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Arun Kumar Vs. State

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Court : Delhi

Decided On : Feb-27-1996

Reported in : 1996IAD(Delhi)955; 1996CriLJ2280; 61(1996)DLT887; 1996(37)DRJ242

Judge : P.K. Bahri and; Mohd. Shamim, JJ.

Acts : Evidence Act, 1872 - Sections 8; Indian Penal Code (IPC), 1860 - Sections 302

Appeal No. : Criminal Appeal No. 116 of 1992

Appellant : Arun Kumar

Respondent : State

Advocate for Pet/Ap. : B.S. Rana and; Neelam Grover, Advs

Judgement :

P.K. Bahri, J.

(1) This appeal has been directed against the judgment dated May 30, 1992 and order dated June 25, 1992 by which appellant Arun Kumar has been convicted of an offence punishable under Section 302 of the Indian Penal Code for having caused the murder of one Anita during the intervening night of 24th and 25th July 1985 and has been sentenced to undergo rigorous imprisonment for life and to

pay a fine of Rs.5,000.00 and in default of payment of fine, to undergo rigorous imprisonment for six months in addition.

(2) The conviction of the appellant is based on circumstantial evidence as the investigating agency could not find out any eye witness of the occurrence. One Sukhvinder Singh was also tried along with the present appellant for the murder of the said woman but he has been acquitted by the Additional Sessions Judge and the State has not preferred any appeal challenging his acquittal.

(3) The facts which have come out from the evidence led during the trial are that Anita aged about 30 years was married to one Kuldeep Kumar Saxena but there had taken place a divorce and Anita had also filed an application under Section 125 of the Criminal Procedure Code for obtaining maintenance from Kuldeep Kumar Saxena and that application was filed through Sh.Sukhvinder Singh, who is an Advocate by profession. That application was later on dismissed as withdrawn vide order dated March 1, 1983 as per record proved in the case through testimony of PW-38, Sh.S.K-Sharma, record clerk.

(4) Anita has a daughter named Shweta, PW- 18, who was aged about 4 or 5 years at the time of the occurrence. Anita had taken up residence in Dayanand Colony but later on she became a tenant in one room in House No.A-I/12-13, Lajpat Nagar-I, New Delhi. That house belongs to PW-16, Prem Kumar, and she had started living in that house along with her daughter and one Arun Kumar at the rental of Rs.400.00 per mensem.

(5) On July 24, 1985, Anita had left her house along with her young daughter in the morning as usual but she did not return back and Prem Kumar, PW-16 had informed the parents of said Arun Kumar who are stated to be resident of House No.A-II/71, Lajpat Nagar, New Delhi.

(6) On July 26, 1985, PW-1 Banwari and PW-2 Shiv Dutt, who were working as beldars with Municipal Corporation of Delhi, had on routine come to attend the complaint received from occupant of House No.145, Dayanand Colony and they, in routine, lifted the cover of the manhole of a gutter located in front of Bunglow No. 161 and they discovered a dead body lying in that gutter which later on came

to be identified as the dead body of said Anita. The police party had come to the spot. The dead body was taken out and photographs, Ex.P-l to P-3, were taken and statement of Banwari was recorded which is Ex.PW-l/A. As apparently the injuries on the dead body indicated that it was a case of murder, an F.I.R. was registered at the Police Station but identity of the dead body could not be discovered till that time.

(7) Inspector Ashok Saxena, PW-34, was at that time working as in charge Police Post Amar Colony, Police Station Lajpat Nagar and on receiving the information, as recorded in Daily Diary No.5, he along with Asi Lal Chand, Constables Kaushal and Lal Chand had reached the said spot from where the dead body was recovered. Sh.Ombir Singh, the Investigating Officer, who was then working as SHO. PW-35, had also reached the spot. Copy of the said D.D.entry is Ex.PW-34/A. The Investigating Officer had prepared the inquest papers and had sent the dead body for post-mortem but he had required the doctor to preserve the dead body for 72 hours so that the efforts could be made for getting the dead body identified.

(8) PW-4, Ram Kishan, is having an eating house (dhaba) located by the side of G.T.Road, Murthal, District Sonepat (Haryana). According to the prosecution, he had found on July 25, 1985, Shweta sitting on his dhaba and she alleged that Arun Kumar, appellant, had brought her there and after buying a loaf of wheat for her consumption, he had left informing Shweta that he would be bringing more eatables for her and thereafter he did not come back. Ram Kishan is stated to have gone to the Police Station Sonepat and gave this information about the girl having been abandoned at his place but the police told him to keep the girl overnight and if the person who left the girl would not return, then he should bring the girl to the police station on the following day.

(9) Asi Shyam Singh, PW-10, then ted in Police Station Sonepat, on July 28, 1985, on the basis of some information given by Shweta that she was studying in J.D.Tytler School, Delhi and her father's name was Arun and her mother's name was Anita, had brought Shweta to Delhi and along with S.I.Rameshwar Singh, PW-37, then posted in Police Station Lajpat Nagar, has, gone to the said school

and then they had reached near about the house of Prem Kumar and Shweta had pointed out the said house of Prem Kumar informing that she was living in that house and Prem Kumar also identified Shweta as daughter of his tenants Arun Kumar and Anita.

(10) A daily diary report, copy of which is Ex.PW-27/A, recorded at Police Station Sonepat on 27th July 1985, was proved through PW-27, Constable Ishwar Singh who was working as Duty Officer at that time in that police station. This report was recorded at 9.30 A.M. in which it was recorded that Ram Kishan had come to the police station and informed that on July 24, 1985, a person had brought a girl aged 5/6 years and after purchasing a loaf of wheat along with vegetable had left the place informing the girl that he would be bringing more eatables for her and thereafter had not turned up and the girl told her father's name as Arun Kumar and her mother's name as Anita and brother's name as Pankaj and sister's name as Manju and her father (papa) had brought her there and bad gone away and that she was a student of J.D.Tytler School and was residing at House No.l45, Lajpat Nagar. As no guardian of the girl could be found out, she was placed in a Balgram Rai, District Sonepat, Haryana.

(11) PW-10 Mohan M.Godbole was the in charge of that children home. He has disclosed that on August 5, 1985, in his presence, the girl had pointed out Arun Kumar, who was in police custody at that time, as the person who had left her. PW-23, Ms-Kavita Arora, was contacted by the police. She is running a beauty parlour known as Begum Beauty Parlour at C-7, Vasant Vihar, New Delhi and she disclosed that Anita was working with her and she had worked with her only for six months in a casual way and one Ram Lalit, PW-30, had been working as watchman at her place. The dead body was got identified from landlord Prem Kumar and watchman Ram Lalit on July 29, 1985.

(12) The post-mortem on the dead body was conducted by Dr.R.K.Sharma, PW-22 who, as per his post-mortem report, Ex.PW-22/A found five injuries caused by sharp edged weapon on right forehead, middle of nose, left chin, left ear and left forearm. It was the injury on the head which proved to be fatal an he opined that the cause of death was coma as a result of the injuries which were ante-mortem in

nature and the injury was sufficient to cause death in the ordinary course of nature. He had preserved the blood sample, sample of scalp hair, clothes and viscera of the deceased which he converted into scaled parcel.

(13) Appellant and Sukhvinder Singh were interrogated by the police without being arrested from July 29 1985 onwards and ultimately both of them were arrested on 1st August 1985 and their personal search memos, Ex.PW-34/C and PW-34/E were prepared. On interrogation in presence of S.I.Rameshwar Singh and Ashok Saxena, then S.I, PW-34, they made disclosure statements, Ex.PW-34/D and Ex.PW-34/F that they could point out the place where Anita was murdered and also point out the manhole where the dead body was thrown in the gutter and could also point out the blood stained shirts and the weapon of offence i.e. chopper (gandasa) which they had thrown in a water tank near Jal Vihar.

(14) However, the gutter from where the dead body was recovered, was already in the knowledge of the police before these disclosure statements were made, thus that part of the disclosure statement was not admissible in evidence. No recovery was affected in respect of any blood stained shirts and the weapon of offence, the chopper. Thus, that part of the disclosure statement was also not admissible in evidence. The Additional Sessions Judge has unfortunately not kept in view the legal position as to which portion of the disclosure statement has to be considered admissible under Sec- corporation 27 of the Evidence Act. He has allowed the evidence to come on the record, may be subject to objection of the defense, even those portions of the disclosure statements which are not admissible in evidence. The only portion of the disclosure which pertains to the fact that they could point out the place where the murder had taken place could become admissible in evidence if other ingredients of Section 27 of the Evidence Act were to be satisfied that the accused could be deemed to have had exclusive knowledge of that particular place.

(15) The case of the prosecution is that in pursuance to the aforesaid disclosure statements, both the appellants had led the police party to the back side of House No.A-144, Dayanand Colony, near a corner of the park and it is the case of the prosecution that appellant Arun Kumar had pointed out the barbed wire located on

the south west corner of the park as the place of occurrence and i

(16) The learned Additional Sessions Judge held the following pieces of circumstantial evidence proved beyond shadow of reasonable doubt:

1.That the deceased and the appellant along with Shweta were residing together in the house of Prem Kumar.

2.That on July 24 1985, Anita had left the house of Prem Kumar and had not returned.

3.That Prem Kumar informed the parents of appellant Arun Kumar at House No.A-II/71, Lajpat Nagar that Anita and her daughter had not come back.

4.That Shweta was left at the dhaba of Ram Kishan at Murthal by appellant Arun Kumar clandestinely.

5.Arun Kumar had made a disclosure statement that he could point out the place of occurrence and in pursuance to the said disclosure statement, he took the police party and pointed out the place of occurrence from where long hair of the deceased entangled in the barbed wire and a piece of cloth, also part of the clothing of the deceased, and stones having the human blood stains were recovered.

(17) The Additional Sessions Judge, from these pieces of circumstantial evidence, came to the conclusion that an irresistible conclusion can be reached that it was the appellant who committed the murder of Anita.

(18) The learned Additional Sessions Judge also found that in the present case neither the prosecution has alleged nor any evidence has been brought on record as to the motive for which the life of Anita was taken away.

(19) We may mention that the case property was, of course, sent to C.F.S.L. and the C.F.S.L. reports, Ex.PW-28/A and PW-29/A were received showing that the sample hair of the deceased and the hair recovered from the said barbed wire were similar in most of their morphological and microscopical characteristics and the small piece of cloth recovered from that place was similar to the cloth of the

deceased in respect of their general appearance of colour, shape and printed design and the printed piece of cloth also recovered from that place matched with the salwar of the deceased.

(20) It is indeed not challenged before us that Anita had been murdered. The only question to be decided by us is whether it was the appellant who had committed this murder. Before we appraise the evidence and refer to the various contentions raised before us by learned counsel for the appellant, we may notice the legal position, as far as standard of proof required for proving the offence based on circumstantial evidence which is quite settled and reiterated in the latest judgment given in case of Akhilesh Hajam v. State of Bihar (1995) C.C.R. 24 . It has been held that the standard of proof required to convict a person on circumstantial evidence is now well settled by a series of pronouncements of this court and according to the standard enunciated by the court, the circumstances relied upon by the prosecution in support of the case must not only be fully established but the chain of evidence furnished by those circumstances must be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and the circumstances from which the conclusion of the guilt of an accused is to be inferred should be of conclusive nature and consistent only with the hypothesis of the guilt of the accused and same should not be capable of being explained by any other hypothesis except the guilt of the accused and all the circumstances cumulatively taken together must lead to the only irresistible conclusion that the accused alone is perpetrator of the crime.

(21) In this judgment, the question of admissibility of recovery of an iron angle on the basis of the disclosure statement was also examined. The said article was not found concealed anywhere but was found lying in verandah which was open and accessible place. It was held that such a seizure from an open and accessible place can hardly be said to he a recovery on the basis of the disclosure statement.

(22) In case of Tarseem Kumar v. Delhi Administration 1995 Crl.L.J. 470, the Supreme Court has laid down that it has been repeatedly pointed out by this Court that where the case of the prosecution has been proved beyond all reasonable doubts on the basis of the materials produced before the court, the motive loses its

importance but in a case which is based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. It Was further emphasised that if each of the circumstance proved on behalf of the prosecution is accepted by the court for purpose of recording a finding that it was the accused who committed the crime in question even in absence of any proof of a motive for commission of such crime, the accused can be convicted. (See also Stale of Madhya Pradesh Vs . Digvijay Singh, : 1981 CriLJ1278

(23) In Badha Satya Venkata S.Rao v. State of A.P. 1 (1995) Ccr 35, the Supreme Court again emphasised that in a case of circumstantial evidence, aspect of motive assumes considerable importance.

(24) Now coming to the merits of the case, as already pointed out by us there is no motive alleged on the part of the appellant or co-accused for having done away with the life of Anita. Learned counsel for the appellant has contended that in the present case, most material witnesses have been declared hostile and it has not been established beyond shadow of reasonable doubt that it was appellant who was residing with Anita and Shweta in the house of Prem Kumar and that he was being treated as papa by Shweta. Prem Kumar, PW-16 had deposed in court that one Arun Kumar and his wife Anita and daughter Shweta had been living in his house as tenants and on July 24, 1985, Anita had gone away and did not return and he had gone to the house of parents of Arun Kumar located at A-11/71, Lajpat Nagar, New Delhi and informed them about the disappearance of Anita and her daughter. But he deposed that appellant, Arun Kumar, present in Court was not the said Arun Kumar who was living with Anita as her husband. He was declared hostile and was cross-examined by the prosecution and he was confronted with his police statement but he continued to say that the appellant was not the same Arun Kumar. On one fact, he was firm that he had gone to House No.A-II/71, Lajpat Nagar, New Delhi for giving the information about the disappearance of Anita and her daughter. That was the house of parents of Arun Kumar. Significantly, the appellant, when examined under Section 313 of the Code of Criminal Procedure, also admitted that he was residing with his parents at the aforesaid house.

(25) Learned counsel for the appellant has pointed out various documents pertaining to Arun Kumar proved by the prosecution in this case like the disclosure statement, personal search memos, pointing out memos where the residential address of Arun Kumar is mentioned as K-71, Lajpat Nagar- Ii, New Delhi. So, it is urged that the house of parents of Arun Kumar was not A-11/71, Lajpat Nagar, New Delhi which is referred to by Prem Kumar in his deposition before the court. We do not agree. After all, the statement of Prem Kumar that the house of parents of Arun Kumar was having the municipal No.A-ll/71, Lajpat Nagar, New Delhi remained unchallenged and appellant himself has admitted in his statement under Section 313 of the Code of Criminal Procedure, that the said house was of his parents. So, mere fact that Prem Kumar has turned hostile would not lead us to disbelieve him on this aspect of the case that one Arun Kumar, Anita and Shweta were definitely living in his house as tenants and house of parents of that Arun Kumar was having the address A-11/71, Lajpat Nagar, New Delhi. If that is so, his turning hostile in court with a view to perhaps supporting the appellant that appellant was not that Arun Kumar is of no consequence.

(26) Shweta, PW-18, a child of tender years, who could not be obviously very intelligent had disclosed the name of Arun Kumar as his papa and this fact also stood recorded in the daily diary of Police Station Sonepat on 27th July 1985. She, in Court, was, while being put questions in examination-in-chief, was quite apprehensive and when was asked to identify Arun Kumar who was her father and who had left her at a dhaba in Murthal, had started weeping and had not taken courage to point out appellant, Arun Kumar, as the same person. She was allowed to be put some questions in leading form and on the prosecution asking her to state whether appellant present in court was or was not her papa who had left her at the said hotel, she replied in affirmative. She also replied in affirmative that it was the appellant present in court as the person who used to live with her and her mother Anita at Lajpat Nagar. In cross-examination, she deposed that on that day of her appearing as a witness she had been brought in a police van from Balgram Rai by the police and a police officer had told her the name of her father as Arun. But she denied that she had deposed in court falsely at the instance of the police officer who had come with her.

(27) It is significant to mention that the name of Arun Kumar as her papa stood recorded even in daily diary report even at Sonepat on 25th July 1985 when the dead body of Anita had not yet been identified and there could be no reason for anyone to have fabricated or forged such a fact in the daily diary report recorded at police Station Sonepat.

(28) Learned counsel for appellant has urged that statement of this Shweta was not recorded by the police on July 28, 1985 when she was brought to Delhi and had located the house of Prem Kumar and belatedly her statement was recorded in which again nothing was brought out to show how she came to be separated from her mother and whether she had seen the appellant with her mother after 24th July 1985 at any time and it is also not elicited from her that on that crucial date i.e. 24th July 1985 whether appellant had any occasion to meet her mother. So, it is urged that there is no evidence of appellant being seen in company of Anita on 24th July 1985. It is also urged that the testimony of a child of such a young age should not be given credence unless the same is corroborated in material particulars by any independent evidence and moreover as Shweta in the present case has been tutored by the police as admitted by her in cross-examination on one point the possibility of her being tutored to identify the appellant in Court as the same Arun Kumar who was living with her could not be over-ruled.

(29) It has been held by a division bench of this Court in Vijay Kumar v. State 1981 (2) I.L.R. (Delhi) 449 that before a person could be convicted on the testimony of a child it has to be ensured that child had not been tutored and there is some corroboration available to its testimony.

(30) In the present case, as we examine the testimony of Shweta and the circumstances mentioned and particularly keeping in view the testimony of Prem Kumar, we are of the view that Additional Sessions Judge was right in coming to the conclusion that it was appellant Arun Kumar who was living with the deceased and Shweta in the house of Prem Kumar and it was appellant who had left Shweta at the said dhaba in Murthal. As already discussed above, although Prem Kumar has, for reasons known to him, turned hostile in not identifying the appellant as

that Arun Kumar, who was living with deceased in his house, yet the close scrutiny of his testimony, particularly his statement that he had gone to inform the parents of Arun Kumar at their house about the missing of Anita lends due corroboration to the testimony of Shweta that it was no one else than the appellant Arun Kumar who was living with the deceased and Shweta in the house of Prem Kumar. So, these circumstances which have been relied upon by the Additional Sessions Judge for bringing home the offence to the appellant that it was the appellant who was living with deceased and Shweta in the house of Prem Kumar and it was appellant who had left Shweta at the dhaba of Ram Kishan in Murthal stand duly proved beyond reasonable doubt.

(31) It is true that PW-11, 0m Prakash and PW-9 Ram Kishan had turned hostile and had not identified the appellant as the person who had left Shweta at the said dhaba but we have no reason to doubt the testimony of Shweta and the entry recorded in the daily diary of the Police Station Sonepat that it was the Arun Kumar who had left Shweta at the said dhaba.

(32) The most crucial circumstance which has been relied upon by the Additional Sessions Judge for bringing home the offence to the appellant is that the appellant had made a disclosure statement with regard to the place where the murder of Anita took place and in pursuance to that, the appellant had pointed out the said part of the park of alleged commission of crime from where the incriminating articles were taken into possession which were linked with the deceased.

(33) It is to be emphasised at this stage that there has appeared some confusion as to which of the two accused had made the disclosure statement in the first instance. The efforts of the two appellants, in cross-examining the material witnesses, PW-34, Inspector Ashok Saxena and PW-35 the investigating officer Ombir Singh was to show that the disclosure statement was made by the other accused at first. PW-34, in his examination-in-chief, had deposed that Arun Kumar was arrested first and was interrogated and he had made a disclosure statement and thereafter Sukhvinder was arrested on the same day and he was also interrogated and he made a disclosure statement. Ombir Singh, PW-35 also deposed that Arun Kumar was arrested and thereafter his disclosure statement

was recorded and later on, on the same day, Sukhvinder was arrested and interrogated and his disclosure statement was recorded.

(34) Even if we hold that both these police officers are right in their deposition that it was Arun Kumar who made the disclosure statement at first, still we find that the recoveries, which have been effected on the basis of the said disclosure statement, were not from any hidden place and thus the disclosure statements, in our view, lose all importance. The only question which needs decision is whether the conduct of the appellant in pointing out the place of occurrence is of any consequence in the present case or not. If there appears any doubt in regard to this particular aspect of the case, then this all important circumstance would be of no use to the prosecution. The pointing out memo, Ex.PW-15/A is signed by both the accused, although its contents show that it was appellant Arun Kumar who had pointed out the said portion of the park and barbed wires from where the incriminating articles were taken into possession. It is true that under Section 8 of the Evidence Act, the conduct of an accused becomes admissible unless that conduct amounts to some statement which may be hit by Section 25 of the Indian Evidence Act.

(35) In Prakash Chand Vs . State, : 1979 CriLJ329 , it was held that there is a clear distinction between the conduct of a person against whom an offence is alleged which is admissible under Section 8 of the Evidence Act, if such conduct is influenced by any fact in issue or relevant fact and the statement made to a police officer in the course of investigation which is hit by Section 162 of the Code of Criminal Procedure. It was held that what is excluded by Section 162 of the Code of Criminal Procedure is the statement made to a police officer in the course of investigation and not the evidence relating to the conduct of an accused person (not amounting to a statement) when confronted or questioned by a police officer during the course of an investigation. The Supreme Court laid down that for example, the evidence of the circumstance, simpliciter, that an accused person led a police officer and pointed out the place where stolen articles or weapons which might have been used in the commission of the offence were found hidden would be admissible as conduct under Section 8 of the Evidence Act irrespective of whether any statement by the accused contemporaneously with or antecedent to

such conduct falls within the purview of Section 27 of the Evidence Act.

(36) In case of Bheru Singh Vs . State of Rajasthan, : [1994]1SCR559 , the Supreme Court had again noticed the difference between the provisions of Section 25,26 & 27 and Section 8 of the Indian Evidence Act and it was held in that particular case that where the accused himself lodges the First Information Report, the fact of his giving the information to the police is admissible against him as evidence of his conduct under Section 8 of the Evidence Act and to the extent it is non-confessional in nature, it would also be relevant under Section 21 of the Evidence Act but the confessional part of the First Information Report by the accused to the police officer cannot be used at all against him in view of ban of Section 25 of the Evidence Act.

(37) In the present case. Inspector Ashok Saxena, PW-34, had deposed that both the accused, Arun Kumar and Sukhvinder took the police parly to the place of the occurrence. If that is so, it is not possible to hold that it was only Arun Kumar who had pointed out the place of occurrence as is sought to be proved through pointing out memo, Ex.PW-15/A.

(38) In Prem Bahadur Rai v. State of Sikkim, 1978 Criminal Law Journal 945, a Division Bench of the Sikkim High Court has held that if there is a joint statement and the recoveries are affected on the basis of pointing out jointly by the accused, then such evidence is not admissible against any of the said accused persons unless it can be shown as to who made the first statement leading to the discovery or who made the first discovery.

(39) In light of the categorical testimony of Inspector Ashok Saxena, PW-34, that both the accused had together taken the police party to the place of occurrence, we have to hold that this particular place of occurrence, which has come to the notice, cannot be exclusively imputed to have been pointed out by the appellant. So, we come to the conclusion that this particular circumstantial evidence that the place of occurrence was pointed out by the appellant and such conduct of the appellant is admissible in evidence under Section 8 of the Evidence Act has not been proved beyond reasonable doubt.

(40) Unfortunately, for the prosecution, most of the other witnesses, who could have furnished some evidence against the appellant, had turned hostile. PW-3 Ram Richpal was examined to prove the pointing out of the sewer tank where allegedly the weapon of offence and blood stained clothes were thrown by the accused but as no recovery was affected, so his testimony was inadmissible in evidence. PW-4 Mahipal Singh, PW-6 Fakira, PW-7 Amar Singh and PW-8 Brahm Chand were examined only to prove the recovery of the dead body and do not carry the case of the prosecution any further.

(41) PW-12, Jasbir Singh, was examined to show that the accused had pointed out the gutter from where earlier the dead body was recovered. Although this witness had also turned hostile, but even if he had supported the prosecution case, his statement could not have been admissible because that gutter was already in the knowledge of the police.

(42) PW-15 Mohan Singh had also turned hostile. He was examined to show that the appellant had pointed out the said park from where the incriminating articles were recovered. He did not support the prosecution case at all although he claimed to have signed the recovery memo, Ex.PW-12/C and the Pointing Out Memo, Ex.PW-15/A. We have already discussed the evidence with regard to this circumstantial evidence and we need not say anything more.

(43) PW-21 N.K.Handa was another hostile witness who was sought to be examined again to show that the accused had pointed out that manhole from where the dead body of Anita had been earlier recovered. His testimony is of no help in proving the case against the appellant. PW-23 Kavita Arora, the proprietor of the beauty parlour and PW-30 Ram Lalit, the watchman of that beauty parlour, had also turned hostile and did not give any evidence against the appellant, Arun Kumar.

(44) There is no other piece of circumstantial evidence proved against the appellant which could link the appellant with the commission of the murder of Anita. The two circumstances proved by the prosecution that the appellant was living with Anita and Shweta and appellant had left Shweta at a dhaba in Murthal only throw a ring of suspicion about the involvement of appellant perhaps in

commission of murder of Anita but from these two pieces of circumstantial evidence, in our view, no irresistible conclusion can be reached regarding the guilt of the appellant. The chain of the circumstances is not so complete as to over-rule the possibility of appellant being innocent of the crime imputed to him. Mere fact of appellant living with Anita and Shweta by itself is not sufficient to show that appellant had committed the crime of murder of Anita. His act of leaving Shweta at the dhaba at Murthal only points out a finger of suspicion towards the appellant and nothing more. But mere suspicion can not lead to an inference that appellant must have been the murderer of Anita.

(45) In view of the above, we allow this appeal and set aside the conviction and the sentence of the appellant and acquit him of the charge giving him benefit of doubt. He is directed to be released from the Jail forthwith if not required to be detained in any other case.

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