on being shown the stone opined that the injuries on the dead body could have been caused by the stone produced or by a similar one. Thus, it is clearly established that the stone found near the body of the deceased was the weapon of offence.

37. The scientific evidence placed on record in the form of reports Ex.PW16/A and Ex.PW-16/B have confirmed that the clothes worn by the appellant i.e. pant and shirt, and the clothes worn by the deceased i.e. Salwar, kurta and bra, weapon of offence i.e. the stone and the articles collected from the spot in the form of bed sheet and mat, were all having blood stains and on all the aforesaid articles the blood was human blood and of the same group and the same was similar to the blood sample collected by the IO from the spot through seizure memo Ex.PW-1/C. The relevant portion of Ex.PW-16/A and Ex.PW-16/B reads as under:

DESCRIPTION OF ARTICLES CONTAINED IN PARCEL Parcel 1: One cloth parcel sealed with the seal of BS containing exhibit 1. Exhibit 1: A piece of gauze cloth having dark brown stains. Parcel 2: One cloth parcel sealed with the seal of BS containing exhibits 2a and 2b. Exhibit 2a: One bed sheet having dark stiff brown stains. Exhibit 2b: One foot mat having dark stiff stains. Parcel 3 : One cloth parcel sealed with the seal of FMT BJRM HOSPITAL DELHI containing exhibits 3a, 3b, 3c and 3d. Exhibit 3a: One lady kurta having dark brown stains. Exhibit 3b: One lady salwar having dark brown stains. Exhibit 3c: One underwear having dark brown stains. Exhibit 3d: One brassiere having dark brown stains. Parcel 4 : One cloth parcel sealed with the seal of BS containing exhibits 4a and 4b. Exhibit 4a: One full sleeved shirt having dark brown stains. Exhibit 4b: One paints having dark brown stains. Parcel 5 : One cloth parcel sealed with the seal of FMT BJRM

HOSPITAL DELHI containing exhibits 5. Exhibit 5 : A heavy stone piece having dark brown stains. Parcel 6 : One paper envelope sealed with the seal of FMT BJRM HOSPITAL DELHI containing exhibit 6. Exhibit 6 : A piece of gauze having dark brown stains.

1. Blood was detected on exhibits 1, 2a, 2b, 3a, 3b, 3c, 3d, 4a, 4b, 5 and 6.

2. Report of serological analysis in original is attached herewith. The relevant portion of report Ex.PW16/B is as under:

Exhibits	Species	Origin
1	Gauze	Human
2a	Bedsheet	Human
2b	Foot mat	Human
3a	Lady kurta	Human
3b	Lady Human Salwar	Human
3c	Underwear	Human
3d	Brassiere	Human
4a	Shirt	Human
4b	Pants	Human
5	Stone piece	Human
6	Gauze piece	Human

38. ABO Group/Remarks A Group A Group No reaction A Group A Group A Group A Group A Group A Group A Group A Group Thus, it is established that the blood found on all the aforesaid articles was the blood of the deceased Madhu and by the factum that the same blood was found on the clothes worn by the appellant i.e. pant and shirt and the fact that the same was got recovered by the appellant himself has further established the circumstances against the appellant and there is no explanation to presume to the contrary.

39. There is no quarrel with the proposition that in a case of circumstantial evidence, all the circumstances which pointed out towards the guilt of a person, must be fully established.

40. Law with regard to the conviction on the basis of circumstantial evidence has been discussed in detail by the Supreme Court in the case of Harishchandra Ladaku Thange Vs. State of Maharashtra, reported at AIR 2007 SC2957 It would be useful to reproduce the relevant paras:

8. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See Hukam Singh V. State of Rajasthan (AIR 1977 SC1063, Eradu V. State of Hyderabad (AIR 1956 SC31, Earaohadrappa V. State of Karnataka (AIR 1983 SC446, State of U.P.

V. Sukhbasi & Ors. (AIR 1985 SC1224, Balwinder Singh alias Dalbir Singh V. State of Punjab (AIR 1987 SC350 and Ashok Kumar Chatterjee V. State of M.P. (AIR 1989 SC1890). The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram V. State of Punjab (AIR 1954 SC621 it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.

9. We may also make a reference to a decision of this Court in C. Chenga Reddy & Ors. V. State of A.P. (1996 (10) SCC193, wherein it has been observed thus:

21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

8. In Padala Veera Reddy V. State of A.P. (AIR 1990 SC79 it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests: (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

41. It would be useful to reproduce the observations of the Supreme Court of India in another decision rendered in the case of *Munish Mubar v. State of Haryana*, reported at (2012) 10 SCC464 paras 20 and 22 reading as under:

20. Undoubtedly, in a case of circumstantial evidence, all the circumstances must be fully established and all the facts so established, must be consistent with the hypothesis regarding the guilt of the accused. The circumstances so established, should exclude every other possible hypothesis except the one sought to be proved. The circumstances must be conclusive in nature. Circumstantial evidence is a close companion of factual matrix, creating a fine network through which there can be no escape for the accused, primarily because the said facts, when taken as a whole, do not permit us to arrive at any other inference but one, indicating the guilt of the accused.

22. In a case of circumstantial evidence, motive assumes great significance and importance, for the reason that the absence of motive would put the court on its guard and cause it to scrutinize each piece of evidence very closely in order to ensure that suspicion, emotion or conjecture do not take the place of proof. However, the evidence regarding existence of motive which operates in the mind of an assassin is very often, not within the reach of others. The said motive, may not even be known to the victim of the crime. The motive may be known to the assassin and no one else may know what gave birth to such evil thought, in the mind of the assassin. In a case of circumstantial evidence, the evidence indicating the guilt of the accused becomes untrustworthy and unreliable, because most often it is only the perpetrator of the crime alone, who has knowledge of the circumstances that prompted him to adopt a certain course of action, leading to the commission of the crime. Therefore, if the evidence on record suggest sufficient/necessary motive to commit a crime, it may be conceived that the accused has committed the same. (See: *Subedar Tewari v. State of U.P. and Ors.*: AIR 1989 SC733 *Suresh Chandra Bahri v. State of Bihar*: AIR 1994 SC2420 and *Dr. Sunil Clifford Daniel v. State of Punjab*: JT2012(8) SC639.

42. In this case, motive stands duly established from the evidence of PW-1, PW-2, PW-3 and PW-12. It has also been established that the deceased was having an

illicit relation with a boy named Sanjay. The couple would often quarrel on this issue. On the preceding night of the incident, a quarrel broke out between the deceased and the appellant in the presence of PW-1 as the appellant had asked the deceased to remove the picture of the deceased and Sanjay put on the wall, which the deceased had refused to remove. The picture was found at the spot of the incident.

43. As per the evidence as noticed in the paragraphs foregoing, which establish a strong motive and strong circumstances, which point towards the guilt of the appellant, the stone with which the head of the deceased was smashed was found at the spot with blood stains, which matches with the blood group of the deceased. As per the evidence of Dr. Upender, PW8, the said stone could have been used for smashing the head of the deceased which led to her death. It has been submitted before us that the appellant did not abscond after the commission of the crime and this is a relevant factor which should have been considered by the trial court. The evidence of PW-3, brother of the deceased read with the evidence of PW4, ASI Balwan Singh, and PW-17, Inspector S.K. Sharma, would show that the appellant was arrested from the mazaar on the pointing out of PW-3. Thus, it cannot be said that the appellant was present at the spot after the incident. The appellant had made a disclosure statement in the presence of PW-3. The thumb impression on the disclosure statement has been identified by PW-3 as also by PW-4 and PW-17.

44. In the case of *Golakand Venkateshwara Rao v. State of A.P.*, reported at (2003) 9 SCC277 it has been held as under:

15. The provisions of Section 27 of the Evidence Act are based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and consequently the said information can safely be allowed to be given in evidence because if such an information is further fortified and confirmed by the discovery of articles or the instrument of crime and which leads to the belief that the information about the confession made as to the articles of crime cannot be false. (See *S.C. Bahri v. State of Bihar*:

1994. Cri LJ3271. As already noticed M.O.3, M.O.4 and M.O.5 were retrieved from the well with the help of swimmers, as there was a water level of 6-1/2 feet. MO.2 MO.6 and MO.8 are the pieces of langa dug out and unearthed at the disclosure of the appellant. These materials were not found lying on the surface of the ground but they were found inside the well, which is 6-1/2 deep of water, with the help of swimmers and were found after being dug out and unearthed only after the place was pointed out by the appellant. It is not found from the place where public can have free access. Therefore, there is no reasonable apprehension with the material exhibits being planted to rope in the appellant with the crime.

45. It would also be useful to reproduce the observations made by the Supreme Court of India in the case of Nisar Khan Alias Guddu & Others v. State of Uttaranchal, reported at (2006) 9 SCC386

6. Regarding the second contention that the recovery of arms has not been proved by the prosecution has also no substance. It is evidence on record that the accused were arrested on 17.12.1999 and pursuant to a disclosure statement made by them, the arms were recovered from the bank of Gaula river where these have been hidden under the sand and covered by the stones. All the arms were recovered as pointed out by each accused hidden under the stones. The High Court fell in error in holding that the recovery has not been proved as these were recovered from a place which is frequented by the public. This finding of the High Court is contrary to the evidence on record. It is now well settled principle of law that the recovery pursuant to the disclosure statement made by the accused under Section 27 of the Evidence Act is admissible in evidence. In Dhananjay Chatterjee alias Dhana v. State of West Bengal: [1994]. 2 SCC220 1994 SCC (Cri) 358, it is held that entire statement made by an accused person before the police is inadmissible in evidence being hit by Sections 25 and 26 but that part of his statement which led to the discovery of the articles is clearly admissible under Section 27 of the Act. It is also held that the Court must disregard the inadmissible part of the statement and take note only of that part of his statement which distinctly relates to the discovery of the articles pursuant to the disclosure statement made by the accused. It is further held that the discovery of the fact in this connection includes the discovery of an object found, the place from which it is

produced and the knowledge of the accused as to its existence.

7. In the case of Gola Konda Venkateswara Rao v. State of A.P.:

2003. Cri LJ3731, this Court reiterated the view and held that the discovery statement of an accused leading to recovery of crime articles from concealed place. Even though the discovery statement and the recovery memo did not bear the accused's signature. The fact of recovery from the well and dug out from a place which was pointed out by the appellant and, therefore, such discovery was voluntary. That the recovery was in consequence to the information given fortified and confirmed by the discovery of the wearing apparel and skeletal remains of the deceased and, therefore, the information and statement cannot be held false. In the present case on the recovery memo the signatures of all the accused have been obtained. In the case of Praveen Kumar v. State of Karnataka, the same view has been reiterated.

8. As already noted, in the instant case the discovery of the arms was pursuant to the disclosure statement made by the accused immediately after the arrest and the offending arms were recovered at the place pointed out by each of the accused which were concealed under the sand and covered by the stones. The High Court in this regard fell in grave error by disbelieving the recovery memo solely on the ground that the place is a common place which is frequented by the public. The High Court failed to take notice that the recovery has been made from underneath the sand covered by the stones pursuant to the disclosure statement pointing out by each of the accused.

46. In the present case, the blood stained clothes of the appellant were discovered under the cot from the terrace, a place, which was not within the knowledge of the Police and was discovered for the first time on the information given by the appellant. Since the information given by the appellant led to the discovery of facts, which facts were within the knowledge of the appellant and also which had a direct relation and nexus to the commission of the offence, the same would be covered by Section 27 of the Evidence Act.

47. For the reasons aforestated, we find no grounds to interfere with the judgment and order of learned trial court holding the appellant guilty for the offence. We also find that the evidence adduced by the prosecution, the recovery effected on the pointing out of the appellant and the disclosure made by him are sufficient to hold the appellant guilty coupled with the strong motive, which stands fully established for the offence committed. The appeal is accordingly dismissed. (G.S.SISTANI) JUDGE (G.P.MITTAL) JUDGE JULY21 2014 msr

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com