

Satish Kumar Vs. State

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Court : Mumbai

Decided On : Apr-08-1994

Reported in : II(1995)DMC185

Judge : G.D. Kamat and ; E.S. Da Silva, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Crl. Appeal No. 29 of 1993

Appellant : Satish Kumar

Respondent : State

Advocate for Def. : G.U. Bhobe, P.P.

Advocate for Pet/Ap. : V.B. Nadkarni, Sr. Adv. and ; A.N.S. Nadkarni, Adv.

Disposition : Appeal allowed

Judgement :

G.D. Kamat, J.

1. In Sessions Case No. 32/91 by the Judgment and Order dated 26th May/7th June, 1993 the appellant was convicted under Section 302 of the Indian Penal Code for having murdered his wife Geeta and sentenced to imprisonment for life. He appeals against his conviction.

2. The prosecution case against the appellant is that between 1.30 p.m. on 14th December, 1990 to 8.30 a.m. on 15th December, 1990 in Room No. 204 of Hotel Four Pillars, Panaji, Goa he intentionally caused the death by strangulating his wife Geeta and quietly left Bombay by bus in the afternoon of 15th December, 1990.

3. Prosecution Case unfolded suggests that the appellant and his wife Geeta arrived from Bangalore at Panaji, Goa on the morning of 14th December, 1990 and sought a room at Tourist Hostel run by the Goa Tourism Development Corporation. As the Tourist Hostel could not accommodate the couple, the same Hostel arranged a room at the hotel known as Four Pillars by accepting an advance rent of Rs. 150/- under a receipt. The couple accordingly checked in Hotel Four Pillars upon allotment of Room No. 204. The couple was last seen in the hotel for service of tea at about 11.00 a.m. on that day. On the next morning at about 8.30 a.m. the Receptionist complained to the owner that there was no answer from Room No. 204. Police were alerted and when the door was opened with the help of some key, Geeta was found dead lying on the bed covered upto the neck with white bedsheet. The wheels of investigation started and upon assistance of Bangalore Police, appellant was apprehended at Malad, Bombay on 15th January, 1991 in front of Dipa Cinema Theatre. Accordingly the appellant was taken in custody and handed over to Goa Police.

4. The prosecution story as unfolded in the evidence has proceeded on the basis of circumstantial evidence as admittedly there is no eye-witness or direct evidence. The law is regarding circumstantial evidence by now well settled that such evidence must satisfy three main 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, and (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 non else.

A conviction can be sustained based on circumstantial evidence when there can be no explanation for any other hypothesis than that of the guilt of the accused and it should be not only consistent with the guilt of the accused but must be incompatible with the innocence.

5. The learned Sessions Judge has found the following circumstantial evidence against the accused.

'(i) The accused and the deceased having been seen last by the mother of the deceased on 13.12.90 leaving together at 6 p.m.;

(ii) The accused and the deceased coming to Panaji on 14.12.90 in the morning and being accommodated in Hotel Four Pillars and identification by three witnesses;

(iii) Entry in hotel register of Four Pillars, specimen and admitted handwritings of the accused and the opinion of the Handwriting Expert;

(iv) Clothes M.O. 2 and M.O. 3 of the accused found in Room No. 204, as well as the suitcase M.O. 1;

(v) Key of Room No. 204 of Hotel Four Pillars found at Malim Jetty from where buses used to go to Bombay;

(vi) Sale of gold chains to goldsmith at Ghatkopar, Bombay on 15.12.90 at 7 p.m.; and

(vii) Falsity of defence.'

6. When this appeal was being heard several doubts have been raised on behalf of the appellant as also great suspicion cast in the matter of collection of evidence and investigation. The chain of events starting from the time the couple, that is, the appellant and his wife Geeta, left Bangalore on 13.12.90, the discovery of the dead body of Geeta on the morning of 15.12.90 and apprehension of the appellant at Bombay on 15.1.91 have created in our minds uneasiness and anxiety to view the matter with greater caution and diligent scrutiny of the evidence.

7. Geeta is said to be the eldest daughter of A.K. Narsimamurthy (P.W. 14) and Kamala Narsimamurthy (P.W. 15). It is their case that Geeta was married to appellant but in a very queer circumstance on 16th February, 1990. On the evening of 13th December, 1990 the appellant came in an Autorickshaw and represented to the parents that he was taking Geeta to Dharamsthal and left their house at about 6.00 p.m. They came to know about the death of Geeta after having seen a photograph of her published in a newspaper on 29th December, 1990 and upon which event they contacted the Bangalore Police.

8. In his evidence (P.W. 14) A.K. Narsimamurthy deposes that he is the father of two sons and two daughters and his daughter Geeta got married to appellant on 16th February, 1990. According to him, it was an arranged marriage but he says the parents of the appellant did not attend the marriage and appellant was all alone on the occasion of the marriage. He also says that mother of the appellant was not enjoying good health and the father was at Qatar. After the marriage the appellant and his daughter Geeta resided in his own house for three months, whereafter the appellant went to his house without Geeta but occasionally used to come to his house. According to the witness he persuaded his daughter two months thereafter to go to her matrimonial house and despite attempts by Geeta the appellant was not available and the mother of the appellant used to abuse Geeta. On one occasion when she had gone to the matrimonial house appellant talked to her nicely but sent her back.

9. He asserts that he was against this marriage but his daughter wanted to marry the appellant and, therefore, the marriage was performed. He then refers to Geeta and the appellant leaving the house of 13th December, 1990 at 6.00 p.m. in an autorickshaw but asserts that he was not present at the time as he was in the factory and that he was told about this by his wife Kamala. He says that there was no news of Geeta and she did not return for about a week. One day some college students brought a newspaper in which Geeta's photograph had been printed and upon reading 'Deccan Herald' he came to know that one girl was murdered in a hotel in Goa and that is how he approached Jalahandi Police Station at Bangalore and identified the photograph of his daughter. According to him, his daughter was wearing two Mangalsutras, one gold chain with two layers and earrings made out

of gold. He thereafter identified the clothes of his daughter, which were recovered from Room No. 204 of the hotel at Panaji. He also identified M.O.3 two shirts, M.O.2 one Pant as that of the appellant. M.O.1 is a briefcase which he claimed to be belonging to his friend Gopal Krishna from whom the appellant had taken the same.

10. As against this evidence P.W. 15 Kamala Narsimamurthy has made several contradictory and inconsistent statements in her deposition before the Court. She asserts that when appellant came in an autorickshaw to take his wife Geeta to Dharamsthal on 13th December, 1990 at 6.00 p.m., her husband was present in the house. According to her Geeta was wearing a gold chain, earrings, nose ring and toe rings and further that Geeta had taken along with her a Suitcase belonging to her neighbour Gopal Krishna. She also makes a reference that her youngest son Chandrashekhar had accompanied the couple in the Autorickshaw but her son had got out at Malleshwaram. In cross-examination she asserted that she never wanted Geeta to marry the appellant and further categorically asserted that Geeta did not like the marriage, but the marriage was performed on account of pressure of the appellant.

11. Several contradictions in the depositions of the father and mother of Geeta have become per se visible because according to the version of the mother Geeta did not want to get married but the appellant put pressure. Both the parents asserted that they did not like the marriage. It is, therefore, not understood as to how, when Geeta did not approve of the marriage and they also did not like the same, yet the marriage was performed. This apart from the evidence of the father Geeta did not stay at the matrimonial house at all but the mother has made a statement that father of the appellant after 3 months of the marriage took Geeta to the matrimonial house, insofar as the briefcase is concerned the contradiction between the two is that according to the father the briefcase was borrowed from his friend by appellant while according to the mother it was Geeta who borrowed it from Gopal Krishna. There is no identity of the ornaments established for the version is very much varied and whereas the father asserts that he was not in the house when the couple left, mother went on asserting on more than one occasion that father was present when the couple left. Both of them have asserted that

Geeta had carried Rs. 600/- with her.

12. Another factor which causes a doubt on the evidence of these unfortunate parents is that P.W. 14 the father says that Geeta was to appear for final B.A. Examination in March, 1990 but she could not appear because she got married on 16th February, 1990 yet the marriage invitation printed clearly shows that Geeta is holder of B.A, Degree.

13. The prosecution version is that after the commission of the offence appellant went to Bombay. On 15th December, 1990 the appellant sold some gold ornaments to a Goldsmith called Sureshkumar Rathod (P.W. 16) at Ghatkopar near Bombay. It is worth seeing the evidence of this witness.

14. P.W. 16 Sureshkumar Rathod is a Goldsmith, who is carrying on business in the name of 'Prince Jewellers'. In his evidence he says that on 15th December, 1990 appellant came to his shop at Ghatkopar at about 7.00 p.m. and said that he was a tourist from Bombay and as he was short of money he wanted to sell two gold chains. The two gold chains, according to the witness, weighed 13.300 gms. He deposes that appellant bought a new chain in lieu of the two gold chains sold and in addition the witness paid Rs. 1,835 to be appellant. He could not produce the two gold chains sold by the appellant as they were melted. According to the witness the appellant held out that he is Girishkumar Krishnakumar and he had issued a receipt Exh. P.W. 16/A, which is signed by the appellant as Girish Kumar. The witness identified his signature at point 'A' and that of the appellant at point 'B'. The witness also says that he issued receipt for the purchase of new gold chain by the appellant and gave a Xerox copy of the same to the police. The Xerox copy has been Exhibited as P.W. 16/B and the witness again identifies his signature at point 'A' and signature of the appellant at point 'C'.

15. There are several misgivings about this evidence. According to the version of the mother, Geeta was wearing a gold chain without reference to mangalsutra whereas according to the father, he asserts that Geeta was wearing two mangalsutras and one gold chain with two layers.

16. Coming back to the evidence of Suresh Kumar Rathod all that he has stated is that the appellant sold to him two gold chains and instead purchased one new one of lesser weight and in addition obtained value in money. No other item of gold like mangalsutra, earrings, nose ring and toe rings have been recovered. The identity of the ornaments worn by Geeta does not answer the description of two gold chains sold by appellant to P.W. 16.

The other catch is the signature said to have been made by appellant as Girish Kumar at Exh. P.W. 16/A at point 'B' does not tally with signature at Exh. P.W. 16/B at point 'C'.

17. On the basis of this evidence of the aforementioned witness, the identity of the gold ornaments is clearly not established. The signature on the two receipts spoken to by witness Rathod (P.W. 16) does not tally. The discrepancy in the statement of father (P.W. 14) and mother (P.W. 15) that Geeta and appellant left together and they were last seen at Bangalore on 13th December, 1990 at about 6.00 p.m. creates doubt. Another aspect is younger brother of Geeta Chandrashekhar who had gone with them and got out of the autorickshaw, according to the mother, at Malleshwaram, has not been examined though, in our view, his evidence could have thrown good light on the so-called journey by the couple on that day.

18. The question as to whether the identity of the appellant is established that he had taken Room No. 204 at Hotel Four Pillars at Panaji In this connection the evidence of P.W. 1 Antonio Barreto is unless as he does not seem to have seen the couple at all either on 14th or 15th except that he discovered the dead body of Geeta on the bed after the intervention of Police at about 10.00 a.m. on 15th December, 1990.

19. P.W. 4 is Vijay Mahale. He says that he was working as a room-boy at Hotel Four Pillars. At about 10.00 a.m. on 14th December, 1990 he got a bell from Room No. 204. He says that he is not able to identify the appellant as two years have already passed. He remembers that a lady with a customer were in the room. He served tea to the couple and made inquiries about their sight-seeing and on the next day he came to know that the lady who had occupied Room No. 204 was

dead. According to him his timings of work are 7.00 a.m. to 11.00 a.m. and 2.30 to 5.00 p.m.

20. P.W. 5 is Francis Clerk. He says that he was the receptionist at that hotel and his timings are 8.00 p.m. to 8.00 a.m. He says that he was on duty on 14th December, 1990 and he generally checks the register to find out whether customers have indicated that they are interested in sight-seeing. He had gone to Room No. 204 to find out whether the occupants wanted logo for sight-seeing. He rung the bell but there was no response. He also knocked the door and on finding that there was no response he informed the owner P.W. 1. Both of them tried to get response from the occupants and on finding no response, the owner peeped into the key hole who saw legs and a white bedsheet. According to him, both of them came down and informed the Police. Upon arrival of the Police since the key of Room No. 204 was not available, with the key of Room No. 203 finally the Room was opened and they went inside and discovered a body of a lady covered with white bed-sheet upto her face. In cross-examination he says that he had taken charge from Kamble, another receptionist on the evening of 14th between 7.30 to 8.00 p.m. He asserts that duplicate keys of the rooms are available on the board. According to him he does not know any thing about the keys of Room No. 204 nor Kamble had informed him on 14th about the where about of the key.

21. P.W. 17 is Laximan Kamble. He is the other receptionist in the hotel. He deposes that on 14th December, 1990 a couple was referred by Tourist Hostel at 9.30 a.m. The male gave his name as Mr. and Mrs. Satish Kumar. He stated that he is able to identify the couple and identified appellant sitting on the Court. According to him he had directed the appellant to register the name in hotel register and accordingly appellant-made the entries in the register. He was shown, Exh. P.W. 3/A. The witness identifies entries Q1 and Q2 as the entries made by the appellant and that exhibit is a sheet from the hotel register of occupants. He affirmed that he had allotted Room No. 204 to the couple. He says the couple went away within half an hour of their arrival without keeping the key at the counter and returned at about 11.00 a.m. At about 4.00 p.m., he says one person came to him and informed that he had found a key of Room No. 204 at Malim Bus Stand and demanded Rs. 50/- for the return of the key but the witness refused. The witness

says that this person gave his name and address with a view to direct the customer on the said address. He says that he went to Room No. 204, gave a knock but the door was not opened.

In cross-examination he says that his statement was recorded by the Police on 15th December, 1990. He admits that Police had shown the appellant present in the Court in the Police Station but he does not remember the date, he further asserts that for the purpose of identifying the appellant the Police had not only taken him but other persons working in the hotel viz., Ashok Naik, Andrew Gonsalves as also the owner P.W. 1. He says that he had left a written message that a person had come with a key and his address when he left upon termination of his duty at 8.00p.m. and he also asserts that he never seen the couple after 11.00 a.m. His identification of the appellant is vitiated as the Police took him to the custody and showed him the appellant along with other prosecution witnesses who were working for Hotel Four Pillars.

22. P.W. 6 is Ashok Naik who claimed that he was working as the Asstt. Manager cum P.R.O. in Hotel Four Pillars. His duties consisted of looking after the occupancy of the hotel and supervise the duties of the staff. As P.R.O. he goes to Airport and Tourist Hostel to collect customers. He says that on 14th December, 1990 he had gone to Tourist Hostel at about 7.30 a.m. At about 8.00 a.m. one couple came and that couple was referred by the receptionist of Tourist Hostel to Hotel Four Pillars. According to him a sum of Rs. 150/- was collected from the said couple by Rohidas P. Naik (P.W. 9). He immediately changed his statement and said that the receipt was issued by another receptionist by name Rajendra Walwaikar (P. W. 8). He says that he arranged a Rickshaw for that couple to go to Four Pillars and in the meantime he rung up his Hotel to allot a double room to the said couple. He now says that at about 11.00 a.m. when he returned to Hotel Four Pillars he came across the male person out of the couple at the counter and identified appellant present in the Court as the male person being the same person whom he met on 14th December, 1990. According to him on the next day he found that the lady out of the said couple was murdered in Room No. 204. He identified the photograph of the lady. Before the murder came to light according to him from Tourist Hostel he had made an inquiry with the receptionist of Hotel Four

Pillars whether accused had made booking for sight-seeing and also for extension of stay. Sometime later the owner of the Hotel (P.W. 1) summoned him urgently to Hotel Four Pillars. The owner of the Hotel took him to Room No. 204 from which there was no response. According to the witness he saw from the keyhole and the gap of the door two legs on the bed. He, therefore, went alongwith the owner to the Police Station. The Police Officer came to the Hotel and asked for duplicate keys of Room No 204 but the duplicate keys were not available. He says that with the keys of Room No. 203, room No. 204 was opened whereafter he saw the body of the woman on the bed.

In cross-examination he says that his statement was recorded immediately on the same day the murder took place. He says that on 26th January, 1991 Police had shown him the accused present in the Court at Panaji Police Station. On 22nd February, 1991 at 4.00 p.m. according to the witness he had participated in the identification parade before Judicial Magistrate Shri Divekar at Municipal Building for identification of the accused.

The identification of the appellant by this witness is very strange and totally vitiated. According to him he was shown the appellant at Panaji Police Station on 26th January, 1991. He also speaks of the identification parade on 22nd February, 1991 at 4.00 p.m., that too before the Magistrate, but there is no whisper about this identification parade. It is not known as to why this identification parade has been suppressed.

23. P.W. 8 is Rajendra T. Walwaikar, who was the receptionist at Tourist Hostel at Panaji at the relevant time. He says that when the Hostel is full the tourists and passengers are diverted to different hotels. He identified the receipt shown to him by the Public Prosecutor and which bears his signature at point 'A' which is Exhibit P.W. 8/A. He says that he had issued that receipt in respect of booking at Hotel Four Pillars. He confirmed that his duties were from 8.00 a.m. to 2.00 p.m. on 14th December, 1990 and that he had taken over from one Rohidas Naik (P.W. 9), who was on prior duty on that day. According to him the handwriting on the receipt Exhibit P.W. 8/A is that of P.W. 9(Rohidas Naik). He categorically says that he had not seen the couple. He affirms in cross-examination that the original receipt was

given to the party passenger concerned when tourists are diverted to private hotels and two duplicate copies remained with the Tourist Hostel.

It is not known as to how Exhibit P.W. 8/A which was issued by the Tourist Hostel, Panaji, dated 14.12.1990 which is run by Tourist Development Corporation came to be seized and from whom. If at all we go by the statement of P.W. 8, the original must be with the appellant. There is no indication that the same had been seized from the appellant in accordance with law.

24. P.W. 9 is Rohidas P. Naik, who is an L.D.C.-cum-receptionist at Tourist Hostel, Panaji. His duty started at 8.00 p.m. on 13th December, 1990 and lasted until 8.00 a.m. on 14th December, 1990. According to him he handed over charge to Mr. Walwaikar (P.W. 8). He identified Exhibit P.W. 8/A to be in his handwriting. He then speaks about tourists who are diverted to other hotels for want of vacant room at Tourist Hostel. In examination-in-chief he affirms that he can identify the person to whom the receipt Exhibit P.W. 8/A was issued but in cross-examination he admitted that he had stated to the Police that he was unable to identify the appellant as he had not seen him properly. It is clear that his statement was recorded by the Police on 15th December, 1990 on the day the murder was discovered. This contradiction, therefore, being vital and material, throws a cloud on the identification of the appellant by this witness.

25. By now we have seen the evidence of those persons who are supposed to have identified the appellant as the person who accompanied deceased Geeta at Tourist Hostel and at Hotel Four Pillars. The evidence of Vijay Mahale (P.W. 4) Francis Clerk, (P.W. 5) Ashok Naik (P.W. 6), Laximan Kamble (P.W. 17), all employees of Hotel Four Pillars, Rajendra T. Walwaikar (P.W. 8) and Rohidas P. Naik (P.W. 9) of Tourist Hostel, Panaji, does not in reality identify the appellant at all. Identification by some of them has come as a result of Police having shown the appellant to them when the appellant was in custody. The identification, therefore, throws a serious cloud.

26. Prosecution has sought to make out that soon after committing murder of Geeta by strangulation in the afternoon of 14th December, 1990 appellant went to the other side of the river at Malim and boarded a bus for Bombay and before

going to Bombay he threw the keys of Room No. 204 of Hotel Four Pillars amongst the bushes near the bus stand.

In this connection two brothers are examined.

27. Umesh A. Lotlikar is P.W. 10. He says that he is the brother of Nilesh Lotlikar(P.W. 13). According to him between 12.00 noon and 1.00 p.m. he had gone from his shop near Geeta Bakery to Porvorim to drop his brother Nilesh at Malim Jetty as his cousin brother had to go to Bombay by bus. He says that he left Nilesh at about 1.30 p.m. at Malim Jetty and he went to his in-laws place at Betim. As he was coming back to his shop at Panaji, Nilesh met him at Betim along with his cousin when he came to know that his cousin brother had dropped the programme of going to Bombay on account of some urgent work. Nilesh told him that he found a key of Hotel Four Pillars with the words 'Four Pillars' written on it. The witness says that he told Nilesh that he would hand over the key after making necessary inquiries. According to him he inquired from somebody who told him that the key must be of Hotel Four Pillars. Witness says that he went to a place called Pillar and did not find any hotel by name Four Pillars and somebody told him that Hotel Four Pillars is near Sales Tax Office at Panaji. Witness says that he came to hotel Four Pillars at about 2.30 to 3.00 p.m. on 14th December, 1990 himself and informed the person concerned that since he had spent Rs. 50/- if that amount was paid to him he would hand over the key. The person incharge of Hotel Four Pillars at that time told him that the person occupying Room No. 204 was not there and, therefore, the witness says he brought the key to his shop after giving his address. On the next day he says Police came, recorded his statement and took away the key. He identified the key M.O.19. In cross-examination he says that he does not remember whether his statement was recorded on 15th December, 1990 or on 17th December, 1990. He says that Police had come to him on two occasions on the same day and ends in saying that when he had gone to return key the person at the counter had taken down his address.

28. P.W. 13 Nilesh Anand Lotlikar says that Umesh Lotlikar (P.W. 10) is his brother. He says that on 14th December, 1990 he found a key at Malim Jetty from where buses go to Bombay. According to him his cousin brother Deelip Revodkar

was to go to Bombay and that is why his brother Umesh left him at Malim. He says that he went near the bushes for passing water and found the key in the bushes. Deelip Revodkar however told him that his work was not over and, therefore, he was not going to Bombay. When he and Deelip were coming to Betim they came across brother Umesh to whom he handed over the key and he identified the same.

29. The evidence in relation to the finding of the key appears to be mere of a chance. The evidence of the two brothers does not seem to be satisfactory and the fabrication of this type of evidence cannot be ruled out for a number of reasons. Nilesh had gone to see his cousin Deelip going to Bombay but Deelip dropped out from the journey. Nilesh again comes by chance in contact with his brother to whom he handed over the key. From the time the key was handed over to Umesh and Umesh went to return the key at Hotel Four Pillars, which was between 2.30 to 3.00 p.m. creates again a great doubt because Umesh went all the way to a place called Pillar, which is about 8 to 10 kms. away from Panaji (side of Zuari Bridge), it is as if Umesh had nothing to do and was somehow obsessed with returning the key at such a short time.

30. According to the prosecution case appellant left for Bombay by bus which started from Malim on the afternoon of 14th December, 1990. We have already seen earlier that according to Sureshkumar Rathod (P.W. 16) appellant allegedly sold to him gold ornaments in the evening of 15th December, 1990. The prosecution, therefore, suggested that murder of Geeta was committed in the early afternoon of 14th December, 1990. The medical evidence, however suggests that the murder was in the evening of 14th December, 1990. In this connection evidence of Dr. P.S. Audi (P.W. 11) is worth noticing.

31. Dr. P.S. Audi (P.W. 11) says that he conducted post-mortem on the dead body of a female who was 24 years old at the request of P.S.I. Panaji Police Station on 15th December, 1990 which started at about 5.30 p.m. Not much reference is necessary with regard to the internal and external examination and it can be straight away accepted that the death was due to asphyxia as result of smothering and throttling, that is strangulation. In cross-examination the Doctor says that the

death was approximately within 24 hours of the post-mortem. He also confirmed that the death had taken within 6 hours of the last meal as semi-digested rice and vegetables were found in the stomach. Going by this expert opinion, it seems clear that the offence must have been committed on or after 5.30 p.m. of 14th December, 1990. The other aspect of the matter is that according to the prosecution evidence appellant and Geeta went out soon after taking possession of Room No. 204 and returned to the hotel at 11.00 a.m. on 14th December, 1990 and that thereafter nobody had seen either appellant or Geeta. It is, therefore, difficult to accept that the couple who had arrived had no occasion to take food in the afternoon and that at any rate the evidence is in the grey area. Going by the Doctor's opinion on the finding that semi-digested rice and vegetables were found and in which event the death must occur within 6 hours of the last meal, then the difficulty is how to reconcile the prosecution evidence.

It is well settled law that the Court has to accept opinion with regard to the time of the death based upon expert opinion and this is exactly what is observed in *Gambhir v. State of Maharashtra*, reported in : 1982 CriLJ1243 .

32. All the prosecution witnesses have referred to the appellant as Satish Kumar. It is not known as to how the prosecution were able to obtain that name including the registration of a crime against him. We have already referred earlier that when the couple landed at Tourist Hostel, Panaji, the couple was assigned Hotel Four Pillars upon taking an advance of Rs. 150/- and that too under a receipt Exhibit P.W. 8/A. The receipt mentions only Mr. Satish and not Satish Kumar.

The prosecution has produced a sheet of the register of passengers of Hotel Four Pillars to prove that appellant and Geeta had checked in and obtained room No. 204 on the morning of 14th December, 1990 vide Exhibit P.W. 3/A. It appears that this sheet from the register of passengers was seized under a panchanama and in support the prosecution examined Venkatesh Arjun Nai (P.W. 3). On behalf of the defence it has been brought on record that P.W. 3 is a stock punch witness of Panaji Police Station. He himself admits that he has acted as such in about 20 to 25 cases. Perhaps it may not be a ground to reject a punch witness merely because he has acted in large number of prosecution cases of one Police Station

but then the ordinary rule is to seek good corroboration and appreciate evidence of regular punches with some caution. The panchanama and evidence of P.W. 3 suggests that the panchanama was conducted between 4.00 and 4.30 p.m. on 15th December, 1990. It is, therefore, clear that the sheet of passengers' register Exhibit P.W. 3/A was taken from the register and attached under panchanama on the day the murder was detected. This story becomes impossible for its acceptance because the sheet shows entries of several passengers who left on 16th and 17th December. If the sheet was taken in possession by the Police on 15th December, it is inconceivable that some entries could have been made by the hotel owner or passengers of their departure any time after 4.30 p.m. of 15th December, 1990. The fact that the register shows departure time of passengers on 16th and 17th would suggest that this register was seized in any case on or after 17th but not before. This is a tell-tale in the prosecution story with regard to the entries made in the register of passengers of Hotel Four Pillars.

33. Obviously this sheet from passengers' register was brought to show that appellant entered his name on the register in his own handwriting. It is suggested that under Sr. No. 2507 there is a mention against the column 'name of tourist' Mr. and Mrs. Satish with address 28, Grant Road, Bangalore-25 and an initial in the column 'signature of tourist.' These two entries one showing the name and address and the other initial were forwarded to the Handwriting Expert Sureshchandra Lohia (P.W. 12) who has identified the same as Q1 and Q2 respectively.

34. Sureshchandra Lohia (P.W. 12) is a Deputy Government Examiner of Questioned Documents who has tendered his opinion that Exhibit Q1 is similar to the admitted handwriting of the appellant. He was, however, unable to express opinion on Exhibit Q2, namely, the initial.

A question has indeed agitated our minds that when the dead body of Geeta was discovered in bed on the morning of 15 December, 1990 on the side table empty Soda bottles, empty Kingfisher Beer bottle, one empty quarter bottle of Travellers brand Whisky, two empty Limca bottles and two empty glasses were found along with other personal belongings. This has been spoken by P.W. 7 Raghuvir

Mahatme, who is a panch witness of the scene of offence. According to his evidence Scientific Assistant attached to the Police Station had taken finger prints from the glasses and bottles. It is not known why such finger prints were not sent to the expert for the identification of the thumb-impression of the appellant. It is well settled by now that the opinion finger prints has more weight than opinion on writing in questioned documents. Besides how all those drinks came into the room who brought them and at what time is also a mystery.

35. Coming back to the opinion of the Handwriting Expert P.W. 12 Sureshchandra Lohia, though he identified Q1 to be the writing of appellant, we have already seen how the sheet of passengers register has cast suspicion on the prosecution evidence in the matter of its seizure in the afternoon of 15th December, 1990. The expert opinion on handwriting cannot be made the sole basis for conviction unless there is a strong corroborative evidence. If any authority is required in this behalf one can easily look of State of Maharashtra v. Sukhdeo Singh and Anr., reported in : 1992 CriLJ3454 .

36. It is true that father (P.W. 14) and mother (P.W. 15) of Geeta identified some clothes to be that of the appellant which were seized by the police after the discovery of the scene of offence. We have already said enough with regard to the evidence of the parents of Geeta. It is not the case of the prosecution that the clothes identified by them as that of appellant bore any laundry marks. In fact no such evidence has come on record. It is, therefore, unsafe to attribute that the pant and shirt, merely because they are male apparel, must belong to the appellant. In fact either father or mother of Geeta have deposed as to why they have identified those clothes or on what basis they say that those clothes belong to the appellant.

37. The appellant is said to have been arrested on 15th January, 1991 at 4.15 a.m. in front of Deepa Cinema Theatre near Malad at Bombay. The arrest was effected by P.W. 19 Ashwat Narayan a P.S.I. attached to Subramania Police Station at Bangalore. According to him when the Investigating Officer, Goa approached Hanumant Nagar Police Station to assist in tracing the appellant, he was deputed to Bombay by his Superior Officer. The witness does not even make any reference as to what attempts he made for tracking down the appellant for it is

needless to say that Bombay is one of the largest city in the world with nearly a crore population. A bare statement by this witness that he traced appellant at Malad without anything more is more dramatic and less realistic.

38. The learned Sessions Judge has accepted falsity of defence to be a circumstantial evidence against the appellant. It was the defence case that appellant was in Bombay on the date of the offence for he had gone in search of a job. The learned Judge found that the appellant did not bring any evidence to prove that he was in Bombay. We are afraid that merely because the appellant took the defence that he was in Bombay could be taken against him more particularly when prosecution has not established anything against the appellant.

39. Motive has its own part to play in the matter of offences which are sought to be based or proved on circumstantial evidence. In the present case the prosecution had not suggested any motive as to why appellant wanted to kill Geeta. The evidence suggests and that too overwhelmingly that the appellant was bent on marrying Geeta and that is how he got married to her on 16th February, 1990 and that too against the wishes of the parents of Geeta. Even going by the evidence of parents of Geeta it is clear that Geeta was hardly wearing any jewellery or gold ornaments worth the 'name. There is no other indication with the result we are left in a lurch as to why appellant should have murdered Geeta. Once we come to this position then it is inconceivable that the defence was required to prove that the appellant was in Bombay on some job or the absence of positive proof that the appellant was in Bombay can be taken as a circumstance against him and that too for the purpose of holding that the appellant strangled his wife.

40 In our view by now we have exposed each and every circumstance which is sought to be held against the appellant. We have also highlighted the suspicious nature of the prosecution evidence. Suspicion cannot take the place of proof and it is well settled that no accused can be convicted based upon suspicion. The evidence collected by the prosecution in this case against the appellant is not so complete to forge all links in a chain and is not capable of explanation of any other hypothesis than that of the guilt of the accused. It is neither consistent with the guilt of the accused without being inconsistent with his innocence. The appellant

is, therefore, entitled to a benefit of doubt.

41. For all these aforesaid reasons the appeal succeeds. The impugned judgment and Order dated 26th May/7th June, 1993 is quashed and set aside and appellant to be set at liberty.

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