Raja Ram Vs. State

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Court : Delhi

Decided On : May-27-2015

Judge : Ashutoshkumar

Appellant : Raja Ram

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRIMINAL APPEAL No.211/2013 Reserved on:

30. 04.2015 Date of Decision:

27. 05.2015 % RAJA RAM Through ..... Appellant Mr.R.M.Tufail, Mr.Vishal Raj Sehijpal Mr.Farooq Chaudhary and Mr.Anwar A.Khan, Advocates. versus STATE ..... Respondent Through Ms.Aasha Tiwari, APP. CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE ASHUTOSH KUMAR ASHUTOSH KUMAR, J:

1. Raja Ram has impugned the judgment of conviction dated 7.1.2013 passed in Sessions Case No.36/2007 (reference FIR No.1823/2006, P.S.Sultanpuri) by the Learned Sessions Judge-I (Outer) Rohini Courts, Delhi whereby he has been convicted for offences under Sections 364/302/201 and 120B IPC for killing Mukesh Kumar, his friend.

2. By order of sentence dated 17.1.2013, appellant Raja Ram has been directed to undergo imprisonment for life, pay fine of Rs.10,000/- and in default of payment of fine, undergo Simple Imprisonment of six months, for the offence under section 302 IPC, and for criminal conspiracy for committing murder under Section 302/120B IPC, the appellant has been sentenced to imprisonment for life and fine of Rs.10,000/- and in default of payment of fine Simple Imprisonment for six months. The appellant has also been sentenced to undergo Rigorous Imprisonment for 10 years for the offence under Section 364 IPC with a fine of Rs.10,000/- and in case of non-payment of fine, Simple Imprisonment for six months. Similarly, he has been sentenced Rigorous Imprisonment for 10 years, fine of Rs.10,000/- and in default to pay, Simple Imprisonment of six months for the offence of conspiracy for kidnapping under Section 364 read with Section 120B IPC. Separate sentence of rigorous imprisonment for five years, fine of Rs.2000/and in default of payment of fine, Simple Imprisonment for three years, for the offence under section 201 IPC has also been awarded to the appellant. The sentences referred to above have been directed to run concurrently.

3. The appellant was chargesheeted and tried for kidnapping and murdering Mukesh Kumar (deceased) and concealing his dead body beneath the floor of a rented room in order to screen the offence.

4. Briefly stated, the case of the prosecution is based on the statement of Rakesh (PW.7), brother of Mukesh Kumar (deceased). Rakesh Kumar, (PW.7) lodged a missing report on 12.11.2006 about his brother Mukesh who was not to be heard of since 7.11.2006 when he left Delhi for Ludhiana. On the basis of said report, DD No.13H was recorded in Sultanpuri Police Station.

5. After 4 days, a detailed complaint was lodged by Rakesh Kumar, (PW.7) in the police station Sultanpuri, stating that his brother Mukesh Kumar was in the same business as that of the appellant namely sale and purchase of old rubber tubes of bicycles. On 7.11.2006, Mukesh Kumar had gone to Ludhiana for purchase of old rubber tubes but he did not return till the date of the filing of the complaint. During this period when enquiries were made privately by PW.7, he had learnt that the appellant had also gone to Ludhiana along with his brother for purchase of the raw

materials and he had come back, whereas his brother did not. Suspicion therefore, was raised against the appellant by PW.7. On such complaint of PW.7, FIR No.1823/2006 was registered in the Sultanpuri police station for an offence under Section 365 of the IPC.

6. The appellant, being a suspect, was apprehended on 16.11.2006 from his godown at Krishan Vihar. On interrogation, he made a disclosure about his participation along with two accomplices, namely Sonu and Ashok Kumar Chaudhary, in killing the deceased. It would be relevant here to state that Sonu, one of the accomplices of the appellant was not arrested and was declared a proclaimed offender, whereas Ashok Kumar Chaudhary faced trial along with the appellant, and has been acquitted of all charges by the judgment impugned.

7. Pursuant to the disclosure by the appellant (Ex.PW.7/D), he was taken on police remand for four days. The appellant accompanied the police to Ludhiana. On the pointing of the appellant, a dead body was recovered after digging the floor of a room in a house situated at Jeevan Nagar which had been taken on rent by the appellant. The local Naib Tehsildar Navdeep Singh Sandhu, on the direction of the SDM, had joined the investigation. The dead body exhumed from beneath the floor of the rented room, was identified by PW.7 and Subhash Chand (PW.12) to be of Mukesh Kumar (deceased). The entire process of exhumation was video graphed and photographs were taken. The dead body was thereafter sent to the mortuary where post mortem was conducted on 18.11.2006.

8. Rakesh Kumar (PW.7), the first informant, in his testimony before the Court affirmed and supported the allegation that the appellant, had killed the deceased. He has stated that the deceased was in the business of selling old rubber tubes of bicycles which he normally purchased from Ludhiana. On 7.11.2006, the deceased had gone to Ludhiana but he did not return. After 2-3 days, an attempt was made by PW.7 to locate his brother but no clue came forthcoming. PW.7 has deposed that on 10.11.2006, he had gone to Ludhiana along with the appellant, in search of his brother Mukesh Kumar (deceased) but to no avail. A missing report was, thereafter lodged on 12.11.2006. CRL.A.211/2013 towards the appellant. On 16.11.2006 a complaint was lodged by PW.7 at Sultanpuri police station

suspecting the appellant. Initially the case was registered under Section 365 of the IPC. After the recovery of the dead body of Mukesh Kumar (deceased) Sections 302/364/201 and 120B IPC were added.

9. Rakesh Kumar (PW.7) has deposed that he along with Subhash Chand, (PW.12) had gone to Ludhiana and in their presence, the dead body of the Mukesh Kumar was recovered after digging the floor which was pointed out by the appellant. PW.7 has stated that co-accused Ashok Kumar Chaudhary was arrested on 17.11.2006 in the morning from the same house in which the dead body was concealed but such arrest was not made in his presence.

10. The prosecution has also relied upon the testimonies of Smt.Sunita (PW.3), wife of the deceased and Subhash Chand (PW.12), the cousin of the deceased in order to bring home the charges of kidnapping and murder of the deceased after hatching a conspiracy.

11. Smt.Sunita (PW.3), wife of the deceased has confirmed that the appellant and the deceased were in the same business and 3-4 days prior to 7.11.2006, appellant had apprised the deceased of low rates of material in Ludhiana. Since the appellant did not have any money with him, he had requested her husband to take money to Ludhiana for purchasing raw material. Thereafter on 7.11.2006, husband of PW.3 left for Ludhiana with Rs.60,000/-. The deceased had informed PW.3 that he was going to Ludhiana along with the appellant and would come back the next day after purchase of the raw material. When her husband did not return, she informed her brother-in-law, Rakesh (PW.7) who went to Punjab in search of her husband. Later, on 12.11.2006 a complaint was lodged by him, suspecting involvement of the appellant.

12. We have noticed that the Trial Court had permitted the prosecutor to put leading questions to PW.3. Her response to such leading questions were also in consonance and in complete conformity with what she stated before the police and before the Trial Court.

13. Subhash Chand (PW.12) has affirmed that on 17.11.2006 he had gone to Ludhiana along with Delhi Police officials and was a witness to the digging out of

the dead body of Mukesh Kumar, his cousin. He affirmed the fact that the deceased had accompanied the appellant to Ludhiana on 7.11.2006.

14. From a conspectus of the testimonies of the aforesaid three witnesses namely PWs.3, 7 and 12, it stands proved and established that the appellant had told the deceased about availability of rubber tubes of bicycles at low rates at Ludhiana. On getting such information, the deceased left his house with Rs.60,000/- for the purchase of raw materials. The appellant came back but Mukesh Kumar (deceased) did not. Search was made for the deceased by his brother (PW.7) who took the help of the appellant and visited Ludhiana along with the appellant on 10.11.2006. Finding the conduct of the appellant suspicious and his answers to the posers evasive, the appellant was named in the first information report. On his arrest, the appellant made a disclosure, leading to the recovery of a dead body, from a rented room. The body was identified by PW.7, PW.12 and others to be of Mukesh Kumar (deceased). We shall be referring to the deposition PW.3 again, later, when the motive for the crime and the issue of admissibility of the statement of the deceased regarding his trip to Ludhiana with the appellant, would be discussed.

15. Once these facts viz. recovery and identification of the dead body stand established, what is required to be seen is whether, there are other materials to connect the recovery with the crime and ascertain the culprit.

16. In order to appreciate whether the appellant was the culprit who was responsible for the offences, we proceed to examine the testimonies of other public witnesses.

17. Manjit Singh (PW.14), care taker of the house of his brother- in-law namely Jaswant Singh, has testified that out of the six rooms in the said house, he had let out one room to co-accused Sonu and Ashok Kumar on monthly rental of Rs.700/- whereas the adjacent room was let out to the appellant on the recommendation of Sonu and Ashok Kumar Chaudhary. This witness has supported and affirmed that the dead body was recovered from beneath the floor of the room which was let out to the appellant and that the entire process of exhumation was video-graphed. He has candidly admitted that no rent receipts were issued to the tenants nor any

agreement of tenancy was executed. The aforesaid witness voluntarily stated that the appellant had taken the room in the month of November and had paid rent on 6/7.11.2006. The other rooms in the house were vacant and not occupied by anybody.

18. Avtar Singh (PW.15), a professional videographer deposed that on 17.11.2006 he was called at the spot by police in order to capture and videograph the recovery proceedings. He has affirmed and has corroborated the recovery of a dead body.

19. The testimonies of the aforesaid witnesses conclusively prove the fact that the dead body was recovered after digging the floor of the room which was taken on rent by the appellant.

20. Rama Shankar (PW.10) stated before the Court that he worked as an employee in V.K.Building Material and Hardware Store, Ludhiana. On 6.11.2006, the appellant had come to his shop and had taken on hire two iron implements namely Kassi and Gaiti and had also purchased 5 kg of cement from his shop. An advance of Rs.100/- was given by the appellant. The iron implements were returned on 7.11.2006. He proved the aforesaid fact by referring to the entries in the challan book with respect to hiring and returning of the iron implements referred to above (Exh.PW.10/B). PW.10 has also proved a receipt of the said articles (Exh.PW.10/D). However, on being cross-examined, PW.10 has stated that though the aforesaid iron implements were taken on 6.11.2006 but the cement was purchased on 7.11.2006. He was interrogated by the police on 18.11.2006 and thereafter his statement was recorded at the shop. He has denied the suggestion that the iron implements referred to above were not taken on hire by the appellant from his shop.

21. In order to establish that the iron implements which were taken on hire by the appellant were used for concealing the dead body beneath the floor of the house, the prosecution has also relied upon the deposition of Parshuram Singh (PW.20) who is an Assistant Director (Physics) in Forensic Science Laboratory, Rohini, Delhi. He examined the blood stained earth, earth control and the soil which remained stuck to the iron implements about which reference has been made above and gave his report (Exh.PW.20/A). A perusal of the said report shows that

the earth seized and the soil on the said tools were found to be possessing similar physical characteristics.

22. Dr.Ashwani Malhotra (PW.4), Dr. Amandeep Sandhu (PW.8) and Dr.Ramninder Kaur (PW.13) members of the Board constituted for the purpose of post mortem, performed the autopsy.

23. On examination of Larynx and trachea, mud was found. On cleaning the mud, the trachea was found to be compressed. The following external injuries were found on the person of the deceased:

External injuries: I. A lacerated wound 3 inches into 1 inch, bone deep present half an inch above left ear/ obliquely and left partial temporal area. Underline bone was fractured. II. 2 inches X1inch lacerated wound bone deep present half inch outside left eye, on and below left zygomae, underline bone fractured. III. 2 X1 inches contusion, brownish over right eye and nose (bridge),underline bone fractured. IV. 3X1inches lacerated wound present obliquely outside on right cheek starting from right side of mouth, underline right maxilla and mandible fractured, underline teeth missing on right mandible (jaw). V. 8X4inches brownish contusion, anterior aspect of right thigh. VI. 4 inches X5Inches brownish contusion on anterio medial aspect of right ankle. Scalp, Skull and Vertebrae: On exploration of skull, underline bone corresponding to injury No.1 fractured. All sutures were loosen, a small amount of liquefied brain was present. Meninges, brain and spinal cord were not examined. Thorax: Chest-ribs healthy, plura- congested, lungsshrunken, friable showing early putrefied changes. On cut section, dark coloured was present. On examination of heart and the muscles, it was friable, showing early putrefied changes and healthy. Abdomen: Peritoneum was congested, stomach was ruptured, showing early putrefied changes. The small intestine was putrefied and gases were present. The large intestine showed putrefied changes and contained gases and faecal matter. The liver, spleen, kidneys, bladder showed putrefied changes. The organs of internal and external generations were healthy.

The cause of death, in the opinion of the Board, was shock and hemorrhage as a result of multiple injuries on head and face with blunt weapon which was sufficient to cause death in the ordinary course of nature and which injuries were ante-

mortem. The probable time of the death was fixed at 7-10 days from the time of the post mortem. There, thus, remains no dispute that the deceased died a homicidal death.

24. That the deceased died a homicidal death whose dead body was recovered from beneath of the floor of the room of the appellant which he had taken on rent in the same month when the occurrence had taken place, confirms that the appellant had participated in killing the deceased and concealing his dead body.

25. In the case of State of Maharashtra vs. Suresh (2000) 1 SCC471 the Supreme Court examined the case law and the provisions of Sections 27, 106 and 114 of the Evidence Act and observed as under:

We too countenance three possibilities when an accused points out the place where a dead body or an incriminating material was concealed without stating that it was concealed by himself. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there. But if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities the criminal court can presume that it was concealed by the accused himself. This is because the accused is the only person who can offer the explanation as to how else he came to know of such concealment and if he chooses to refrain from telling the court as to how else he came to know of it, the presumption is a well-justified course to be adopted by the criminal court that the concealment was made by himself. Such an interpretation is not inconsistent with the principle embodied in Section 27 of the Evidence Act.

In Suresh Chandra Bahri v. State of Bihar 1995 Supp (1) SCC80 the Supreme Court held as under:

71. The two essential requirements for the application of Section 27 of the Evidence Act are that (1) the person giving information must be an accused of any offence and (2) he must also be in police custody. In the present case it cannot be disputed that although these essential requirements existed on the date when

Gurbachan Singh led PW59and others to the hillock where according to him he had thrown the dead body of Urshia but instead of the dead body the articles by which her body was wrapped were found. The provisions of Section 27 of the Evidence Act are based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and consequently the said information can safely be allowed to be given in evidence because if such an information is further fortified and confirmed by the discovery of articles or the instrument of crime and which leads to the belief that the information about the confession made as to the articles of crime cannot be false. In the present case as discussed above the confessional statement of the disclosure made by the appellant Gurbachan Singh is confirmed by the recovery of the incriminating articles as said above and, therefore, there is reason to believe that the disclosure statement was true and the evidence led in that behalf is also worthy of credence.

72. In the light of the facts stated above we are afraid the two decisions mentioned above and relied on by the learned counsel for the appellants have no application to the facts of the present case and do not advance the case of the appellants challenging the discovery and seizure of the incriminating articles discussed above. In Nari Santa the accused of that case was charged for the theft and it is said that in the course of investigation the accused produced certain articles and thereafter made a confessional statement and it was in these facts and circumstances it was held that there was no disclosure statement within the meaning of Section 27 as the confessional statement was made only when the articles were already discovered having been produced by the accused. Similarly the decision rendered in Abdul Sattar also does not help the appellants in the present case. In the case of Abdul Sattar recovery of wearing apparels of the deceased is said to have been made at the instance of the accused of that case more than three weeks after the occurrence from a public place accessible to the people of the locality and, therefore, no reliance was placed on the disclosure statement and recovery of the wearing apparels of the deceased. But in the present case it was soon after the arrest of appellant Gurbachan Singh that he took the Police Officer while in custody to the place where according to him he had thrown the dead body of Urshia wrapped by the incriminating articles. Those

articles were not found lying on the surface of the ground but they were found after unearthing the Khad gaddha dumping ground under the hillock. Those articles were neither visible nor accessible to the people but were hidden under the ground. They were discovered only after the place was pointed out and it was unearthed by the labourers. No fault therefore could be found with regard to the discovery and seizure of the incriminating articles.

26. In Ram Lochan Ahir vs. State of West Bengal, AIR 1963 SC1074 the Supreme Court had another occasion to examine the aspect of recovery of a dead body at the instance of the accused, and observed the same to be highly incriminating evidence. It was observed that the only aspect required to be scrutinised is whether the prosecution was successful in proving that the recovery was only with the aid of the accused.

27. In Criminal Appeal No.979/2010 titled Harvinder Singh vs. State decided on 2nd June, 2011, a Division Bench of this Court has referred to the judgments of the Supreme Court in Deepak Chandrakant vs. State of Maharashtra (2006) 10 SCC151 Ningappa Yallappa Hosamani and Ors. vs. State of Karnataka and Ors. (2009) 14 SCC582 State of Maharashtra vs. Suresh (2000) 1 SCC471regarding the question of recovery pursuant to disclosure statement and the weight and evidentiary value attached. It was observed that in the case of Deepak Chandrakant (supra), the Supreme Court has observed that recovery of the dead body is a highly incriminating circumstance, if it is satisfactorily and clearly established that the police could not have traced out or recovered the body except on the basis of the disclosure statement.

28. Looking at the evidence on record it is apparent that without the disclosure of the appellant, the police could not have exhumed the buried dead body from the floor of the room in question. The disclosure has also led to discovery of the fact that iron implements were hired by the appellant to bury the dead body. Thus the part of the statement of the appellant, which led to the aforementioned recoveries is held by us to be voluntary, untainted and forming one of the most important blocks of the prosecution structure, on which reliance can be placed safely.

29. After we have held the recovery of the dead body, at the instance of the appellant to be untainted, we would look for an account and explanation from the appellant himself as to what had happened. The recovery of the dead body is from the room, which has been proved and established, to be in occupation of the appellant. The deceased had visited Ludhiana on 7.11.2006. The appellant was known to the deceased, and claimed to be his friend and a close associate. He was in the same line of business and was also residing in Ludhiana. Since the occurrence has taken place in the house where the rooms were taken on rent by the appellant, therefore and in such circumstances, explanation of the appellant, assumes significance for he can dispel and negate the prosecution evidence. When a crime is committed within the confines of a place which is in occupation of a person and there is no possibility of any other person having come or operated from such place, such a person needs to disclose the facts and give an explanation about what happened, as he only has the specific information about it. In such circumstances, the law puts the onus on such fact knowing person to come up with an explanation. We clarify that the initial burden of proving the guilt of the accused remains essentially with the prosecution. However, once such burden is discharged, it is upon the accused, to discharge the burden of explaining the fact which is especially within his knowledge. If this were not the position in law, it would pose an insurmountable task on the prosecution to prove and establish the participation of the accused persons and their exact roles in the commission of crime. Though it is trite that the onus probandi is always on the prosecution but this principle cannot be stretched to absurd limits. The principle is meant to facilitate the delivery of justice and it cannot be permitted to be interpreted in an obtuse manner so as to nullify its efficacy.

30. Per force we need refer to the provisions of Section 106 of the Evidence Act:

106. Burden of proving fact especially within knowledge.- When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustrations (a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him. (b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

31. In Shambu Nath Mehra vs. State of Ajmer, AIR 1956 SC404 Supreme Court observed as under:

9. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that. It means facts that are preeminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. It is evident that that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are Attygalle v. Emperor A.I.R. 1936 P.C. 169 and Seneviratne v. R. [1936]. 3 All E.R. 36, 49....

10. xxxx 11. We recognise that an illustration does not exhaust the full content of the section which it illustrates but equally it can neither curtail nor expand its ambit; and if knowledge of certain facts is as much available to the prosecution, should it choose to exercise due diligence, as to the accused, the facts cannot be said to be "especially" within the knowledge of the accused. This is a section which must be considered in a commonsense way; and the balance of convenience and the disproportion of the labour that would be involved in finding out and proving certain facts balanced against the triviality of the issue at stake and the case with which the accused could prove them, are all matters that must be taken into consideration. The section cannot be used to undermine the well-established rule of law that, save in a very exceptional class of case, the burden is on the prosecution and never shifts.

In Trimukh Maroti Kirkan vs. State of Maharashtra (2006) 10 SCC681the Supreme Court has observed as hereunder:

14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See Stirland v. Director of Public Prosecution 1944 AC315quoted with approval by Arijit Pasayat, J.

in State of Punjab v. Karnail Singh 2003 Cri LJ3892. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him.

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish

its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

In a recent pronouncement in Pritpal Singh vs. State of Punjab (2012) 1 SCC10 the Supreme Court has encapsulated as follows:

53. In State of W.B. v. Mir Mohammad Omar [(2000) 8 SCC382:

2000. SCC (Cri) 1516 : AIR 2000 SC2988 this Court held that if fact is especially in the knowledge of any person, then burden of proving that fact is upon him. It is impossible for the prosecution to prove certain facts particularly within the knowledge of the accused. Section 106 is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference. Section 106 of the Evidence Act is designed to meet certain exceptional cases, in which, it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. (See also Shambhu Nath Mehra v. State of Ajmer [AIR 1956 SC404:

1956. Cri LJ794, Sucha Singh v. State of Punjab [(2001) 4 SCC375:

2001. SCC (Cri) 717 : AIR 2001 SC1436 and Sahadevan v. State [(2003) 1 SCC534:

2003. SCC (Cri) 382 : AIR 2003 SC215) xxxxxx 79. Both the courts below have found that the appellant-accused had abducted Shri Jaswant Singh Khalra. In such a situation, only the accused person could explain as to what happened to Shri Khalra, and if he had died, in what manner and under what circumstances he had died and why his corpus delicti could not be recovered. All the appellant-accused failed to explain any inculpating circumstance even in their respective statements under Section 313 Cr PC. Such a conduct also provides for an additional link in the chain of circumstances. The fact as to what had happened to

the victim after his abduction by the accused persons, has been within the special knowledge of the accused persons, therefore, they could have given some explanation. In such a fact situation, the courts below have rightly drawn the presumption that the appellants were responsible for his abduction, illegal detention and murder.

32. Section 106 of the Evidence Act refers to the word especially within the knowledge of any person. Only such facts are required to be disclosed which are in special knowledge of the accused. The dead body has been recovered from the room which is in the occupancy of the appellant. He could only have said as to how the dead body came to be buried beneath the floor in his room, and which was recovered on his disclosure.

33. The appellant in his Section 313 statement has simply denied the incriminating materials and circumstances which were put to him. He has even denied that the recovery was at his instance. Such a stead fast denial of every incriminating material which have been well proved and established by the prosecution, leads us to infer that the appellant has no explanation whatsoever to offer, and has therefore, a guilty mind.

34. The prosecution, as we have seen, has discharged the initial burden of establishing the guilt of the appellant beyond all reasonable doubts. Non rendition of any explanation whatsoever would justify the courts to presume certain facts (Sec. 114 Indian Evidence Act), making prima facie case for the prosecution.

35. Sunita, (PW.3), wife of the deceased, has deposed that she was told by her husband that he was going to Ludhiana with the appellant. This fact stands corroborated and affirmed as the appellant had gone to Ludhiana. He had taken iron implements on rent from a shop at Ludhiana on 6.11.2006. When the husband of PW.3 went missing and she reported about this matter to her brother-in-law, Rakesh (PW.7), Rakesh visited Ludhiana along with the appellant. Thereafter, the recovery of the dead body of the husband of PW.3, at the instance of the appellant, proves that the deceased had gone to Ludhiana on the asking of the appellant. The credibility of PW.3 could not be shaken despite her being subjected to rigorous cross examination. It was only natural for the deceased to have spoken

about his visit to Ludhiana to Sunita (PW.3), his wife.

36. She has assigned competitiveness and poor business of the appellant compared with the business of the deceased, as one of the motives for killing. However on a deeper scrutiny of the deposition of PW.3 it would appear that her statement about this alleged motive of the appellant in killing the deceased is not credit worthy or acceptable. The second reason offered by PW.3 is, misappropriation of Rs. 60,000/- which the deceased was carrying and which fact was known to the appellant. We do not intend to go into the existence or the sufficiency of the motive. Motive, as has been held in series of cases, does not play any crucial role in a criminal case as only the offender knows the impelling motive for commission of a particular crime.

37. At this stage, we would examine the other contentions raised by the appellant, Raja Ram. Learned counsel appearing for the appellant has argued that there was no suspicion against the appellant till 16.11.2006 and thereafter, only because of machinations of the relatives of the deceased and the police, his name was arraigned. The delay in lodging the FIR and Sunita (PW.3) not having told Rakesh (PW.7) about the fact that the appellant had accompanied the deceased to Ludhiana, weakens the prosecution case. The last seen theory of the prosecution as well as the last statement of the deceased to his wife PW.3 have been doubted on the abovementioned score. Certain contradictions were also pointed out in the testimony of private witnesses and it was urged that those witnesses could not have been relied upon for the purpose of convicting the appellant.

38. The arguments advanced on behalf of the appellant do not stand to reason as PW.3 and PW.7, the wife and the brother of the deceased were cautious, chary and vigilant enough not to unnecessarily implicate any innocent person in the case. The fact that Rakesh (PW.7) visited Ludhiana along with the appellant on 10.11.2006 clearly establishes two facts namely (i) that the deceased had told PW.3 his wife that he was going to Ludhiana with the appellant for the purchase of old rubber tubes, and (ii) only when the conduct of the appellant was found to be suspicious, then the complaint was lodged indicating and suspecting the hand of the appellant in causing the disappearance of the deceased.

39. We have taken note of the testimony of Rama Shankar (PW.10), who has proved the fact that Kassi and Gainti were taken on hire by the appellant on 6.11.2006 and were returned on 7.11. 2006, on which date 5kg cement also was purchased by the appellant. This is definite evidence regarding the screening of the offence and disposing off the dead body. This fact further buttresses the reasoning that though the murder had taken place on 7.11.2006 but preparation for screening of such commission of offence began on 6.11.2006 only.

40. We have gone to the core of the matter to ascertain whether any reasonable doubts in the prosecution case are available on record. The statement of witnesses who are related to the deceased, the doctors who conducted the post mortem, the care taker of the house from where the dead body was recovered, the shopkeepers testimony affirming the hiring of iron implements and purchase of 5 kgs of cement by the appellant, and the statement of police witnesses complete the chapter. The appellant does not have any tenable and acceptable explanation for such incriminating discovery.

41. We do not intend to repeat as to when circumstantial evidence can be taken in aid for bringing home charges against the accused. We would only stop at the basic postulate that after all the evidence is collected and collated, there is no scope of doubt, as if by forging of a chain, that it was the appellant and nobody else who committed the crime, such set of circumstances can safely be relied upon. There is nothing on record to come to any conclusion that the house in which the dead body of Mukesh Kumar was recovered was occupied by anybody else except by the appellant.

42. Summing up, the case is fully proved beyond all reasonable doubts. We feel that despite some inconsistencies in the prosecution version, the prosecution version is highly credible and if relied upon, would not defeat the ends of justice.

43. We have also given our earnest and solemn consideration to the fact whether the appellant has committed the crime or could possibly have committed the crime. The chain of events as noted in the Trial Court judgment and which has been reproduced by us, affirms that the appellant has killed the deceased and thereafter successfully concealed the dead body, for the purpose of screening the

offence.

44. The aforesaid evidence, we feel, completes the chain so as to establish that the appellant was the perpetrator or one of the active perpetrators who had committed the murder. Recovery of the dead body at the instance of the appellant from the room taken by him on rent pursuant to his disclosure statement (Ex.PW.7/D) has been proved and established beyond doubt. Before the disclosure statement, the police had no inkling or even suspicion that the dead body would be buried under the floor of the room. The said room was taken on rent by the appellant only one month prior to the occurrence. The appellant was a close acquaintance and a friend of the deceased and was engaged in the same line of business. PW.3 has deposed that the deceased had gone to Ludhiana and that the appellant had informed him about good business deals at Ludhiana. Conduct of appellant post disappearance of the deceased, when he went with PW.7 to Ludhiana to trace the deceased, is a corroborative and surrounding circumstance. PW.7 had occasion to interact with the appellant. His suspicious behavior and conduct created a doubt. It was then that PW.7 informed the police and the appellant was thoroughly interrogated. He broke down and made the disclosure statement (Ex.PW.7/D). It also appears that the murder was pre-planned as the appellant had taken on hire implements from a shop as deposed to by PW.10 one day before the deceased was to come to Ludhiana. These implements were subsequently returned and from the same shop, the appellant purchased cement. The cement, it can be inferred, was used for repair of the damaged floor. We have also noticed that when such incriminating evidence was put to the appellant, during recording of the statement under Section 313 of the Code of Criminal Procedure, except for the denial, no explanation or factual assertion to dispel or dent the prosecution version was propounded.

45. This leaves us to the question whether the appellant should also be convicted and had committed the offence under Section 362 and 364 and whether the prosecution has been able to prove and establish conspiracy under Section 120A read with Section 120B of the IPC.

46. Sunita, PW.3 in her testimony has clearly stated that about 3- 4 days before 7.11.2006, the appellant had come to their house and had intimated her husband (deceased) about the availability of rubber tubes at lower prices at Ludhiana. The appellant has challenged the said version with some merit. As per prosecution case, the appellant was in Ludhiana, a day before as he had taken the digging implements on hire from the shop of PW.10. It is possible that the appellant could have returned to Delhi but it is equally possible that the appellant might have stayed back at Ludhiana and the deceased had met the appellant at Ludhiana. However, it is clear to us that the appellant had called the deceased to Ludhiana and as noticed above we find that there is merit in the contention of the prosecution that the appellant wanted to deal with and committed his murder in Ludhiana. The said inference can be drawn from the fact that the appellant had interacted with the deceased about two days prior to as deposed to by PW.3 and had informed the deceased that material was available at cheap rates in Ludhiana. The deceased had informed his wife that he would go to Ludhiana at the instance of the appellant. The deceased had certainly met appellant at Ludhiana. The appellant had hired the room in question a month prior to the date of occurrence. The implements used for digging the floor and hiding the body were taken on hire one day before the deceased had left for Ludhiana.

47. Section 362 of the IPC defines abduction and Section 364 provides for punishment for kidnapping or abduction in order to murder:

362. Abduction.-Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

364. Kidnapping or abducting in order to murder.- Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

48. The inducement and inveigle of cheaper rates of rubber tubes at Ludhiana by the appellant, the deceased having visited the room of the appellant from where his dead body was recovered and the fact that digging implements were taken on

hire by the appellant a day prior to the deceased having visited Ludhiana clearly make out a case of abduction. We thus uphold and affirm the conviction of the appellant for the offence under Section 364 of the Indian Penal Code.

49. Now we advert to the issue as to how the offence was consummated and with whose help. On giving an anxious consideration over the issue we feel that such a crime could not have been committed single handedly and must have required help, assistance and planning (Conspiracy?.) 50. The deceased was killed before he was buried. The injuries on his person were found to be ante-mortem. Who participated in the occurrence and how was it executed is not known to us. The perpetrators of the crime must have conspired before embarking on such a misadventure. The appellant herein is the sole convict under Sections 302/364/120B IPC.

51. The offence of conspiracy, which is a substantive offence under the Indian Penal Code has been defined under Section 120A and punishment for the same has been delineated under Section 120B of the IPC:

120A. Definition of criminal conspiracy.-When two or more persons agree to do, or cause to be done,- (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy: Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. Explanation.-It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incide