Deepak Dev Nath Vs. State

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Court : Delhi

Decided On : May-26-2015

Judge : G. S. Sistani

Appellant : Deepak Dev Nath

Respondent : State

Advocate for Pet/Ap. : Mr. Ajay Verma

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A. 346/2014 % Judgment reserved on 21.05.2015 Judgment pronounced on 26.05.2015 Appellant DEEPAK DEV NATH Through: Mr. Ajay Verma, Advocate. Respondent Through: Mr. Feroz Khan Ghazi, APP for State. STATE CORAM: HONBLE MR. JUSTICE G. S. SISTANI HONBLE MS. JUSTICE SANGITA DHINGRA SEHGAL SANGITA DHINGRA SEHGAL, J.

1. Present appeal filed by the appellant is directed against the judgment of the learned trial court dated 27.09.2013 and order on sentence dated 03.10.2013 whereby the appellant had been sentenced to undergo imprisonment for life and a fine of Rs. 5,000/- for an offence punishable under Section 302 of the Indian Penal Code and in default of payment of fine to further undergo simple imprisonment for three months. The appellant had also been sentenced to undergo rigorous imprisonment for five years and a fine of Rs. 5,000/- for an offence punishable

under Section 201 of the Indian Penal Code and in default of payment of fine to further undergo simple imprisonment for three months.

2. Brief facts of the case, as noted by the learned trial court are :

On 09.09.2011 at 5.45 pm, an information was received in PS Kalkaji about murder of landlady at House No.B-124B, Ground Floor, Kalkaji, New Delhi. The information was recorded as DD No.26A and was marked to Insp. Ranbir Singh for investigation. The latter accompanied by Ct. Amit Kumar reached at spot, mentioned above. A crowd of people had gathered there. Dead body of a lady aged about 65 years was entangled between center-table and sofa in that house, neck of whom was cut by a sharp edged weapon. A lot of blood was lying in the room. The deceased was known as Smt. Vijay Nindra wife of Sh. Ranbir Kumar Nindra. Son-in-law of victim namely Manish Sethi was at spot. The latter described the incident to the IO as :

I am residing at address mentioned above i.e. H. No.59/60, L-Block, Lajpat Nagar-II, New Delhi. I have a shop in Khan Market in the name of Shyam tyres. My in-laws reside at house No.B-124B, Kalkaji. I as well as my wife used to visit my inlaws two or three times in a week. My father-in-law is in constant comma for last 8-9 years. My motherin-law retired from a school as Head Mistress and was aged about 64-65 years. We had engaged two attendants (one for day time and other for night) for the care of my father-in-law. We changed 15-20 attendants during this period of 8-9 years. For about 10-11 days, one Deepak was attending my father-inlaw in day time and Mahesh Maan during night. Today i.e. 09.09.2011 at about 6.00 pm, one Shantanu told me on phone that my mother-in-law was killed by someone. I came here i.e. H. No.B124B, Ground Floor, Kalkaji along with my wife and found my mother-in-law lying dead entangled between sofa set and center table in the drawing room of her house.

IO made endorsement on said statement and got FIR registered for offence punishable under Section 302 IPC. During investigation of the case the accused, who was employed as attendant of husband of deceased was interrogated. As per case of prosecution, he gave disclosure statement admitting his guilt. The accused produced his clothes, which he was wearing at the time of incident. Same were

blood stained. IO also seized weapon of offence i.e. knife on being produced by accused. After completion of investigation, the accused was indicted for offence of murder of said Smt. Vijay Nindra, punishable under Section 302 IPC and also for destruction of evidence i.e. concealing of weapon of offence and also the wearing clothes of himself, punishable under Section 201 IPC.

3. In order to bring home the guilt of the appellant the prosecution has examined twenty nine witnesses in all. Statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure wherein he admitted that Sh. Ranbir Kumar Nindra, father-in-law of the complainant was in constant coma for last 8-9 years and the deceased Smt. Vijay Nindra, aged about 60 years, was residing in her house with her husband. The appellant also admitted that he used to visit the deceased and her husband as an attendant. The appellant claimed to be innocent and stated that he had been framed by the police in connivance with other attendant / servant of the house. During trial, the appellant opted not to lead any evidence in his defence.

4. Mr. Ajay Verma, learned counsel for the appellant has contended that the judgment of learned trial court is against the facts and law and based on surmises and conjectures hence the same is liable to be set aside and the appellant be acquitted. He further contended that the prosecution failed to prove its case beyond reasonable doubt and overlooked the basic principles of criminal jurisprudence.

5. It is contended by the learned counsel for the appellant that no doubt the appellant used to visit the house of the deceased whenever she called him to serve her husband as an attendant but the appellant did not commit any such offence but he had been falsely implicated by the police simply to work out its case of murder as the prosecution has not produced any eye witness who could claim that the appellant was seen committing the crime. Testimony of any of the witnesses do not prove anything against the appellant as there is no direct evidence to prove the guilt of the appellant.

6. It is also the submission of Mr. Ajay Verma, learned Counsel for the appellant that in a case of circumstantial evidence, the prosecution has to establish an

unbroken chain of circumstances which leads to only one conclusion which is of the guilt and culpability of the accused person and does not in any manner suggest or support the hypothesis of innocence of such person. Elaborating his arguments further the counsel submits that the prosecution has miserably failed to prove such an unbroken chain.

7. The learned counsel for the appellant further argued that the conduct of the appellant is relevant in the circumstances of the case as he did not run away from the spot and moreover he collected people from the locality informing them about the murder of the Smt. Vijay Nindra.

8. It is also submitted that the proof of existence of a motive for the offence is a material circumstance in order to support the case of the prosecution and to pass a judgment of conviction. In the instant case, the prosecution has miserably failed to even suggest a motive, let alone lead any evidence thereof. It is submitted that the evidence which has been brought on record is to the contrary.

9. Learned counsel further submitted that the alleged recovery of knife with which the appellant committed the offence did not have the finger prints of the appellant and the absence of finger prints on the recovered knife proves that the appellant has been falsely implicated in this case and the prosecution has also not led any cogent evidence in the form of independent witness to prove the alleged recovery of the knife. Hence, the recovery of knife is duly planted on the appellant to implicate him in this case.

10. Learned counsel further contended that the prosecution alleged that the T-Shirt of the appellant was got recovered from the house of the deceased but the prosecution has not included any independent witness to authenticate the recovery of the T-Shirt of the appellant which clearly implies that the recovery has been planted to implicate the appellant.

11. The Counsel has argued at great length that the prosecution of the appellant ought to have failed for the reason that material witness had not been examined by the prosecution. It is further submitted that the testimony of PW3 Mahesh is limited to the extent that he visited the house of the deceased in the evening on

the day of the incident and came to know that Smt. Vijay Nindra was murdered.

12. The learned counsel for the appellant also contended that the investigation conducted by the police is faulty as the recoveries were effected on 10.09.2011 however the appellant was arrested a day prior i.e. on 09.09.2011.

13. On the other hand, Mr. Feroz Khan Ghazi, learned APP for the State has repudiated the challenge laid by the appellant. It has been urged that the prosecution has established the commission of the offences by the appellant beyond reasonable doubt and that the judgment of conviction as well as the order of sentence imposed upon him deserves to be maintained.

14. The learned APP for the State has contended that the prosecution has conducted the investigation strictly as per law and there is no reason for doubting either the disclosure statement or the recoveries and seizures effected by the police. It is urged that there is no absolute proposition that non-existence of motive for commission of an offence of murder has to be fatal to the prosecution.

15. We have heard counsel for both the parties and perused the trial court record.

16. Before dealing with the arguments raised by the respective counsels it would be pertinent to discuss the evidence given by the prosecution witnesses. Testimony of Witnesses 17. (i) Witness who knew the appellant PW3 Mahesh Kumar, another attendant of the husband of deceased deposed that he as well as the appellant were employed at E-121, Kalkaji, New Delhi to attend a patient and in the last week of June 2011, said patient went to Mumbai. He further deposed that he and the appellant both were relieved from duty. He deposed that thereafter the appellant was employed at B-124-B, Kalkaji and disclosed that the patient whom he was attending, was in coma. He further deposed that on 02.09.2011, he i.e. PW-3 also joined duty along with the appellant to serve that patient and his duty was for night while the appellant was to attend that patient during day time. Crl. Appeal No.346/2014 He further deposed that on Page 6 of 24 09.09.2011 in the evening, when he came to attend his duty, the doors were opened by police and the appellant was sitting with the patient and police disclosed that one lady was murdered at the house and the blood was lying on the floor. (ii) Witnesses

who deposed that the appellant was working with the deceased. PW6 Vijay Kumar, also a servant, who worked with the deceased deposed that after working for about 1 years, he left the job of the deceased in the year 2009. He further deposed that on 08.09.2011, he visited the deceased to recover his dues and at about 12:30 pm and met the deceased. He further deposed that when he entered inside the house, he noticed that the appellant was sitting there along with one other person and both of them were talking to each other. He further deposed that the appellant had been employed to replace him. PW18 Sunaina Devi deposed that she was working as house maid in a house at Kalkaji and she had seen the appellant having been employed in the house of the deceased. (iii) Other prosecution witnesses PW4 Complainant Manish Sethi deposed that his in-laws were residing at B-124-B, Kalkaji and his father-in-law was in coma for last nine years. He further deposed that his mother-in-law Smt. Vijay Nindra was a retired teacher from a Government school and in the year 2011, she employed the appellant as well as one Mahesh to attend to his father-inlaw. He further deposed that he used to see the appellant serving his father-in-law and on 09.09.2011 at about 06.00 p.m., he got a message on his phone about the murder of his mother-in-law and he rushed there with his wife and daughter and found his mother-in-law having been murdered. PW28 Inspector Ranbir Singh, Investigating Officer deposed that he picked up denture (upper jaw) of the deceased lying there. He also picked up blood with the help of a gauze lying near the dead body at two places. He seized blood smeared concrete by breaking the floor as well as earth sample. He deposed that the appellant was interrogated and he gave a disclosure statement Ex.PW13/D and the appellant handed over to him one blood stained T-Shirt and one pant, from his residence which were lying on a rope which were seized by him vide seizure memo Ex.PW13/E. He further deposed that the appellant was arrested and took them to the spot. The appellant also took them to the kitchen of that house and recovered the weapon of offence. He further deposed that the appellant was having a tooth bite mark on his left arm. He further deposed that he seized blood sample of the appellant having been handed over to him by SI D. K. Tejwan. Seizure memo in this regard is Ex.PW13/F.

18. From the testimonies of the above witnesses, it has emerged on record that the appellant was working as an attendant in the house of the deceased to look

after her ailing husband during the day time and PW3 Mahesh was to attend the patient during the night time. PW6 and PW18 corroborated the testimony of PW3 that the appellant was employed as an attendant in the house of the deceased. PW4 complainant also testified the presence of the appellant at the spot at the time of incident being employed by his mother-in-law. From the testimony of PW28, it has emerged that the weapon of offence and the clothes worn by the appellant at the time of commission of crime have been recovered at the instance of the appellant himself.

19. Now the question arises, whether the evidence adduced by the prosecution satisfies the above conditions, for which we have to look into each and every circumstance leading to death of Smt. Vijay Nindra. Recovery of Knife and Clothes 20. The learned counsel for the appellant has argued that the recovery of knife and clothes were planted. In this regard the testimony of PW28 Inspector Ranbir Singh is significant. He deposed that when the appellant was arrested he led them to the spot and the appellant took them to the kitchen of that house. The appellant handed over one knife from the kitchen and also produced his blood stained T-Shirt and pant. From the statement of IO Inspector Ranbir Singh, it is proved that weapon of offence as well as the clothes which the appellant was wearing at the time of commission of crime were concealed by him and the same were recovered at his instance. In this way, it was the appellant who concealed weapon of offence as well as his blood stained clothes with intention to make evidence of murder disappear and to screen himself from legal punishment. The seizure of knife and T-Shirt on being produced by the appellant are also proved from the statement of PW13 SI D. K. Tejwan who signed the above seizure memos. Law is laid down in Dhananjoy Chatterjee alias Dhana v. State of West Bengal, 1994 (2) SCC220 wherein it is held that :

Entire statement made by an accused person before the police is inadmissible in evidence being hit by Sections 25 and 26 but that part of his statement which led to the discovery of the articles is clearly admissible under Section 27 of the Act. It is also held that the Court must disregard the inadmissible part of the statement and take note only of that part of his statement which distinctly relates to the discovery of the articles pursuant to the disclosure statement made by the

accused. It is further held that the discovery of the fact in this connection includes the discovery of an object found, the place from which it is produced and the knowledge of the accused as to its existence.

In the case of Gola Konda Venkateswara Rao v. State of A.P., 2003 CriLJ3731, this Court reiterated the view and held that :

The discovery statement of an accused leading to recovery of crime articles from concealed place. Even though the discovery statement and the recovery memo did not bear the accused's signature. The fact of recovery from the well and dug out from a place which was pointed out by the appellant and, therefore, such discovery was voluntary. That the recovery was in consequence to the information given fortified and confirmed by the discovery of the wearing apparel and skeletal remains of the deceased and, therefore, the information and statement cannot be held false. In the present case on the recovery memo the signatures of all the accused have been obtained. In the case of Praveen Kumar v. State of Karnataka, (2003)12SCC199, the same view has been reiterated.

21. Keeping in view the principles laid down by the Apex Court with regard to the recovery of the weapon of offence i.e. knife and the blood stained clothes of the appellant further lends substance to the prosecution case. Medical Evidence 22. Death of the deceased was also established from the statement of PW-12 Dr. Hari Prasad and PW-21 Dr. Sudipa Ranjan Singh who conducted post mortem and they submitted the post mortem report Ex.PW12/A which shows that the cause of death of the deceased was shock due to haemorrhage consequent to cut throat wound and injuries No.1 & 2 were independently and collectively sufficient to cause death, in ordinary course of nature and both the injuries were caused by sharp edged weapon.

23. PW25 Dr. D. S. Paliwal, Senior Scientific Assistance, DNA Unit, FSL, Delhi deposed that on 09.01.2012, five sealed parcels were received by him and on examination, blood was detected on exhibit No.1, 2, 3B, 4 and 5. Female DNA profiles were prepared for exhibits No.1, 2, 3B and 4 and that were all similar in femsale origin i.e. gauze of deceased. He describes the result of examination as follows :

The alleles from source of exhibit 2 (blood in gauze of deceased) are similar with alleles from the source of exhibit 3b (T-shirt) and exhibit 4 (knife). The alleles from the source of exhibit 5 (blood in gauze of accused Deepak Dev Nath) are not similar with the alleles from the exhibit 2 (blood in gauze of deceased, exhibit 3b (Tshirt) & exhibit 4 (knife).

24. From the testimony of PW25 Dr. D. S. Paliwal it is clear that the blood found on the weapon of offence i.e. knife, T-Shirt of the appellant and blood samples of the deceased were same.

25. PW-26 Dr. Dhruv Sharma, Assistant Director (Biology), FSL, Rohini deposed that on 22.09.2011 six sealed parcels sealed with the seal of Department of Forensic Medicine, AIIMS, New Delhi were received in his office in which exhibit 4 was right hand nail clippings of the deceased, exhibit 5 was left hand nail clippings of the deceased and exhibit 6a, 6b and 6c were the clothes of the deceased. PW-26 Dr. Dhruv Sharma opined vide his report Ex.PW26/A that the blood was detected on exhibit No.4, 5, 6a, 6b and 6c.

26. PW-28 IO Inspector Ranbir Singh when he reached the spot, on being inspected, he noticed that the throat of the deceased was cut and was having two injury marks which is proved from the MLC of the deceased i.e. Ex.PW7/A. He further deposed that the appellant was having a tooth bite mark on his left arm and the same is proved from the MLC of the appellant i.e. Ex.PW11/A.

27. In our view, from the perusal of the testimonies of the aforementioned witnesses, it is proved that the cause of the death of the deceased was shock due to haemorrhage consequent to cut throat wound and injuries No.1 & 2 were independently and collectively sufficient to cause death and it stands proved that the blood found on the clothes and nail clippings of the deceased matched with the blood found on the clothes of the appellant and this establishes his presence at the spot. Moreover, no explanation has been given by the appellant as to how blood came on his clothes and he also failed to offer an explanation regarding a tooth bite mark on his left arm in the statement recorded under Section 313 of the Code of Criminal Procedure. Motive 28. The learned counsel for the appellant argued that there was no motive for the appellant to commit the crime and the

prosecution has miserably failed to prove the same. From the evidence adduced by the prosecution, we are of the view that it has not come out with any motive for commission of this crime by the appellant. The motive always remains locked in the head of offender. Motive is an emotion which impels a person to do a particular act. It may not always be possible to discover that impelling factor. In the case reported as Sahadevan @ Sagadevan v. State rep. by Inspector of Police 2003 (1) SCC534 the Supreme Court held that :

In the case of circumstantial evidence, if the circumstances relied upon by the prosecution are beyond doubt, then the absence of motive would not hamper a conviction.

29. In the case reported as Ujjagar Singh v. State of Punjab (2009) 1 SCC (Cri) 272, it was held as under :

In a case relating to circumstantial evidence, motive does assume great importance, but to say that the absence of motive would dislodge the entire prosecution story is giving this one factor an importance which is not due. Motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy.

30. In view of the above dictum, the existence of motive is only one of the circumstances to be kept in mind while appreciating the evidence adduced by the prosecution. If the evidence of the witnesses appears to be truthful and convincing, failure to prove the motive is not fatal to the case of the prosecution. Burden of Proof 31. From the above discussion, it is clear that the T-Shirt of the appellant and weapon of offence i.e. knife recovered at the instance of the appellant were stained with blood of the deceased and no explanation was given by the appellant as to how the blood of the deceased came on the T-Shirt as well as on the knife produced by him to the Investigating Officer. By virtue of Section 106 of the Indian Evidence Act, the appellant ought to have explained the incriminating circumstances that why would he conceal the weapon of offence and his blood stained TShirt. The presumption under Section 106 of the Indian Evidence Act, is explained in Hasmuddin vs State of Delhi (2008) ILR2Delhi 701, wherein it has been held by the Delhi High Court that :

20. As per settled law it is not as if the conviction can only be based on the sole ground of last seen as last seen together may not by itself necessarily lead to the inference that it was the accused who committed the crime. We consider it necessary at this stage to refer to a decision of the Supreme Court of India reported in State of Rajasthan v. Kashi Ram AIR 2007 SC145 where the law on this subject has been discussed in detail. Relevant portion of the same reads as under:

18. Learned counsel for the State strenuously urged before us that the High Court committed an apparent error in ignoring the evidence on record which disclosed that the respondent was last seen with deceased Kalawati in his house on February 3, 1998 late in the afternoon. Thereafter, he was not seen by anyone and his house was found locked in the morning. The evidence of PW-5, mother of the deceased Kalawati, and her brother Manraj, PW-2, clearly prove the fact that the house was found locked on February 4, 1998. The evidence also establishes beyond doubt that the doors were removed and dead bodies of the deceased Kalawati and her daughters were found inside the house on February 6, 1998. In these circumstances, the disappearance of the respondent was rather suspicious because if at all only he could explain what happened thereafter. He, therefore, submitted that in the facts of the case, in the absence of any explanation offered by the respondent, an inference must be drawn against the respondent which itself is a serious incriminating circumstance against him. He has supported his argument relying upon several decisions of this Court.

19. Before adverting to the decisions relied upon by the counsel for the State, we may observe that whether an inference ought to be drawn under Section 106 IPC is a question which must be determined by reference to proved. It is ultimately a matter of appreciation of evidence and, therefore, each case must rest on its own facts.

20. In Joseph s/o Kooveli Poulo v. State of Kerala (2000) 5 SCC197 the facts were that the deceased was an employee of a school. The appellant representing himself to be the husband of one of the sisters of Gracy, the deceased, went to the St. Mary's convent where she was employed and on a false pretext that her

mother was ill and had been admitted to a hospital took her away with the permission of the Sister in charge of the Convent, PW-5. The case of the prosecution was that later the appellant not only raped her and robbed her of her ornaments, but also laid her on the rail track to be run over by a passing train. It was also found as a fact that the deceased was last seen alive only in his company, and that on information furnished by the appellant in the course of investigation, the jewels of the deceased, which were sold to PW-11 by the appellant, were seized. There was clear evidence to prove that those jewels were worn by the deceased at the time when she left the Convent with the appellant. When question under Section 313Cr.P.C, the appellant did not even attempt to explain or clarify the incriminating circumstances inculpating and connecting him with the crime by his adamant attitude of total denial of everything. In the background of such facts, the Court held: Such incriminating links of facts could, if at all, have been only explained by the appellant, and by nobody else, they being personally and exclusively within his knowledge. Of late, courts have, from the falsity of the defence plea and false answers given to court, when questioned, found the missing links to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the person concerned with the crime committed (see State of Maharashtra v. Suresh, (2000) 1, SCC471. That missing link to connect the accused-appellant, we find in this case provided by the blunt and outright denial of every one and all the incriminating circumstances pointed out which, in our view, with sufficient and reasonable certainty on the facts proved, connect the accused with the death and cause for the death of Gracy.

21. In Ram Gulam Chaudhary and Ors. v. State of Bihar, (2001) 8 SCC311 the facts proved at the trial were that the deceased boy was brutally assaulted by the appellants. When one of them declared that the boy was still alive and he should be killed, a chhura blow was inflicted on his chest. Thereafter, the appellants carried away the boy who was not seen alive thereafter. The appellants gave no explanation as to what they did after they took away the boy. The question arose whether in such facts Section 106 of the Evidence Act applied. This Court held: In the absence of an explanation, considering the fact that the appellants were suspecting the boy to have kidnapped and killed the child of the family of the appellants, it was for the appellants to have explained what they did with him after

they took him away. When the abductors with held that information from the court, there is every justification for drawing the inference that they had murdered the boy. Even though Section 106 of the Evidence Act may not be 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 like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The appellants by virtue of their special knowledge must offer an explanation which might lead the Court to draw a different inference.

22. In Sahadevan alias Sagadevan v. State, represented by Inspector of Police, Chennai (2003) Vol. 1 SCC534 the prosecution established the fact that the deceased was seen in the company of the appellants from the morning of March 5, 1985 till at least 5 p.m. on that day when he was brought to his house, and thereafter his dead body was found in the morning of March 6, 1985. In the background of such facts the Court observed: Therefore, it has become obligatory on the appellants to satisfy the court as to how. where and in what manner Vadivelu parted company with them. This is on the principle that a person who is last found in the company of another, if later found missing, then the person with whom he was last found has to explain the circumstances in which they parted company. In the instant case the appellants have failed to discharge this onus. In their statement under Section 313Cr.P.C. they have not taken any specific stand whatsoever.

23. It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categoric in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself

provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation, as an additional link which completes the chain.

32. Applying the above discussed principles of law, we are of the opinion that since the appellant failed to offer an explanation that he did not commit the murder of the deceased, hence, he failed to discharge the burden cast upon him by Section 106 of the Indian Evidence Act. In a case resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him and the court can consider his failure to adduce any explanation, as an additional link which completes the chain. Circumstantial Evidence 33. 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 acused 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 Crl. LJ1104 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 SC343 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 (5) 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.

34. It is proved that T-Shirt seized by the Investigating Officer on being produced by the appellant stated to be belonging to him and weapon of offence i.e. knife which was seized by the Investigating Officer on being produced by the appellant were found smeared with blood of the deceased, as is clear from DNA report Ex.PW25/A. From the statement of PW-28 IO Inspector Ranbir Singh, it is proved that when he reached the spot he picked up denture (upper jaw) of the deceased lying there which connects the appellant with the crime as when the appellant tried to kill her as there were cut marks on the neck of the deceased and she tried to save herself she bite on the left arm of the appellant and her denture fell down which fact finds support from the MLC of the deceased as well as the appellant.

35. From the statement of PW-28 IO Inspector Ranbir Singh and PW-13, SI D. K. Tejwan, it is also proved that weapon of offence which is evidence of crime as well as T-Shirt and pant, which the offender was wearing at the time of incident were concealed by the appellant and same were recovered at his instance, after being arrested in this case. It was the appellant, who concealed weapon of offence as well as his blood stained clothes with intention to make evidence of murder disappear and to screen the offender i.e. himself, from legal punishment. The circumstances show that the appellant was on duty with the deceased for taking care of her husband and he was on duty for the day time and other attendant for night. So there is no chance of any other person coming to the house of the deceased in the day time except the appellant. So there remains no doubt in coming to the conclusion that it was the appellant who killed the deceased.

36. In the background of such a scenario, we are of the view that the prosecution has succeeded in establishing the sequence of circumstances which can be called conclusive in nature and there is no unbroken chain leaving a gap of missing links. Hence, the circumstantial evidence, medical evidence and the testimony of the witnesses examined by the prosecution establish that it was the appellant only who committed the crime.

37. For the reasons stated above, we find no infirmity in the judgment passed by the learned trial court and we see no reason to interfere with the same. The conviction of the appellant under Section 302 and Section 201 of the Indian Penal Code is upheld.

38. The appeal therefore fails and is dismissed.

39. The copy of this order be sent to the Superintendent Jail.

40. The lower court record be sent back. SANGITA DHINGRA SEHGAL, J.

G. S. SISTANI, J.

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