

**Subhash Sharma Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/36412](http://sooperkanoon.com/36412)

**Court :** Delhi

**Decided On :** Jan-16-2015

**Judge :** G. S. Sistani

**Appellant :** Subhash Sharma

**Respondent :** State

**Judgement :**

\$~R-3. \* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A. 672/1999  
Date of decision :16th January, 2015 % SUBHASH SHARMA Through : .....  
Appellant Mr.Sanjiv Narula, Adv. versus STATE Through : ..... Respondent  
Mr.Sunil Sharma, APP for the State. CORAM: HON'BLE MR. JUSTICE  
G.S.SISTANI HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

**JUDGMENT**

(ORAL) 1. Present appeal has been filed by the appellant under Section 374 of the Code of Criminal Procedure against the judgment dated 19.11.1999 and order on sentence dated 22.11.1999, by which the appellant was sentenced to undergo Rigorous Imprisonment for life with fine of Rs.1000 and in default of payment of fine Rigorous Imprisonment for six months for committing the murder of late Sh.Prahlad Dutt Shastri. The appellant was further sentenced to undergo Rigorous Imprisonment for three years with fine of Rs.500 and in default of payment of fine Rigorous Imprisonment for a further period of three months for the offence punishable under Section 201 of the Indian Penal Code. The appellant was also

directed to undergo Rigorous Imprisonment for three years with fine of Rs.500/- and in default of payment of fine Rigorous Imprisonment for three months for having forged the General Power of Attorney, Will and other documents. It was further sentenced that the substantive sentences of imprisonment would run concurrently. Appellant was given the benefit of Section 428 of the Code of Criminal Procedure.

2. The case of the prosecution, as it unfolds is that one, Sh.Prehlad Dutt Shastri, was living in House No.4/49, Subhash Nagar. He had no family. Admittedly, the appellant was living with late Sh.Prehlad Dutt Shastri at his house. On or about 5.6.1995, late Sh.Prehlad Dutt Shastri disappeared in mysterious circumstances. He was never seen thereafter.

3. It was the case of the prosecution before the trial court that the appellant tried to mislead the neighbours and the persons residing in the locality by telling them that Shastriji had gone for a pilgrimage. The appellant produced two letters, claimed to have been written by Shastriji, to him. Being suspicious, some of the neighbours went to the Police Post Rajouri Garden and one Sukhdev Chawla submitted an application, Ex.PW-6/A. On the basis of this application, a case under Section 365 of the Indian Penal Code was registered on 7.6.1995. There was no breakthrough for two months, although a police team was sent to Hardwar but Shastriji could not be traced. It was further the case of the prosecution before the trial court that on 23.8.1995 the appellant went to the house of PW-1, Sh.Niranjan Prakash, and he made a confession of his guilt. The appellant also informed Niranjan Prakash after becoming sentimental that he had murdered Shastriji on 5.6.1995 and had thrown his dead body in a naala near Kakrola Bridge on 6.6.1995. The appellant also named one Uma Kant, who had helped him in disposal of the dead body. The appellant sought help of Sh.Niranjan Prakash to overcome PW-3 and asked him to save him and his family. Sh.Niranjan Prakash advised the appellant to accompany him to the Police post as on account of disappearance of Shastriji the atmosphere in the Mohalla had become very tense, however, the appellant slipped away on the pretext of informing his family. The appellant was arrested along with Uma Kant on 27.8.1995. Although the appellant led the Police to Najafgarh drain and pointed out to the place where the body was thrown yet the body was not

recovered despite the assistance of the Flood Control Office and the drain having been combed for over an area of one kilometre. It was also the case of the prosecution before the trial court that on 29.9.1995, the appellant took the Police to the shop of one, Sh.Ashok Mago, in Mansarovar Garden, from where the documents, Exhibits P-5 to P-11, including General Power of Attorney, Will, Agreement to Sell, Affidavit, Receipt, Sale Deed, etc., were recovered vide memo Exhibit PW-12/8. The documents were alleged to have been executed in favour of the appellant by Shastriji with regard to the house. The letters, Exhibit P-4 and P-5, and the documents, Exhibits P-5 to P-9, were sent to CFSL along with the specimen writing of the appellant.

4. Mr.Narula, learned counsel for the appellant, submits that the impugned judgment and order on sentence are contrary to law and facts on record and there is no legal evidence against the appellant. It is further submitted that the dead body of Sh.Prehlad Dutt Shastri was not recovered and, thus, the prosecution has failed to prove any cogent evidence to show death of late Sh.Prehlad Dutt Shastri and in the absence thereof the appellant could not have been convicted under Section 302 of the Indian Penal Code. It is also contended that there is no evidence against the appellant to prove the extra judicial confession nor PW-1, Sh.Niranjan Prakash, was the person in whom he could repose confidence. It is next contended that the witnesses to the documents i.e. General Power of Attorney, Will, Agreement to Sell, Affidavit, Receipt, Sale Deed, etc., were not cited as witnesses, which would show that in fact Sh.Prehlad Dutt Shastri had executed the documents in favour of the appellant on the said date.

5. Learned counsel for the appellant further submits that the documents in favour of the appellant were registered on 12.6.1995, when late Sh.Prehlad Dutt Sastri appeared before the Sub-Registrar and, thus, there could be no occasion for the appellant to produce letter dated 11.6.1995, Exhibit P-4, and accordingly, documents P-4 and P-5 could not have been the basis of convicting the appellant. It is also submitted that reliance on the evidence of PW-3 is misplaced as he neither made the complaint nor reported the matter to the Police for a period of one month. It is next submitted that neither the matador, which was used, as per the prosecution, to carry the dead body of late Sh.Prehlad Dutt Shastri was

recovered nor the Chowkidar, who pushed the matador, was examined. It is also contended that there is delay in lodging of FIR and for which there is no explanation.

6. Mr.Sharma, learned Additional Public Prosecutor for the State, submits that non-recovery of the dead body cannot be termed as fatal to the case of the prosecution. It is further submitted that in terms of section 108 of the Evidence Act Sh.Prehlad Dutt Sharma would be presumed to be dead as his body has not been recovered for a period of more than seven years. It is also contended that the motive in this case has been established by the fact that the appellant was residing with Sh.Prehlad Dutt Shastri, he gained his confidence which is evident from the fact that he was not paying any rent. Mr.Sharma further submits that the documents, being two letters i.e. Exhibits P-4 and P-5, purported to have been written by late Sh.Prehlad Dutt Shastri to the appellant, were found to be fabricated by the appellant. Learned APP further contends that the documents including sale deed, General Power of Attorney, Agreement to Sell, Affidavit, Receipts, etc., pertaining to the house where late Sh.Prehlad Dutt Shastri was residing, were sent to the CFSL and as per the report of the CFSL the signatures of late Sh.Prehlad Dutt Shastri were found to be forged by the appellant herein. Relying on the aforesaid documents and the report of the CFSL, learned APP for the State submits that the motive stands conclusively proved. It is further submitted that the neighbours became suspicious and the evidence on record would show that the questions were being asked to the appellant, who was admittedly residing with late Sh.Prehlad Dutt Shastri. To pacify the neighbours the appellant had produced two letters and it is on account of the pressure, which was built up by the neighbours, the appellant approached the Sh.Niranjan Prakash, PW-1, and made a confession before him. Mr.Sharma contends that the trial court has erred in not relying on the extra-judicial confession in view of the fact that on account of the pressure, which was built up on the appellant, it was not unusual for him or any person in such a circumstance to approach a man of his confidence and make a confession. It is also contended that there is no suggestion that there was any enmity between Sh.Niranjan Prakash, PW-1, and the appellant or as to why Sh.Niranjan Prakash would falsely implicate the appellant. It is, thus, contended that the prosecution has been able to prove its case beyond any

shadow of doubt.

7. We have heard learned counsel for the parties and also perused the trial court record. Before dealing with the rival contentions of the parties, it would be useful to analyse the evidence of some of the relevant witnesses.

8. As per the evidence of PW-1, Sh.Niranjan Prakash, on 23.8.1995 between 6 or 6.30 p.m. the appellant, whom he identified in Court, was coming to his house. PW-1 asked the appellant as to where he had been for the last four or five days as people from Mohalla were enquiring about his whereabouts. The appellant entered the house of PW-1. PW-1 has further testified that the appellant was residing with the deceased without paying any rent but was paying Rs.300/- towards kitchen expenses for the food consumed by him. This witness has also testified that the appellant had lot of faith in him and when he asked him as to where he had been he became sentimental, started weeping and the tears came out of his eyes. PW-1 consoled him and thereafter the appellant stated that I have committed murder of Shastriji on 5th June and have thrown his deadbody in a ganda Nallah at Kakrola near Najagfarh on 6th June. The appellant further disclosed that one Uma Kant, driver of a matador was his associate. The appellant also disclosed that he had got Shastriji's property in his name and sold the same to Sh.Ashok Mago. The appellant asked PW-1 to save him or else his children would be left on the streets. PW-1 has also testified that at the relevant time on account of disappearance of Shastriji the atmosphere in the mohalla became very tense and surcharged and in view thereof he informed the appellant that the things were not within his control and the appellant should accompany him to the Police station. PW-1 sought some time from the appellant to change his clothes so that he could accompany him to the police station. The appellant also sought time to inform his family but he vanished. It is also testified by PW-1 that he had narrated this story to 8-10 people, who had gathered from the Mohalla and it was decided to approach the Police where this witness narrated the confessional statement made to him. This witness has also testified that on or around 12 or 13 June on account of mohalla people talking about the disappearance of Shastriji the appellant had approached PW-1 with a letter written by Shastriji to him. The letter was kept by the mohalla people as the writing in the said letter did not tally with the handwriting of Shastriji. The

mohalla people were aware of the handwriting of Shastriji as some of them were taught by the Shastriji and they were acquainted with his handwriting. Reposing faith upon this witness, the appellant agreed that the letter be kept by PW-1 and not by any other person. On and around 22nd or 23rd June, 1995, another letter, Exhibit P-1, was also shown by the appellant as the letter having been written by Shastriji. PW-1 has further testified that Shastriji had presented him with a copy of Ramayana and had also written a doha on one of its pages in his handwriting. On 23.8.1995, he took those two letters, their envelopes and the page of Ramayana wherein Doha was written by Shastriji to the Police and handed over the same to them.

9. PW-1 was cross-examined in detail. During cross-examination, PW-1 has testified that the appellant was throughout living in the locality and he had been telling the people that Shastriji had gone on a pilgrimage. He has also testified that the appellant used to touch his feet almost everyday. He was confronted with his statement, Exhibit PW-1/D-A, where he did not state that the appellant was paying Rs.300/-, per month, for food to Shastriji.

10. PW-4 Constable Ram Babu, has testified that on 27.8.1995 at about 9.00 p.m., the appellant and Uma Kant, who were crossing the grill of the park and going towards House N.10/16, were stopped and they were interrogated. They had pointed out to the place of occurrence.

11. PW-6, Subhash Chawla, has testified that late Sh.Prahlad Dutt Sharma, popularly known as Shastriji, was a school teacher. He was living all alone and the appellant started living in the house of Shastriji free of charge about two years before the occurrence of the incident. Subsequently, the appellant started coming home in a drunken state. Shastriji asked the appellant to vacate the premises. Shastriji also talked to the people of the locality. Ultimately, around 15 th or 16th May, 1995, the appellant promised that he would vacate the house by 1 st June, 1995. Shastriji disappeared on 5.6.1995. When asked the appellant informed the public that Shastriji had gone for a pilgrimage. A report, Exhibit C/A, was lodged after four or five days. He identified his signatures on the report at point A. This witness has also testified that the appellant had produced a letter purported to

have been written by Shastriji. On reading the letter he became suspicious as there were mistakes of language in Hindi although Shastriji was a scholar of Hindi. He also became suspicious as the house number was written in English although Shastriji always used to write numerical in Hindi. PW-6 has also testified that subsequently the appellant had produced another letter in an envelope, Exhibit P-3, and this time the number of the house was written in Hindi numerical. The letters produced by the appellant were identified as Exhibits P-1 and P-4. This witness has also testified that in the letter, Exhibit P-1, the word Vishbas has been written whereas the correct word should have been Vishwas. He has further testified that since the Police did not take action, 30-35 persons of the locality visited the Police Post and subsequently the appellant was arrested. On his pointing out, specimen writing of appellant was taken on Exhibits PW-6/B, PW-6/C and PW-6/D in his presence. Thumb impressions of the appellant were also taken in his presence on Ex.PW-6/E and PW-6/F. PW-6 was also cross-examined in detail.

12. PW-7, Sh.M.L. Arora, Sub-Registrar, Kashmiri Gate, has testified that a Special Power of Attorney was executed by the appellant in favour of Sh.Ashok Kumar Mago.

13. PW-12, Inspector R.K. Rathi, has testified with regard to seizure of the documents i.e. General Power of Attorney, Will, Agreement to Sell, Affidavit, Receipt, Sale Deed, from Mr.Ashok Mago which were sent to CFSL.

14. The sum and substance of the arguments of learned counsel for the appellant is that the case of the appellant is purely based on circumstantial evidence, the links of the chain are not complete and, thus the appellant cannot be held guilty. Further the appellant cannot be held guilty merely because certain documents were forged and fabricated. It is further submitted that the dead body has not been found and, thus, it is not established that Shastriji has died or has been murdered. It is next contended that there are discrepancies in the statement of witnesses and the extra-judicial confession is unreliable.

15. 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 AIR2007 Supreme Court 2957. 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 Chaterjee 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.

10. 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.

11. In *State of U.P. v. Ashok Kumar Srivastava* (1992 CrLJ 1104) it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

12. Sir Alfred Wills in his admirable book 'Wills' Circumstantial Evidence' (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt; and (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted. 13. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touchstone of law relating to circumstantial evidence laid down by this Court as far back as in 1952. 14. In *Hanuman Govind Nargundkar and another V. State of M.P.*, (AIR 1952 SC 343) it was observed thus:

It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established, and all the fact so established should

be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

15. A reference may be made to a later decision in *Sharad Birdhichand Sarda v. State of Maharashtra* (AIR 1984 SC1622). Therein, while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in the prosecution cannot be cured by a false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are: (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established; (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty; (3) the circumstances should be of a conclusive nature and tendency; (4) they should exclude every possible hypothesis except the one to be proved; and there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

16. The facts of this case are to be considered on the touch stone of the law, which has been laid down by the Apex Court.

17. As per the evidence on record the deceased had no family. The appellant had started living with the deceased two years prior to the incident. Evidences of PW-1, Sh. Niranjan Prakash, and PW-6, Sh. Sukhdev Chawla, establish that the appellant was residing with the deceased in his house. This fact is also established from the documents which include Special power of Attorney and the General Power of Attorney, which were executed by the appellant in favour of

Sh.Ashok Kumar Mago, wherein the same address has been mentioned by the appellant. Evidence of these two witnesses would also establish that after the disappearance of Shastriji the residents of the locality became suspicious and the needle of suspicion was on the appellant as he was residing with Shastriji in his house.

18. The evidence placed on record also establishes that on being questioned two letters of different dates were produced by the appellant to convince the neighbours that Shastriji had gone for a pilgrimage. In our view, the evidence of PW-1 and PW-6 is truthful and reliable. Both these witnesses were cross-examined and the defence was unable to make a dent in the testimony of the witnesses.

19. The evidence of PW-1 and PW-6 with regard to two letters, Exhibits P-1 and P-4, having been produced by the appellant, is corroborated by the evidence of Ms.Deepa Verma, Senior Scientific Officer (Documents), who has opined that these two letters were written in the handwriting of the appellant.

20. In addition to the report of the CFSL, Exhibit PW-15/B, we have also perused the evidence of Sh.Sukhdev Chawla, PW-16, who has testified that on examining the letters and the envelopes he became suspicious, as Shastriji, who was a scholar of Hindi and Sanskrit, would not write Vishbas instead of Vishwas and it was unusual for him to have used English numerical instead of Hindi numerical.

21. The trial court has failed to rely on the confessional statement made by the appellant to PW-1. We are conscious of the fact that an extra-judicial confession is not to be relied upon casually and only if the Court reaches a conclusion that it is trustworthy and reliable can it form the basis of confession.

22. We are unable to agree with the findings of the trial court on this aspect. The evidence of PW-1, which has been discussed in detail in the paragraphs foregoing, would show that on account of disappearance of Shastriji there was tension in the Mohalla and the people of the Mohalla were talking about his disappearance. The fact that the appellant produced a letter having been written by Shastriji to him and the people of Mohalla wanted to retain the said letter but ultimately the appellant agreed that the letter should be kept by PW-1 as he had

faith and trust in him would fortify the fact that the appellant trusted PW-1 as a person to whom he could confide. During cross-examination PW-1 has testified that the appellant used to touch his feet everyday, which would also point out to the element of faith and respect, which the appellant had in this witness. To expect a confession to be made before a large number of persons or even before two or three persons is unusual of a person, who is likely to make a confession and, thus, to say that the confession was made only before PW-1 and not in the presence of others is unacceptable. During cross-examination the testimony of PW-1 has remained unshaken. As far as creating tension and suspicion growing in the Mohalla is concerned the evidence of PW-6, Sh.Sukhdev Chawla and PW-5, Jagdish Kumar, would lend corroboration. PW-1 has not been cross-examined nor any suggestion has been put to him with regard to as to whether there was any enmity between him and the appellant and as to why he would falsely implicate the appellant.

23. Another factor, which lends corroboration to the fact that a confession was made by the appellant before this witness is the recovery of a large number of documents from Sh.Ashok Mago. These documents pertain to the sale of the property, which belonged to the deceased. The documents such as General Power of Attorney, Will, Agreement to Sell, Affidavit, Receipt, Sale Deed, etc., marked as Q-1 to Q-13 and Q-29, were examined by Ms.Deepa Verma, Senior Scientific Officer (Documents). She has also testified that she had examined the admitted signatures A-2, A-3 and A-4 on Ex.PW-15/A and standard signatures and writings S-3, S4 and S-5 purported to be in the handwriting of appellant on Ex.PW-6/B, PW-6/C and PW-6/D and it was opined that the questioned signatures of writings Q-1 to Q-13 and Q-29 were written by the same person i.e. the appellant who had written S-3, S-4 and S-5.

24. Another reason, we find the evidence of PW-1 to be reliable, is that according to the testimony of PW-1 the appellant had informed him that the property was sold by him to Sh.Ashok Mago. On this basis, the documents were recovered from Ashok Mago, who claimed to be a bona fide purchaser, and had paid the sale consideration to the appellant by means of a cheque.

25. We have in the paragraph foregoing discussed how the evidence on record shows that the appellant trusted and respected PW-1 and how the atmosphere of Mohalla was charged and people were talking about the disappearance of Shastriji and since the appellant was residing free of charge with Shastriji in the same house it was expected that the appellant would be able to reasonably answer the questions of the persons in the locality. It is to satisfy their answers that the appellant produced two letters that Shastriji had gone for a pilgrimage.

26. In a recent decision rendered by the Supreme Court of India in the case of Baskaran And Another v. State of Tamil Nadu, reported at (2014) 5 SCC765 it has been held that if the extra-judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can also solely form the basis of conviction. Relevant portion reads as under:

17. It is no doubt true that this Court time and again has held that an extra-judicial confession can be relied upon only if the same is voluntary and true and made in a fit state of mind. The value of the evidence as to the confession like any other evidence depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. But it is not open to any court to start with the presumption that extra-judicial confession is insufficient to convict the accused even though it is supported by the other circumstantial evidence and corroborated by independent witness which is the position in the instant case. The Courts cannot be unmindful of the legal position that even if the evidence relating to extra-judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction.

27. The Court cannot lose track of the fact that Shastriji was last seen with the appellant as the appellant and Shastriji were residing in the same house. Merely because the matador has not been recovered or the chowkidar, who had pushed the matador, was not cross-examined in our view would not be fatal to the case of the prosecution.

28. As far as non-recovery of dead body is concerned we may notice that as per Section 108 of the Evidence Act in case a person is untraceable over a period of

seven years, he is presumed to have died. In this case, period of seven years has already elapsed.

29. In the case of Rama Nand v. State of Himachal Pradesh, reported at (1981) 1 SCC511 the legal position was discussed as under:

27. . In other words, we would take it that the corpus delicti, i.e., the dead-body of the victim was not found in this case. But even on that assumption, the question remains whether the other circumstances established on record were sufficient to lead to the conclusion that within all human probability, she had been murdered by Rama Nand appellant?. It is true that one of the essential ingredients of the offence of culpable homicide required to be proved by the prosecution is that the accused "caused the death" of the person alleged to have been killed. This means that before seeking to prove that the accused is the perpetrator of the murder, it must be established that homicidal death has been caused. Ordinarily, the recovery of the dead-body of the victim or a vital part of it, bearing marks of violence, is sufficient proof of homicidal death of the victim. There was a time when under the old English Law, the finding of the body of the deceased was held to be essential before a person was convicted of committing his culpable homicide. "I would never convict", said Sir Mathew Hale, "a person of murder or manslaughter unless the fact were proved to be done, or at least the body was found dead". This was merely a rule of caution, and not of law. But in those times when execution was the only punishment for murder, the need for adhering to this cautionary rule was greater. Discovery of the dead-body of the victim bearing physical evidence of violence, has never been considered as the only mode of proving the corpus delicti in murder. Indeed, very many cases are of such a nature where the discovery of the dead-body is impossible. A blind adherence to this old "body" doctrine would open the door wide open for many a heinous murderer to escape with impunity simply because they were cunning and clever enough to destroy the body of their victim. In the context of our law, Hale's enunciation has to be interpreted no more than emphasising that where the dead-body of the victim in a murder case is not found, other cogent and satisfactory proof of homicidal death of the victim must be adduced by the prosecution. Such proof may be by the direct ocular account of an eye-witness, or by circumstantial evidence, or by both. But

where the fact of corpus delicti, i.e. 'homicidal death' is sought to be established by circumstantial evidence alone, the circumstances must be of a clinching and definitive character unerringly leading to the inference that the victim concerned has met a homicidal death. Even so, this principle of caution cannot be pushed too far as requiring absolute proof. Perfect proof is seldom to be had in this imperfect world, and absolute certainty is a myth. That is why under Section 3, Evidence Act, a fact is said to be "proved", if the Court considering the matters before it, considers its existence so probable that a prudent man ought, under the circumstances of the particular case to act upon the supposition that it exists. The corpus delicti or the fact of homicidal death, therefore, can be proved by telling and inculcating circumstances which definitely lead to the conclusion that within all human probability, the victim has been murdered by the accused concerned (Emphasis supplied) 30. In the case of *Lakshmi v. State of Uttar Pradesh*, reported at (2002) 7 SCC198 it was held as under:

16. Undoubtedly, the identification of the body, cause of death and recovery of weapon with which the injury may have been inflicted on the deceased are some of the important factors to be established by the prosecution in an ordinary given case to bring home the charge of offence under Section 302 I.P.C. This, however, is not an inflexible rule. It cannot be held as a general and broad proposition of law that where these aspects are not established, it would be fatal to the case of the prosecution and in all cases and eventualities, it ought to result in the acquittal of those who may be charged with the offence of murder. It would depend on the facts and circumstances of each case. A charge of murder may stand established against an accused even in absence of identification of the body and cause the death.

31. To the same effect is the decision rendered in *Ram Chandra v. State of Uttar Pradesh*, reported at AIR 1957 SC381 where this Court said: (AIR p. 387, para 6)

6. ... It is true that in law a conviction for an offence does not necessarily depend upon the corpus delicti being found. There may be reliable evidence, direct or circumstantial, of the commission of the murder though the corpus delicti are not traceable.

12. Reference may also be made to State of Karnataka v. M.V. Mahesh (2003) 3 SCC353 where this Court observed: (SCC p. 354, para 3)

3. It is no doubt true that even in the absence of the corpus delicti it is possible to establish in an appropriate case commission of murder on appropriate material being made available to the court. In this case no such material is made available to the court.

13. In Lakshmi and Ors. v. State of Uttar Pradesh (2002) 7 SCC198 the legal position was reiterated thus :

16. Undoubtedly, the identification of the body, cause of death and recovery of weapon with which the injury may have been inflicted on the deceased are some of the important factors to be established by the prosecution in an ordinary given case to bring home the charge of offence under Section 302 I.P.C. This, however, is not an inflexible rule. It cannot be held as a general and broad proposition of law that where these aspects are not established, it would be fatal to the case of the prosecution and in all cases and eventualities, it ought to result in the acquittal of those who may be charged with the offence of murder. It would depend on the facts and circumstances of each case. A charge of murder may stand established against an accused even in absence of identification of the body and cause the death.

Also see Rishipal v. State of Uttarakhand, reported at (2013) 12 SCC551 32. In the absence of corpus delicti it is necessary for the Court to look for clinching evidence that the victim has been put to death and in case the prosecution has been able to prove that the victim has met a homicidal death, the absence of the dead body will not itself be fatal to the charge of murder.

33. The question which would arise in this case is that even in the absence of corpus delicti it is possible to establish commission of murder.

34. In this case, the deceased, Shastriji, was residing at House No.4/49, Subhash Nagar. He disappeared on 5.6.1995 under mischievous circumstances. The neighbours of the locality had become suspicious and the appellant had informed

them that the deceased had gone for a pilgrimage. To fortify this, the appellant had produced two letters, alleged to have been written by the Shastriji to him, which turned out to be fabricated documents and in the handwriting of the appellant. The appellant has also made a disclosure statement before PW-1 that the dead body of Shastriji was thrown in a ganda Nallah at Kakrola near Najagfarh. The entire drain, for over an area of one kilometer, was combed with the assistance of the Flood Control Office but the dead body of Shastriji could not have been found. Even otherwise, the incident has happened over twenty years ago. We are, thus, satisfied that merely because the dead body was not found, would not be fatal to the case of the prosecution.

35. For the reasons aforegoing, we find no infirmity in the judgment passed by the learned trial court. The appeal of the appellant is without any merit and the same is dismissed accordingly.

36. We are informed that the appellant is on bail. The appellant is directed to surrender within one week from the date of receipt of this judgment.

37. Let a copy of this judgment be sent to the SHO concerned for compliance.  
G.S.SISTANI, J.

**SANGITA DHINGRA SEHGAL, J.**

JANUARY16 2015 msr

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