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Sanjay vs.state

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Court : Delhi

Decided On : May-31-2019

Appellant : Sanjay

Respondent : State

Advocate for Pet/Ap. : Mr. Pankaj Kumar Agarwal

Judgement :

$~R-1A * + IN THE HIGH COURT OF DELHI AT NEW DELHI CRL. A. 523/2003 % Judgment reserved on:28th May, 2019 Judgment Pronounced on:

31. t May, 2019 SANJAY STATE Through: Mr. Pankaj Kumar Agarwal, Mr. Subrata Das and Mr.Anup Ratan Dutta Choudhary, Advocates .....Appellant Versus Through: Ms.Aashaa Tiwari, APP for State with ASI ..... Respondent Prem Ram Arya, PS Hari Nagar CORAM: HON'BLE MR. JUSTICE MANMOHAN HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL SANGITA DHINGRA SEHGAL, J.

The present Appeal is instituted on behalf of the appellant under 1. Section 374(2) of the Code of Criminal Procedure, 1973, (hereinafter referred to as Cr.P.C.) against the impugned judgment dated 26.03.2003 and order on sentence dated 28.03.2003 passed by the Court of learned Additional Sessions Judge, Delhi, in Session Case No.133/2001 in FIR No.160/2001, registered at Police Station Hari Nagar under Section 302 of the Indian Penal Code,1860 (hereinafter referred to as

IPC) whereby the appellant was convicted for the offence punishable under Section 302 IPC and sentenced to rigorous imprisonment for life alongwith a fine of Rs.5,000/-, in default of payment of fine, to further undergo simple imprisonment for a period of five months. CRL.A. 523/2003 Page 1 of 19 2. Brief facts of the case as noticed by the Learned Trial Court, are as under: Brief facts of the prosecution case are that on the night of 2.5.2001 at about 11.55 pm an information was received at police station that a dead body was lying at house no.WZ-483 MS Block, Hari Nagar and D.D. in this regard was recorded. D.D. was marked to SI Mahesh Kumar. SI Mahesh Kumar went to the spot and found that a dead body of female was lying on the floor in the aforesaid house. He sent rukka for registration of the case. Thereafter case under Section 302 IPC was registered at P.S. Hari Nagar. During the investigation it was transpired that accused Sanjay had a quarrel with his wife Pooja on the evening of 2.5.2001 as on that day the mother in law of accused had come to take Pooja to her village and on that issue accused had on quarrel with his wife Pooja and after his mother in law left for her village accused committed murder of his wife Pooja. 3. After completion of investigation, the charge sheet was filed U/s 302 IPC. Ld. M. M. after complying with provisions of Section 207 Cr.P.C committed the case to Sessions Court as the offence punishable U/s 302 IPC is exclusively triable by Sessions Court. Appellant was charged for the offence punishable U/s, Section 302 IPC to which he pleaded not guilty and claimed trial.

4. To bring home the guilt of the accused, the prosecution examined 17 witnesses in all. Statement of the accused was recorded under Section 313 of Code of Criminal Procedure (hereinafter referred to as CRL.A. 523/2003 Page 2 of 19 'Cr.P.C.') by the learned trial court wherein he pleaded not guilty and claimed trial and chose not to lead any evidence in his defense.

5. After hearing the counsels for both the sides and on appreciation of entire evidence available on record, the learned Trial Court convicted the appellant for the charged offence.

6. Mr. Pankaj Kumar Agarwal, learned counsel for appellant, opened his submissions by contending that the impugned judgment dated 26.03.2003 is

based on conjectures and surmises and the same is against the facts and the settled proposition of law because the learned Trial Court has ignored and omitted the material evidence and has disregarded the cogent evidence in favor of the appellant and has failed to appreciate the basic matter in dispute, as to how the appellant has been categorized as the actual perpetrator of the crime because the entire case is based on circumstantial evidence and there is no direct evidence on record to establish that the appellant was involved in the commission of the alleged offence.

7. Learned counsel for the appellant further contended that as per the version of the prosecution, appellant was last seen with the deceased, but it is not prudent to base conviction solely on the basis of last seen evidence because last seen evidence does not necessarily lead to the inference that it was the appellant who had committed the crime.

8. He further contended that the learned Trial Court has erred in relying on the testimonies of prosecution witnesses because there are major contradictions and discrepancies in the statements of the prosecution witnesses, hence their evidence cannot be exclusively relied on as trustworthy and reliable because there is a very strong possibility of CRL.A. 523/2003 Page 3 of 19 the prosecution witnesses being tutored and influenced. Counsel for the appellant has urged that the trial court failed to correctly appreciate the facts and circumstances of the case; hence the impugned judgment is liable to be set aside.

9. Mr. Pankaj Kumar Agarwal, learned Counsel for the appellant further contended that the medical evidence fails to corroborate with the version of the prosecution and fails to establish the fact that the deceased had died due to strangulation because as per the post mortem report it was opined that the injuries No.2 to 7 can also be possible if a person falls on a hard object or on the ground 10. Ms. Aashaa Tiwari, learned APP for State, on the other hand, strongly refuted the submissions made by the counsel for the appellant and submitted that the impugned judgment is based on proper appreciation of facts and evidence and the statements of prosecution witnesses and medical/scientific evidence are corroborative in nature and the prosecution has been able to prove its case

beyond reasonable doubt.

11. Learned APP for the State further submitted that the appellant was last seen with the deceased and the same can be relied upon for enforcing the conviction of the appellant because the same is supported with reliable testimony of Smt. Sushila (PW-10). She further submitted that the prosecution had relied upon the extra judicial confession made by the accused to PW-15, wherein PW-15 (Satish Kumar) further instructed Devraj (PW-9) to take the accused to the police station because he had committed something wrong with his wife.

12. Counsel for the state lastly urged that the evidence produced on CRL.A. 523/2003 Page 4 of 19 record as well as the circumstances proved by the prosecution, form a complete chain pointing unequivocally towards establishing the guilt of the accused. Based on these submissions counsel for the State urged that this Court may not interfere with the well-reasoned order passed by the learned trial court convicting the appellant for the alleged offence.

13. We have given our anxious consideration to the submissions advanced on behalf of counsel for the parties at considerable length and also perused the material available on record.

14. Since, the present case is based on circumstantial evidence, it is essential for us to determine whether or not a complete chain of events stand established from the evidence produced by the prosecution. What, therefore, needs to be seen is whether the prosecution has established the incriminating circumstances upon which it places reliance and whether those circumstances constitute a chain so complete as not to leave any reasonable ground for the appellant to be found innocent.

15. To elucidate this case, it is essential to peruse the testimonies of prosecution witnesses. Cross examination of PW-10 (Sushila), landlady is reproduced below:-

". 20 days before this incident, at the instance of brother in law Satish, I had given a room to Sanjay- accused on rent. It is also correct that Sanjay used to reside along with his wife in the said room. It is also correct that about one week before

this incident, father of accused, his sister and brother in law came there. However, no quarrel took place between Sanjay and his wife on that day. However, it is correct that when the CRL.A. 523/2003 Page 5 of 19 quarrel took place between Sanjay and his wife, I came to know that there were not good relations between them. It is also correct that on 01.05.2001 the mother of Sanjay came to the room of Sanjay. It is also correct that mother of Sanjay had returned back on 02.05.2001 afternoon, the next day. It is also correct that quarrel had taken place one day before between accused and his wife Pooja. It is also correct that mother of Sanjay wanted to take Pooja to her village. However, Pooja refused to go with her to village and at this a quarrel had taken place between Sanjay and his wife. It is also correct that about 4.00 pm in the evening time, I went to mandir and sometime before Sanjay had gone to leave his mother. It is also correct that when I was going to Mandir, Pooja was alone in the room. It is also correct that at about 7.30 pm, I came back to my house and when I just entered inside my house, I saw Sanjay accused, present in court, going outside slowly after coming down from stairs and he was perplexed. It is also correct that when I asked Sanjay as to whether his mother had gone to her village or not but Sanjay did not answer and he had gone out silently. Xxxx xxxx xxxx It is correct that Pooja did never complain to me against her husband or against any other person. 16. Satish Kumar, employer of appellant was examined as PW-15, in his examination in Chief, he deposed that:-

".In April, 2001, Pooja came to Delhi and I got one room on the first floor of H-No.WZ483 MS block, Hari Nagar of my relation Tej Prakash to accused Sanjay and both Pooja and Sanjay started living in that room. On 02.05.2001, at about 8.30-9.00 pm accused Sanjay came at the office at Nangal Rai. He was perplexed I enquired from him as to what is the matter he told me that he wants to talk something in private. My supervisor was sitting in the office. I told him to go out of the office so CRL.A. 523/2003 Page 6 of 19 that I may talk to Sanjay. They went out of the office then Sanjay told me that his wife has strangulated herself (fanci kha li hai). I told accused Sanjay to go to the police station and called Devraj from outside and told him to take Sanjay to the police station. Further in his cross examination he deposed that:-

"It is incorrect to suggest that accused Sanjay came to my office on 02.05.2001, he told me that he strangulated his wife, as stated to the police on the next date confronted with portion A to A of Ex.PW15/A, where it is so recorded. xxxx xxxx xxxx It is further incorrect to suggest that Sanjay told me that during the day time while going with his mother, she refused to go to her village or that he (Sanjay) told his wife that she does not want to go to his village but will go to her sisters house to meet Fauzi. . It is further incorrect to suggest that Sanjay told me that on this his wife got angry and abused him and his mother, and called him impotent or that he left his mother for the village in bus and came back to his home and beat his wife and then strangulated to her with the chunni nor I stated so in the statement to the police confronted with portion d to d in Ex.PW-15/A where it is so recorded. 17. In the present case the prosecution is relying upon the testimony of PW-10 (Sushila) to prove that the appellant was the last person who was seen in the company of the deceased, however, a close scrutiny of the evidence of PW-10 (Sushila) alongwith other incriminating circumstances, it has not been established by the prosecution that the appellant has murdered his wife or was last seen with his wife. The case of the prosecution has many missing links. PW-10 (Sushila) has deposed only to the extent that she had seen the appellant coming down the stairs. Nowhere in her testimony she suggested that the CRL.A. 523/2003 Page 7 of 19 appellant committed the alleged offence.

18. It is pertinent to note that the Trial Court had declared PW-10 (Sushila) as a hostile witness. Moreover, in her testimony she had stated that the appellant and the deceased did not share a good relationship. However, it is essential to note that she categorically stated that I came to know that there were not good relations between them. This in itself falls under the category of hearsay evidence. The statement of PW-10 (Sushila) is in the nature of hearsay and would not fall under 'res gestae'. It is a well settled proposition of law that the oral evidence is only hearsay with no evidentiary value unless supported by any valid proof.

19. Attention of this court was directed towards the decision rendered in Gentela Vijaya Vardhan Rao v. State of A.P. reported at 1996 (6) SCC241 wherein the Apex Court held, that the principle of law embodied in Section 6 of the Evidence Act, is expressed as "res gestae".

20. The rule of "res gestae", is an exception to the general rule, that hearsay evidence is not admissible. The rationale of making certain statements or facts admissible under Section 6 of the Evidence Act, was on account of spontaneity and immediacy of such statement or fact, in relation to the "fact in issue" and thereafter, such facts or statements are treated as a part of the same transaction. In other words, to be relevant under Section 6 of the Evidence Act, such statement must have been made contemporaneously with the fact in issue, or at least immediately thereupon, and in conjunction therewith. If there is an interval between the fact in issue, and the fact sought to CRL.A. 523/2003 Page 8 of 19 be proved, then such statement cannot be described as falling in the "res gestae" concept. Reliance from the aforesaid judgment was placed on the following observations:

15. The principle or law embodied in Section 6 of the Evidence Act is usually known as the rule of res gestae recognized in English Law. The essence of the doctrine is that fact which, though not in issue, is so connected with the fact in issue "as to form part of the same transaction" becomes relevant by itself. This rule is, roughly speaking, an exception to the general rule that hearsay evidence is not admissible. The rationale in making certain statement or fact admissible under Section 6 of the Evidence Act is on account of the spontaneity and immediacy of such statement or fact in relation to the fact in issue. But it is necessary that such fact or statement must be part of the same transaction. In other words, such statement must have been made contemporaneous with the acts which constitute the offence or at least immediately thereafter. But if there was an interval, however slight it may be, which was sufficient enough for fabrication then the statement is not part of res gestae.

21. As per the case of the prosecution, the appellant had admitted his guilt to PW-15, his employer. While discussing the credibility of an Extra Judicial Confession, the court has to examine the same with a greater degree of care and caution. Whenever the Court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. In the present case, nothing has emerged on record that any confession was made

by the appellant to PW-15 (Satish Kumar). CRL.A. 523/2003 Page 9 of 19 Rather, PW-15 (Satish Kumar) had deposed that Sanjay told me that his wife has strangulated herself (fanci kha li hai). I told accused Sanjay to go to the police station and called Devraj from outside and told him to take Sanjay to the police station. PW-15 (Satish Kumar) has not stated that appellant had made any extra judicial confession to him. The same is neither a confession nor an incriminating statement.

22. Inspector Omwati Malik was examined as PW-17, relevant portion of her testimony is reproduced below: I received message from intercom that a boy has come at the PS and claims himself to be Sanjay husband of Pooja deceased and tells that his wife has committed suicide. I further interrogated accused Sanjay keeping in view scene of crime and accused perplexed and then told that his wife has not committed suicide rather he has strangulated his wife Pooja and further told that his wife had illicit relations with the jeth of her sister and he had come to know of this illicit relations. 23. There cannot be any dispute that a confession made by the appellant to the police is also inadmissible confession. The confession herein cannot even be called an extra-judicial confession because of the presence of the police. According to Section 25 of the Indian Evidence Act 1860, no credence can be placed upon the confession made by the accused which reads as under:

25. Confession to police officer not to be proved No confession made to a police officer shall be proved as against a person accused of any offence. CRL.A. 523/2003 Page 10 of 19 24. Averting to the case at hand and after perusing the aforementioned testimonies, it is evident that there were no prior disputes or quarrel between the appellant and his wife. There is nothing on record to show that the appellant had any motive to commit the alleged offence. The fact that the prosecution has failed to adduce any evidence on record to prove the motive on part of the appellant to commit the said offence, which convinces us to give benefit of doubt to the appellant.

25. Learned APP has time and again emphasised upon the unnatural and unexplained behaviour of the appellant after the commission of the alleged

offence. However, the Supreme Court in numerous cases has held that there is no definite way for a person to react, every individual will have a different response to a particular situation. In Rana Partap and Ors. v. State of Haryana(1983) 3 SCC327 while dealing with the behaviour of the witnesses, the Apex Court had opined that: - Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counterattacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way.

26. Further, in State of H.P. v. Mast Ram(2004) 8 SCC660 it has been held that there is no set rule that one must react in a particular way, CRL.A. 523/2003 Page 11 of 19 for the natural reaction of man is unpredictable. Everyone reacts in his own way and, hence, natural human behaviour is difficult to prove by credible evidence. It has to be appreciated in the context of given facts and circumstances of the case. Similar view has been reiterated in Lahu Kamlakar Patil and Anr. v. State of Maharashtra 2012 (12) SCALE710 27. Hence, according to the settled proposition of law, the argument raised by the learned APP regarding the unnatural behaviour is not conclusive in itself.

28. At this stage it is essential to peruse the medical evidence. PW-11 (Dr.L.K. Barwah) in his examination in Chief deposed as under:-

"All the injuries were ante mortem in nature. Injuries on the forehead were caused by blunt object causing contrusion of the brain. Cause of death was asphyxia following ligature constriction of the neck by soft ligature material. . I had examined the jorjett saree and opined that the ligature mark on the neck of the deceased could be possible by the said cloth. In his cross examination, he deposed as under:-

"On external examination the ligature as observed by me can be possible by hanging. There is a possibility of presence petecheal haemorrhagic spots on face in case of hanging. It is incorrect that since it was three days and body was not fresh, therefore, I could not observe any saliva dribbling out of the mouth of the deceased. It is incorrect to suggest that since it was 3 days and the body was not fresh, therefore, I could not observe if the neck was possible stressed and elongated. It is correct that even a tension of 3.5 k.g. is sufficient to choke the carotid artery. It is correct that if the carotid artery is blocked there is possibility of anoxia of the brain causing the patient unconscious. The injuries mentioned by me at S.No.2 to 7 in my statement above can also be CRL.A. 523/2003 Page 12 of 19 possible if a person falls on a hard object or on the ground (Voltd. These injuries could also have been possible during the process of strangulation or scuffle) (objected to by ld. Defence counsel). 29. After considering the medical evidence and the post mortem report, it is apparent that the deceased could have died either by hanging or by falling on a hard object or by strangulation. Neither there is anything on record which clearly indicates that the death was caused by strangulation, nor from the medical examination it is established that it was the appellant who is primarily responsible for committing the alleged offence.

30. Further, during the course of arguments, an apprehension was expressed by the learned counsel for the appellant, that there is a serious lapse in the investigation of the case and the same lapse has disabled the prosecution to prove the culpability of the accused.

31. The Honble Apex Court very recently, in State of Uttar Pradesh Vs Wasif Haider Etc reported at 2019 2 SCC303has held that lacunas in an investigation will fortify the presumption of innocence in favour of the accused. Germane portion of the judgment is extracted below:-

"innocence in 24. In the present case, the cumulative effect of the aforesaid investigative lapses has fortified the presumption of the accused(cid:173)respondents. In such cases, thebenefit of doubt arising out of a faulty investigation accrues infavor of the accused.

25. Although we acknowledge the gravity of the offence alleged against the accused(cid:173)respondents and the unfortunate factof a senior official losing his life in favor of CRL.A. 523/2003 Page 13 of 19 32. furtherance of his duty we cannot overlook the fact that the lapses in the investigation have disabled the prosecution to prove the culpability of the accused. In the present case, D.D. entry 29A was registered at police station Hari Nagar on 02.05.2001 and the same was marked to SI Mahesh Kumar. SI Mahesh Kumar stepped into the witness box as PW-5 and deposed as under: On 02.05.2001, I was posted at PS Hari Nagar. On that night at about 11:55 pm on receipt of DD No.29A from D.O. copy of which is Ex.PW4/A. I long with Const. Abhey Singh went to H.No.WZ483MS Block, Hari Nagar, double storey house and on the Ist floor in a room on night side measuring 9ft. x 7ft. a dead body of female was lying on the floor whose name was Smt. Pooja w/o Sanjay. I inspected the dead body. She had marks of injuries on right side forehead. One of the fists was closed and the other was half closed. On the right side of the dead body there was a folding bed and on left side there was a tape recorder and some household articles. I found it to be a case of murder and I made endorsement Ex.PW
on DD No.29A and sent rukka through const. Abhey Singh for registration of the case. During the cross examination, PW-5 (Mahesh Kumar) deposed as under: I reached the spot at about 12.10 in the night on the night of 2/3.5.2001. The rukka was sent by me at about 1.30 am (night). It is correct that till the rukka was sent from the spot to the PS no witness was available. I cannot tell as to whether any public witness was present when tape recorder Ex.P1; chunni Ex.P3 and diary Ex.P5 and two pens were seized vide memos Ex.PW5/A; PW5/B and Ex.PW5/C. the neighbourers or from the house in question was called by the Investigating Officer before seizing the Tape No person from CRL.A. 523/2003 Page 14 of 19 recorder. Ex.P1 vide memo Ex.PW5/C in my presence; C chunni Ex.P3 vide memo Ex.PW5/A and diary and two pens Ex.P
to 2 vide memo Ex.PW5/B. It is correct that memos Ex.PW5/A to Ex.PW5/C do not bear signatures of any public witness. 33. The investigation officer Insp. Omwati Malik stepped in the witness box as PW-17 and deposed as under: On the night between 2/3.5.01 I was working as Addl.SHO PS Hari Nagar. I recd. Message from DO that a dead body is lying at WZ-483 MS Block where SI Mahesh Kumar

had already been sent. On receipt of message, I went to the spot on Ist floor of H.No.WZ483 MS Block Hari Ngr. There was only one room where dead body of female was lying just near the entrance of the room on the floor. SI Mahesh Kr. was already present there. SI Mahesh told me that he had already sent rukka for regn. of the case and had made request for summoning crime team and photographer at the spot. After regn. of the case, I recd. the investigation of the case. At the spot I prepared rough site plan of the place of occurrence Ex.PW17/A with correct marginal notes signed by me. SI Mohar Singh of crime team with staff reached the spot who inspected the spot and after discussions told me that he will submit his report E.PW13/A. xxxx xxxxx xxxx xxxx Then I came back to the PS and in the morning I recd. telephonic message from SDM Rajouri Gdn. Sh. Vijay Khanna that he is reaching the spot. Accordingly I also reached the spot. SDM examined the spot and opined verbally that it was a case of murder rather than dowry death. I discussed with my ACP Rajouri Gdn. and I started investigation U/s 302 IPC of the case. Case was also regd. U/s 302 IPC. From the spot I took into possession a blue colour chunni and two pens of blue and red ink lying by the side of dead body of Pooja at the spot. They were sealed in a parcel with the seal of CRL.A. 523/2003 Page 15 of 19 OM and seized vide memo Ex.PW5/A. Chunni is Ex.P3 taken out from parcel sealed with the seal of the court. Dead body was sent to mortuary DDU Hospital. From the spot I came back to the spot and recorded stats. of const. Abhey.

34. During the cross examination, PW-17 deposed as under: Nobody was prepared to make statement on the night of 2nd and 3.5.01 from the neighbours. No public witness has been joined in investigation at the time of seizure of articles. It is wrong to suggest that accused Sanjay had surrendered itself on 2.5.01 itself or that the entire investigation was done while in the PS or that PW Satish did not tell me that accused had to him that he strangulated his wife or that or that I obtained signatures of accused. Sanjay on plain paper or that I did not fairly investigated the case or that I have falsely implicated the accused or that during investigation I came to know that Pooja had committed suicide or that I falsely involved the accused. 35. From a conjoint reading of the aforementioned testimonies, it is apparent that a Tape recorder (Ex.PW5/C), chunni (Ex.PW5/A), diary and two pens (Ex.PW5/B) were recovered from the spot, at the time of

seizure of articles. Further the D.D. entry 29A was registered at police station Hari Nagar on 02.05.2001 at about 11.55 pm upon the receipt of the information from Constable Sunita that a dead body is lying at house No.WZ-483 MS Block, Hari Nagar. However, it is relevant to highlight that Constable Sunita has not been examined as a prosecution witness and neither the prosecution has procured information with regard to the identity of the anonymous caller who had reported the incident from telephone No.5404759. CRL.A. 523/2003 Page 16 of 19 36. Considering the aforesaid facts and circumstances, the benefit of doubt arising out of such inefficient investigation, must be bestowed upon the accused. Furthermore, we are of the considered view that there are various lacunae in the case of prosecution in establishing the motive on the part of the appellant for commission of the said offence punishable under Section 302 of the Indian Penal Code.

37. Henceforth in the instant appeal before us, the prosecution has failed to link the chain of circumstances so as to dispel the cloud of doubt about the culpability of the appellant.

38. It is a settled law that while deciding an appeal filed by the appellant, in case two views are possible, if the High Court reaches a conclusion that another view can reasonably be taken, then the view, which favours the accused, should be adopted.

39. The Apex Court in P. Satyanarayana Murthy vs. The Dist. Inspector of Police and Ors.: (2015) 10 SCC152 wherein it has been held that if in the facts and circumstances, two views are plausible, then the benefit of doubt must be given to the accused. Relevant para whereof is being reproduced herein below: 25. In reiteration of the golden principle which runs through the web of administration of justice in criminal cases, this Court in Sujit Biswas v. State of Assam MANU/SC/0564/20

(2013) 12 SCC406had held that suspicion, however grave, cannot take the place of proof and the prosecution cannot afford to rest its case in the realm of "may be" true but has to upgrade it in the domain of "must be" true in order to steer clear of any possible surmise or conjecture. It was held, that the Court must ensure that

miscarriage of justice is avoided CRL.A. 523/2003 Page 17 of 19 and if in the facts and circumstances, two views are plausible, then the benefit of doubt must be given to the accused. 40. In the case Jose vs. The Sub-Inspector of Police, Koyilandy and Ors.: (2016) 10 SCC519 the Apex Court has held as under: 53. It is a trite proposition of law, that suspicion however grave, it cannot take the place of proof and that the prosecution in order to succeed on a criminal charge cannot afford to lodge its case in the realm of "may be true" but has to essentially elevate it to the grade of "must be true". In a criminal prosecution, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof and in a situation where a reasonable doubt is entertained in the backdrop of the evidence available, to prevent miscarriage of justice, benefit of doubt is to be extended to the accused. Such a doubt essentially has to be reasonable and not imaginary, fanciful, intangible or non-existent but as entertainable by an impartial, prudent and analytical mind, judged on the touch stone of reason and common sense. It is also a primary postulation in criminal jurisprudence that if two views are possible on the evidence available, one pointing to the guilt of the accused and the other to his innocence, the one favourable to the accused ought to be adopted. 41. Keeping in view the aforesaid settled law and the material available on record, we conclude that the prosecution has failed to prove its case beyond all reasonable doubts and it would be highly unsafe to convict the appellant. Accordingly, the present appeal is allowed. The judgment dated 26.03.2003 and order on sentence dated 28.03.2003 of CRL.A. 523/2003 Page 18 of 19 the trial court are set aside. The appellant stands acquitted.

42. Trial Court record be sent back. MAY31 2019 SU SANGITA DHINGRA SEHGAL, J MANMOHAN, J CRL.A. 523/2003 Page 19 of 19

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