

Harish Chander and Billa Vs. State

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Court : Delhi

Decided On : Apr-05-1995

Reported in : 1995IIAD(Delhi)176; 1995CriLJ3036; 1995(3)Crimes189; 1995(33)DRJ424

Judge : P.K. Bahri and; S.D. Pandit, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 302; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313 ; [Evidence Act, 1872](#) - Sections 27 and 165

Appeal No. : Criminal Appeal No. 60 of 1988

Appellant : Harish Chander and Billa

Respondent : State

Advocate for Def. : Mr. R.D. Jolly and ; Mr. Shiv Raj Singh, Advs.

Advocate for Pet/Ap. : Mr. D.C. Mathur and; Ms. Rebecca M. John, Advs

Judgement :

S.D. Pandit, J.

1. These two appeals are preferred by the original accused Nos. 1 & 2 in Sessions Case No. 19/86, both these appeals are being disposed by this common

judgment.

2. Appellants Harish Chand @ Billa son of Banarsi Dass and Kamla, widow of Late Ratan Lal stand convicted of the offence punishable under Section 302, read with Section 34 of the Indian Penal Code and each of them is sentenced to suffer imprisonment for life and to pay fine of Rs. 1,000/- and in default to suffer R.I. for one year.

3. It is the case of the prosecution that appellant Kamla widow of victim Ratan Lal had got illicit relations with appellant Harish Chander and on account of these illicit relations they hatched a plan to kill Kamla's husband Ratan Lal. As per the said plan appellant Harish Chander took Ratan Lal in the evening of 14-8-85 and gave him liquor and made him completely drunk. In the night deceased Ratan Lal used to sleep outside his house bearing No. WZ-1014, Mangal Rai, Pankha Road, New Delhi. Appellant Harish Chand alias Billa brought Ratan Lal at night in total drunken condition and then with the help of a nylon rope strangled him and caused his death. Appellant Kamla had informed her mother-in-law, PW/7, Sohni Devi, about the death of her husband. Accordingly, PW/7 Sohni Devi came to the house of Ratan Lal Along with her other son Rajesh Kumar, PW/15. When they came to the house of Ratan Lal at about 7.00-7.15 am. They found the dead body of Ratan Lal was covered with the help of a Chhadar. When they asked appellant Kamla to show his body appellant Kamla removed the chhadar up to the chin and show Ratan Lal's face. At about 9.00-9.15 am. PW/16 Amar Singh and PW/17 Kulwant Kaur, wife of Amar Singh, came there, PW/17, Kulwant Kaur is the sister of deceased Ratan Lal. After arrival Amar Singh removed the chhadar and at that time he found the ligature mark on the neck of Ratan Lal and thereupon he and other relations of Ratan Lal discovered that his death was not natural one and they wanted the police to inquire into the same. It is the case of the prosecution that at that juncture appellant Kamla had stated that they should go ahead with the death rites on the dead body and she would later on explain to them and if they delayed he cremation there was likelihood of decomposition of the dead body. By that time appellant Harish Chander had also come with 'smagari' material in order to have funeral procession but by that time somebody had informed the police and PW/24 S.I. Om Prakash arrived there Along with Constable PW/10-Raj Singh. He also

found the ligature mark around the neck of Ratan Lal. He then prepared the inquest proceedings and forwarded the dead body for post-mortem. He arrested the present appellants. At the time of arrest of appellant Harish Chander he had also found the bruises around both the wrists of appellant Harish Chander. After his arrest appellant Harish Chander made statements leading to the discovery of the nylon rope from kudakund. He also produced the photograph of himself and daughter of appellant No. 2 Kamla. Appellant Kamla also produced a passport of appellant Harish Chander and her own photo pinned in the said passport at the open space where the photograph of the wife of the passport holder is to be affixed. Then on the next day of the instance of appellant Harish Chander the Investigating Agency was in a position to recover the remaining portion of the nylon rope from a tempo on which appellant Harish Chander was working as a driver.

4. The Medical Officer, PW/21 Dr. P. N. Bhardwaj had carried out the post-mortem and had found ligature mark around the whole neck and fracture of the thyroid cartilages on both sides and fracture of thyroid bone. He had found that the death was due to asphyxia as a result of strangulation.

5. The Investigating Officer had recorded the statements of two neighbours PW/3 Manglu, PW/4 Kastoori Lal. He had also recorded statements of Arti as also PW/5 Kamal Kishore, owner of the tempo PW/8 S. R. Malik and one witness, PW/6 Abdul Sattar who had seen appellant Harish Chander and deceased Ratan Lal in the evening of 14-8-85. On completion of necessary investigation he filed the charge-sheet against both the appellants. As the offences alleged against both the appellants were exclusively triable by the Court of Sessions they were, thus, committed to the Court of the Session by the learned Metropolitan Magistrate.

6. Charge was framed against the appellants on 31-7-1986 for the offence under Section 302 read with Section 34 of the Indian Penal Code. Both the accused had pleaded not guilty. In order to prove its case against the appellants prosecution had examined in all 24 witnesses whereas the accused had not examined any witness in support of their defense. Their defense is of total denial and false implication.

7. On considering the material before him, the learned Additional Sessions Judge came to the conclusion that the case of the prosecution against the present appellants has been proved beyond reasonable doubt by the circumstantial evidence on record. He accordingly found both the appellants guilty of the offence for which they were charged and sentenced them as stated earlier.

8. Feeling aggrieved by the said decision accused have come in appeal before us. It is urged by the learned counsel for the appellants that the prosecution has not proved any circumstances to connect the appellants with the offence alleged against them. It has been contended on behalf of the appellants that there are no circumstances on record on the strength of which it could be held beyond reasonable doubt that the appellants alone are responsible for the homicidal death of deceased Ratan Lal. Thus, it is contended on behalf of the appellants that the appellants are wrongly held guilty of the offence with which they are charged and, they are entitled to get the benefit of doubt in view of the material on record and that the order of conviction and sentence passed against them be set aside.

9. As against this, the learned counsel for the State, Shri R. D. Jolly, contended that the circumstantial evidence on record is sufficient to hold that the appellants have committed the offence with which they were charged. He, thus, contended that the appeals deserve to be dismissed.

10. Admittedly, in this case there is no direct evidence against the appellants. Prosecution is relying on the circumstantial evidence in order to prove guilt of the appellants. It is settled law that in a case of circumstantial evidence the circumstances from which the conclusion is to be drawn have not only to be fully established but also that all the circumstances so established should be of conclusive nature and consistent only with the hypothesis of guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of evidence must be so complete as not to leave any reasonable ground for being consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely conjectures of the Court can form the basis of conviction and the more serious the crime the greater should be the care taken to

scrutinise the evidence lest suspicion takes the place of proof. In the instant case the prosecution is relying on the following circumstances :

1. Deceased Ratan Lal has met with homicidal death;
2. Recovery of nylon rope at the instance of appellant Harish Chander;
3. Conduct of both the appellants; and
4. Illicit relations between appellant Harish Chander and appellant Kamla had motivated them to commit the offence in question.

11. Dr. D. N. Bhardwaj, PW/21, has deposed as under :

'Ligature mark was present around the whole of neck situated 10 cms. below chin and 6 cms. above highest point of inter clavicular joint going horizontally backward on both sides 7 cms. below occipital protuberance (on back of neck). Total circumference of ligature mark was, 37 cms. and breadth was 0.5 cms. The margins around the ligature mark were abraded and contused. On dissection of neck there was extravasation of blood in the surrounding tissue and laceration of muscles underneath. Fracture, of thyroid cartilage on both sides and fracture of hyoid bone was present along with haemorrhage in the surrounding tissue.'

He has further deposed that the cause of death was asphyxia as a result of strangulation. The above evidence of Dr. Bhardwaj had not at all been challenged by cross-examining him. It has also been fairly conceded by learned counsel for both the appellants that they are not at all disputing the said evidence of the medical expert. therefore, in these circumstances, there is no hesitation in our mind to come to the conclusion that deceased Ratan Lal has met with death due to asphyxia due to strangulation. If the description of the ligature mark given by the medical Officer and fracture of thyroid cartilages and hyoid bones are taken into consideration than it is quite obvious that the ligature mark could not be on account of self-strangulation by the deceased. In these circumstances the strangulation in question could not be said to be suicidal. In view of the material on record it could also not be said to be accidental. therefore, in these circumstances, there is no doubt that the deceased has met with homicidal death due to asphyxia

due to strangulation. Thus, prosecution has proved the first circumstance.

12. It is urged before us by the learned counsel for the State, Shri R. D. Jolly, that conduct of both the appellants Harish Chandra and Kamla should be taken into consideration. According to him Kamla had not shown the whole of the body of her deceased husband to her mother-in-law and other relations and she had covered the body by spreading the Chhadar on the same. When her mother-in-law had asked to show the said dead body she had withdrawn the chhadar from the body only up to the chin and had only shown the face of her husband. It has further come in evidence that when PW/16 Amar Singh had pulled away the chhadar from the body of the deceased he had found the ligature mark on the neck and at that time he had said that the matter should be reported to the police and appellant Kamla had said that the cremation should not be delayed and that conduct of her also speaks of her guilty mind.

13. At the outset it must be said that as regards this alleged conduct of Kamla there are only two witnesses, viz., PW/7 Sohni Devi and PW/16 Amar Singh. Both these witnesses are respectively mother and husband of the sister of the deceased. The evidence of both of them further shows that both of them were also having strained relations with appellant Kamla. Appellant Kamla had quarrels with her mother-in-law Sohni Devi when she was living with her mother-in-law and PW/16 has admitted that he was not even on talking terms with Kamla. Thus, both these witnesses are not only interested witnesses but they are also witnesses having inimical relations with appellant Kamla. thereforee, their evidence will have to be carefully considered and scrutinised before putting reliance on the same. It must be stated that no independent witness is coming forth to support their claim. Admittedly, many persons were present there in the house of Kamla when these two witnesses had come there. thereforee, in these circumstances, if at all what is claimed by these two witnesses had taken place then there would have been other witnesses who would have come forward and supported their claim. If the evidence of these two witnesses is taken into consideration as regards the conduct of Kamla then that claim of their's does not seem to be probable and believable. It has come in the evidence of PW/7 Sohni Devi that Kamla had sent her daughter at her place at 6.00 A.M. informing about her husband's death. If at

all Kamla wanted to hush up the matter and to keep PW/7 and other relations of her husband in dark then she would have not at all informed them and would have proceeded with the funeral of her husband's body.

14. If the evidence of appellant Kamla's neighbour Manglu PW/3 is taken into consideration then it would be quite clear that deceased Ratan Lal used to sleep in the gali outside the house. It is not at all made clear as to who had first detected the dead body of Ratan Lal. No evidence is collected to show as to who had brought the dead body from outside and kept it inside the house and as to who had spread the chhadar on the dead body. As per the evidence on record Kamla was weeping and she was sitting by the side of the dead body. Except these two witnesses nobody else has said that Kamla had seen the ligature mark around the neck of her husband and she was questioned about the same. If the conduct of these two witnesses is taken into consideration then their claim does not seem to be probable at all. As per the evidence of PW/16 Amar Singh he had seen the said ligature mark by about 9.30-10.00 am. When that was the position, in the natural course of human conduct he would have gone and informed the police about the said finding. But the material on record shows that police themselves had come to the house of Ratan Lal at about 12.30 in the noon as they had received some telephone message from an unknown person by about 12.15 in the noon. It is not at all probable that if the incident as deposed by these two witnesses had taken place and particularly when both of them were having animosity towards appellant Kamla, they would have kept quite till the arrival of the police about three hours after the alleged incident. Kamla has denied the incident deposed by them in her statement under Section 313. If the other evidence on record as well as the conduct of these two witnesses are taken into consideration then that denial of her seems to be more probable, believable and acceptable than the claim of these witnesses.

15. As regards appellant Harish Chander, it is the claim of the prosecution that there was recovery of nylon rope from kudakundi as well as from the tempo at his instance. It is the claim of the prosecution that strangulation of the deceased Ratan Lal was effected by making use of the nylon rope recovered at the instance of Harish Chander from kudakundi. As regards this recovery of the nylon rope it

must be said that as per the evidence of PW/10 Constable Raj Singh as well as the Investigating Officer both PW/15 Rajesh Kumar and PW/16 Amar Singh were the witnesses for the same along with PW/10 Constable Raj Singh but if the evidence of PW/15 Rajesh Kumar is considered then it would be quite clear that he nowhere claims in his evidence that in his presence the piece of nylon rope was recovered at the instance of appellant Harish Chander from the Kudakundi. Similarly, PW/16 Amar Singh does not say in his examination-in-chief that appellant Harish Chander had made a statement in his presence and the presence of the Investigating Officer and other witnesses that he had kept hidden the piece of nylon rope in Kudakundi and that he would point out and produce the same. He makes only a vague statement as under :-

'Harish Chander accused got recovered the rope Ex. P. 3 from kuldi near Phatak which was taken into possession vide memo Ex. PW. 13/A after converting the same in upland which is also signed by me.'

16. It is also very pertinent to note here that in such evidence of discoveries under Section 27 of the Evidence Act the Investigating Officer is taking his subordinate PW/10 Constable Raj Singh as a witness for the said discovery then it becomes very doubtful. It is also very pertinent to note that neither these two witnesses, viz., PW/10 Constable Raj Singh nor PW/16 Amar Singh nor the Investigating Officer have deposed that the said nylon rope was kept hidden inside the Kudakundi and that it was not visible. Admittedly, the Kudakundi was in an open public place and when the prosecution has not led any evidence to show that the said piece of nylon rope was kept hidden there, the said alleged recovery of the nylon rope loses its importance.

17. It must be further mentioned here that the said rope was not shown to the Medical Officer and his opinion was not at all sought as to whether the ligature mark found by him around the neck of deceased Ratan Lal was possible by the said nylon rope. Similarly, the Medical Officer was also not questioned by the prosecution as to whether the bruises which were found around both the wrists of appellant Harish Chander were possible by the said nylon rope. Similarly, his opinion was also not sought as to whether the said bruises around the wrists of the

appellant were possible if the appellant had attempted to strangle the deceased with the said rope.

18. We have come across in many cases this failure on the part of public prosecutor as well as the trial Court of not eliciting the opinion of Medical expert as to whether the injuries found by him/her are possible by the weapon recovered and produced as an exhibit on record. We, therefore, take this opportunity to emphasize the importance of eliciting the opinion of Medical expert on this point. Presiding Officer/Judge of a Court is not a machine or means for recording evidence. He/she must take interest in his/her job as judicial officer recording evidence in the trial before him/her. It is the duty of the judicial officer to record proper and relevant evidence. No doubt the primary duty is of the prosecution agency through public prosecutor - to bring on record proper and correct evidence. But his failure in performing his duty should not be allowed to creep on record by judicial officer by remaining a mere spectator on evidence recording instrument. He/she has the duty and necessary powers to have on record the proper and necessary material to decide the matter before him/her judiciously. The Presiding Officer can question any witness at any stage under Section 165 of the Evidence Act and record the replies. However, he must take necessary care to see that an opportunity is given to both the parties to cross-examine the witness as regards the material brought on record as replies to Court questions. If the judge fails to perform the duty then it reflects against him and affects the course of justice. We would like to quote here the observation of the Hon'ble Supreme Court in *Kartarey v. State of U.P.*, : 1976 CriLJ13 .

'It is the duty of the prosecution and no less of the Court to see that the alleged weapon of offence, is available, is shown to the medical witness and his opinion invited as to whether all or any of the injuries on the victim could be caused with that weapon. Failure to do so any sometime cause abrasion in the cause of justice.'

19. We have already discussed above the point about the recovery of nylon rope at the instance of appellant Harish Chander and have found that from the material on record even accepting the said recovery it would not be possible to connect the

same with the death in question. Apart from this and apart from the failure of question the medical officer regarding the said nylon rope in the light of the ligature mark found upon the neck of the deceased and bruises found on the wrists of appellant Harish Chander, it must be mentioned that the prosecution had not come out fairly and honestly in respect of the said rope.

20. At the time of the admission of these appeals it was contended on behalf of the appellants that the rope recovered was not at all used for strangulation. On 10-10-1988 the Division Bench which was dealing with the admission of Criminal Appeal No. 60 of 1988 Cr.M. 286/88 had passed the following order :

'During the course of arguments we expressed our desire to examine the rope in question. Mr. Siddiqui submits that by tomorrow he will be able to produce the same before us. Adjourned to October 11, 1988 after lunch.'

On 11-10-1988 the following order was passed :

'The rope in question was in a sealed cover. On our orders the seal was broken open and we have examined the string. Let it be sealed.

Heard.

The sentence of imprisonment and also the fine imposed on the appellant are suspended till the decision of the case. The appellant is released on bail subject, however, to his furnishing bond of Rupees 5,000/- with surety in the like amount to the satisfaction of the trial Court. The application stands disposed of.

A copy of this order be sent to the trial Court and the Superintendent Jail, Tihar, New Delhi.'

In view of the above order we wanted to see the said rope/string but though the same was called from Malkhana of the concerned police station, it was not produced before us. It is reported that the said rope is now missing. It seems that some body has tampered with the evidence in this case. Though during, the trial it was claimed by the prosecution that a rope was seized but at the time of admission of appeal and consideration of the bail application of the appellants,

what was produced before the Court was a string and at the time of hearing of this appeal even the string has disappeared from the police station. A detailed enquiry in this respect is necessary. We, therefore, direct that a copy of this judgment be sent to the Commission of Police, Delhi, for him to take, necessary steps in this regard.

21. It is further urged that appellant Harish Chander had collected 'aarti' material and he was trying to hasten the funeral. In view of the evidence of PW3 Manglu : PW4 Kastoori Lal; and PW5 Kamal Kishore, it is quite clear that appellant Harish Chander had purchased the aarti material from PW5 Kamal Kishore and had brought the same with the help of PW3 Manglu and PW4 Kastoori Lal, the two neighbours of the deceased to the house of Ratan Lal. During the cross-examination of PW7 Sohni Devi a photograph was brought on record. In the said photograph, appellant Harish Chander; deceased Ratan Lal; and another person had posed together. It has also come in evidence that Harish Chander was also on visiting terms at the house of the deceased Ratan Lal. Thus, when appellant Harish Chander was the friend of the deceased and when the death of deceased had taken place in the early hours if he happened to purchase and collect the aarti material, i.e. material necessary for performing the funeral at about 9.30-10.00 A.M. then that conduct of appellant Harish Chander could not be said to be showing his guilty mind. If the evidence of PW 15 Rajesh Kumar, brother of deceased and PW 16 Amar Singh is taken into consideration then it is quite clear that he had gone to purchase the said material openly along with two neighbours and in their presence. Thus, his conduct was not clandestine and it is a natural conduct of any friend or neighbour in such circumstances.

22. Conduct of Harish Chander on which the learned counsel for the State tried to rely is the conduct as deposed by PW7 Sohni Devi. Sohni Devi has deposed that appellant Harish Chander had run away when he had said that funeral would not take place till all her relations would reach there. But the evidence of the other two witnesses PW15 Rajesh Kumar and PW16 Amar Singh clearly shows that appellant Harish Chander was there and he was also caught by the police within few minutes after their arrival there in that gali itself. therefore, the claim of PW7 Sohni Devi that he had run away is not at all true and correct. He might have gone

away for some time from the house of Ratan Lal after she had said that funeral could not take place till all her relations arrive. But when he had come there in the morning and when he found that funeral was not going to take place immediately then in that case if he happened to go away for sometime then his said conduct could not be said to be unnatural or improbable so as to infer guilty mind.

23. It is the claim of the prosecution that both the appellants, viz., Harish Chander and Kamla, were hurrying the funeral but from the material on record that claim of the prosecution is not substantiated. If the evidence of PW7 Sohni Devi; PW 15 Rajesh Kumar and PW 16 Amar Singh is taken into consideration, then it would be quite clear that appellant Kamla had sent information to them regarding the death in question. It is also quite clear from the material on record that appellant Harish Chander had gone to purchase 'aarti' material only after arrival of PW7 Sohni Devi and PW15 Rajesh Kumar. No witness has deposed or shown any circumstances which could lead to the conclusion that the appellants were hurrying the funeral and they wanted to destroy the evidence. thereforee, in view of the above discussion it would be quite clear that the prosecution has failed to prove any conduct from which inference could be drawn to uphold the claim of the prosecution against the present appellants.

24. It is claimed by learned counsel for the State that there were illicit relations between the appellants and that had motivated them to do away with Ratan Lal. In order to substantiate this claim he has tried to put reliance on the photographs which have come on record. One photograph is said to have been recovered from the accused No. 1 Harish Chander. In the said photograph accused Harish Chander is shown holding daughter of Kamla and Ratan Lal in his arms. One photograph has been produced in the cross-examination of PW7 Sohni Devi in which appellant Harish Chander, deceased Ratan Lal and another person have posed together as close friends. When Harish Chander was the friend of Ratan Lal it is but natural that he must be visiting his house and Ratan Lal's daughter must be treated by him just like his niece. It is but natural that a friend of the father could be allowed to be photographed along with daughter of appellant Kamla. From that photograph no inference could be drawn which the prosecution wants to draw. It is also alleged by the prosecution that a passport was recovered at the instance of

appellant Kamla and that passport belongs to appellant Harish Chander. In the said passport there is also a photograph of Kamla. But it is very pertinent to note that the said passport is an old passport and her photograph is there not pasted in the passport but it is pinned there with the help of a pin. Appellant Kamla had denied the recovery of the said passport from her custody. Even assuming that the said passport is recovered at her instance it is very difficult to hold that appellant Harish Chander who was friend of her husband must be having illicit relations with Kamla.

25. No doubt PW7 Sohni Devi has replied to a suggestive question in her examination-in-chief that relations of Harish Chander with Kamla were illicit. She has also stated that she used to object about Harish Chander visiting their house at odd hours. It is also pertinent to note that she has not given any reasons for her claim that appellant Harish Chander had illicit relations with Kamla. If her cross-examination is seen then it would be quite clear that appellant Kamla resided with her husband Ratan Lal along with this witness PW7 Sohni Devi for hardly one year after their marriage. Marriage between deceased Ratan Lal and appellant Kamla had taken place 13/14 years prior to the date of incident. Deceased Ratan Lal and appellant Kamla had left the house of Sohni Devi and they were residing at her parental house. In her cross-examination she has further admitted that she was visiting the house of Ratan Lal only once in a year. therefore, in these circumstances, her claim that there were illicit relations between these two appellants could not be accepted. It is very pertinent to note that her son and brother of deceased PW 15 Rajesh Kumar does not claim any illicit relations or any doubtful relations between the appellants. As a matter of fact, he was specifically questioned regarding this in his examination-in-chief and he has clearly deposed that he did not know if there were any relations between the two. It must be further mentioned here that neither PW7 Sohni Devi nor PW15 Rajesh Kumar nor PW16 Amar Singh has deposed that there were any quarrels or disputes between deceased Ratan Lal and appellant Kamla on account of appellant Harish Chander, when appellant Harish Chander was friend of deceased Ratan Lal, his visiting Ratan Lal's house could not be smeared with suspicion of illicit relations between him and Ratan Lal's wife. Two neighbours of deceased Ratan Lal have appeared as witnesses but none of them has deposed that there were any

disputes between Ratan Lal and Kamla. Similarly, none of them has said that there was any gossiping or talk in the vicinity about Harish Chander visiting the house of Ratan Lal and they had ever felt any doubtful relations between appellant Harish Chander and appellant Kamla. thereforee, it is very difficult to infer that there were any illicit relations between appellant Harish Chander and appellant Kamla. Consequently, the claim of the prosecution that there were illicit relations between the two appellants and that had motivated them to commit the offence in question could not be believed and is liable to be rejected.

26. Thus, it would be quite clear that all the circumstances on which the prosecution was relying to prove its claim against the present appellants have failed and there are no circumstances to connect the appellants with the offence alleged against them.

27. No doubt from the admitted facts of this case it is quite clear that deceased Ratan Lal was living along with her wife Kamla in Kamla's parental house on the day of his death but it has come in evidence that besides her, her mother and other members of her family were also residing in the same house. thereforee, merely because Kamla was living in that house, no inference could be drawn that she must have strangled him. As per the evidence of one of the neighbours, deceased Ratan Lal was sleeping at night time out of the house in the gali. In the circumstances, his death might have taken place out of the house and Kamla could not be said to be responsible for his death. In the case of Sakha Ram v. State of Madhya Pradesh : 1992 CriLJ861 , the Hon'ble Supreme Court had considered the circumstantial evidence alleged to have been proved against the appellant. In that case the trial Court had found the following circumstances having been proved beyond reasonable doubt :

1. That on, the date and time of the incident the accused and the deceased were the only two occupants of the house which consisted of one room.
2. That the accused when examined by Dr. V. P. Gupta on July 1, 1972 was found capable of having sexual intercourse.

3. The deceased AwardhOrani was found dead in the room which at the time of the incident was occupied by the accused and the deceased.

4. Soon after the incident when the witnesses visited the house, the accused who was present, did not assign any reason for the death of the deceased and kept quiet.

5. After the incident an attempt was made to show that the deceased died by committing suicide. A plea of alibi was also set up on behalf of the accused.

The Hon'ble Supreme Court has dealt with the said circumstances and rejected them by making the following observations :

'7. So far as the defense set up at the trial on behalf of the appellant is concerned that cannot be taken as a circumstance against him. The appellant himself did not raise any plea in his statement made before the trial Court. Simply because the pleas of suicide and alibi have failed at the trial no adverse inference can be drawn against the appellant. The guilt of the appellant has to be proved beyond reasonable doubt on the basis of the evidence produced by the prosecution.

8. It is no doubt correct that the appellant and the deceased were together at the time when gun shot sound was heard and the witnesses who reached the spot thereafter found the appellant standing nearby the dead body and crying. It may, therefore, be reasonable to infer that the appellant was present at the time and place of occurrence but this circumstance alone is not sufficient to conclude that it was the appellant who fired the gunshot and he did so with the intention of killing the deceased. The appellant and the deceased were living in the house for about 8/10 days prior to the occurrence. There is no evidence to show, that he ever made any sexual advances towards the deceased. It is no body's case that before the gun shot was fired any attempt to molest or outrage the modesty of the deceased was made. The appellant did not run away from the place of occurrence though he had ample opportunity to do so. There is nothing on the record to show that he could handle the gun. His telling Mahadeo while crying 'run uncle what has happened' shows that the happening was beyond his comprehension. It could be an accident while fiddling with the gun.

9. There is absolutely no motive on the part of the appellant to murder the deceased. Absence of motive may not be relevant in a case where the evidence is overwhelming but it is a plus-point for the accused in a case where the evidence against him is only circumstantial.'

28. In the instant case also the material on record shows that appellant Harish Chander was friend of Ratan Lal. The material on record also shows that there were no disputes between deceased Ratan Lal and appellant Kamla and there is absolutely no motive proved by the prosecution against the appellants and the absence of motive in a case of circumstantial evidence goes heavily in favor of the appellants.

29. From the material on record and the evidence discussed above, we are of the opinion that the prosecution has failed to prove sufficient circumstantial evidence to bring home guilt to the appellants beyond reasonable doubt. We, therefore, hold that there is reasonable doubt regarding the guilt of the accused and we have no hesitation in giving the benefit of doubt to the appellants. Thus, we allow the appeals. The orders of conviction and sentence passed against the appellants are set aside. Both the appellants are acquitted of the charge under Section 302 read with Section 34 of the Indian Penal Code. Their bail bonds are cancelled. The amount of fine, if paid, be refunded to the appellants.

30. Appeal allowed.