Maman Chand Vs. State

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Court : Delhi

Decided On : May-30-2008

Reported in : 2008(105)DRJ84

Judge : Vikramajit Sen and; Rajiv Sahai Endlaw, JJ.

Acts : Evidence Act - Sections 27; Code of Criminal Procedure (CrPC) - Sections 161 and 313; Indian Penal Code (IPC) - Sections 201 and 302

Appeal No. : Crl. A. 232/1992

Appellant : Maman Chand

Respondent : State

Advocate for Def. : Mr. Sunil Sharma, APP for the State and ; Manoj Ohri, Addl. Standing Counsel

Advocate for Pet/Ap. : D.C. Mathur, Sr. Adv. and; Vishal Gosain, Adv

Disposition : Appeal dismissed

Judgement :

Rajiv Sahai Endlaw, J

1. The Appellant charged with commission of offences under Sections 302/201 IPC has preferred this appeal against the order of his conviction under both the

provisions and against the sentence of rigorous imprisonment for life and fine of Rs 500/- under Section 302 IPC and of rigorous imprisonment for two years and fine of Rs 200/- under Section 201 IPC.

2. The deceased/victim was Ms Vidya @ Vidyawati aged about 27 years at the time of her demise on 9th January, 1991. The Appellant at that time was about 29-30 years of age. There is an admission in the statement of the Appellant under Section 313 Cr.P.C. that the deceased was the wife of the Appellant. The Appellant, however, claims to have two wives. The other wife of the Appellant, besides the deceased, was one Ms Shakuntala. Unfortunately, it is not clear from the record as to whom the Appellant was married first i.e., to the deceased or to the said Ms Shakuntala. It is not in dispute that the deceased was murdered. The admission of the counsel for the Appellant to the said effect is recorded in para 31 of the impugned judgment and is even otherwise clearly borne out from the evidence. Neither in the Memorandum of Appeal nor at the time of hearing, it was disputed that the admission of the counsel for the Appellant before the trial court that the deceased was murdered was wrongly recorded.

3. There is no witness to the murder. The trial court has found the Appellant guilty through circumstantial evidence. The entire arguments of the senior counsel for the Appellant was that the circumstances proved did not unequivocally and undoubtedly point towards the Appellant and as such the conviction of the Appellant on the basis of circumstantial evidence is erroneous. We as such, proceed to appraise the evidence in the light of the law with respect to circumstantial evidence as summarised and laid down in Bodh Raj v. State of J and K : 2002 CriLJ4664 .

4. The body of the deceased was seized by the police at about 8.30 pm in the night on 9th January, 1991 from the cremation ground in village Mitraon, Delhi when the pyre had already been lit for cremation. The body seized was thus partly burnt.

5. The factum that the deceased was being cremated or that was half burnt or that her body was pulled out from the pyre is not disputed and was not challenged during arguments by the senior counsel for the Appellant. It is the case of

Prosecution that a photographer was called to the cremation ground and photographs of half burnt body and pyre were taken. The photographer was examined as PW17 and photographs Ex PW17/10-18 and negatives thereof Ex PW17/1-9 proved (which included photographs taken at the cremation ground as well as at the house as hereinbelow discussed). In the cross examination the photographs were not challenged. The photographs show a half burnt body.

6. The Prosecution examined as PW5 Dr L.K. Baruah who had conducted the postmortem of the deceased. He deposed :

Scalp hair in front and sides and also on the right occipital area were seen completely burnt leaving small amount of scalp hair (partially burnt) over left occipital area which was preserved, sealed and handed over to the police for kerosene oil presence. However, no smell of kerosene could be smelled by smelling. The whole face was seen second to third degree burnt, clotted blood was seen smeared on the left side of cheek and below the chin. The whole front of the neck, the whole front of abdomen, both sides chest, pubic region including genital area was seen up to muscle deep burnt. Both thigh fronts and sides, both leg fronts were also muscle deep burnt. Likewise the back of the whole body was also seen muscle deep burnt. The right side was completely burnt. On the left side except hand is seen unburnt. There was no line of redness between the burnt and unburnt area.

It is nobody's case that the deceased was burnt otherwise than in cremation. Thus, there is admission of deceased having been murdered and the circumstance established of, post murder, the deceased being cremated - without reporting the murder.

7. Though, as aforesaid, it is admitted that the deceased was murdered, while on the testimony of PW5 we may also notice his testimony to the effect :

On further examination of the body one incised wound was seen in front of the neck placed horizontally below the thyroid cartilage of size 13 cm x 3.5 cm x cervical vertibra deep. Left angle of the wound showed bifurcations signifying more than one blow. Muscles, blood vessels on both sides front of neck and was seen

cleanly cut and was smeared with blood clot on dissection.

Injury overt in front of neck showed complete dissection of the thyroid cartilage on its lower part, both sides all major blood vessels were cleanly cut Along with sternomastoid muscles.

In my opinion the injury in front of the neck was ante-mortem, caused by sharp weapon. Death in this case in my opinion was due to haemorrhagic shock resulting from injuries. Injury overt in front of neck was sufficient enough to cause death in the ordinary course of nature. The burnt was postmortem in nature.

In the cross examination of this witness, the factum that the deceased had the injuries aforesaid on her body was not disputed. The only suggestion was that the said injuries could be sustained while being burnt which the witness naturally denied. We have not been shown any literature to the effect that the neck showing complete dissection of thyroid cartilage and of all major blood vessels being cut could be sustained during cremation. The circumstance of deceased having been killed/murdered by injury on neck dissecting blood vessels and resultant haemorrhage is also established.

8. It is the case of the Prosecution that the Appellant Along with some other residents/neighbours of village Mitraon namely, PW3 Zile Singh, PW4 Om Prakash, PW7 Nand Kishore and PW21 Jawahar Singh were found by the Police at the cremation ground. The Appellant has denied his presence at the cremation ground. PW3, PW4, PW7 and PW21 aforesaid did not support the case of the Prosecution and denied their presence at the cremation ground and were allowed to be cross-examined by the Prosecution. We have perused the evidence to determine whether the presence of the Appellant at the cremation ground is established or not. The Prosecution claims that the Appellant was arrested from the cremation ground only. The Appellant in his Statement under Section 313 Cr.P.C. stated :

Ans. I am innocent. I have been falsely implicated in this case. I was not present at the place of commission of offence or in the cremation ground. I was arrested on 10.01.1991 from the house of my father-in-law i.e. the father of my wife

Shakuntala from J.J. Colony, Wazirpur.

The sole witness, examined by the Appellant, DW1 Shri Balbir Singh has given his address as house No. L-495 J.J. Colony, Wazirpur, Delhi and has deposed that the Appellant was married to his daughter Shakuntala and for six months / one year prior to his arrest had been residing in his house and not in village Mitraon and, in fact, had been arrested from his house on 10th January, 1991 at about 6.00 a.m.

9. PW2 Shri Sat Prakash is a resident of village Mitraon. He has in his deposition stated ' I know the accused Maman Chand present in court. He is a resident of my village.' The counsel for the Appellant has not cross examined PW2 or otherwise challenged his aforesaid testimony. In fact, in the cross examination not a single question was put to PW2 suggesting that the Appellant was not a resident of village Mitraon or that the Appellant for six months to one year prior to the demise of his wife Vidya had been residing with his other wife Shakuntala at Wazirpur, Delhi. The settled principle is that that much of the testimony of a witness which is not challenged or controverter in cross examination is deemed to be admitted by the cross examining party.

10. The testimony of PW2 is important on yet another material aspect. PW2 deposed that he is the owner of a Maruti car and that the Appellant had hired the said Maruti Car on the day of the murder i.e., 9th January, 1991 at about 6.15 a.m. in the morning. Though the said factum is challenged in the cross examination but, in our opinion, nothing has come in the cross examination of PW2 so as to show that PW2 was not stating the truth or was inimical to the Appellant. Had the Appellant, on the day of the murder, not been a resident of Village Mitraon or had the Appellant been residing at Wazirpur, the Appellant, at that early hour on a winter morning would not have hired the car from a resident of Village Mitraon.

11. It is further the testimony of PW2 that the Appellant after hiring the car of PW2 at 6.15 am in the morning went from place to place. He has deposed :

We reached Bahadurgarh and remained there for 2-3 hours. We came back to Wazirpur from Bahadurgarh at 2.30 p.m. From Wazirpur the accused took his

father-in-law Along with and then we went to Najafgarh. The father-in-law of the accused dropped at Najafgarh and then we went to village Mitraon. I dropped the accused in the Gali.

Thus, from the testimony of PW2, the presence of the Appellant at village Mitraon in the morning as well as in the afternoon/evening of the day of the murder is established. The only suggestion given to PW2 in cross examination is that he was deposing falsely at the instance of the police. Nothing was put to PW2 that owing to any other dispute or enmity with the Appellant, PW2 was deposing to the effect he did. It is significant that PW2 is a resident of village Mitraon. As noted above, a number of other residents of village Mitraon, whose statements were recorded by the police under Section 161 Cr.P.C., had, at the stage of trial, turned hostile and not supported the version of the police. The fact that PW2 owned the vehicle was not challenged in cross examination and the only question put to him was that he did not have the license to ply his vehicle as a taxi. We, however, can not lose sight of the prevalent practice of such private vehicles being given and taken on hire.

12. PW3 Zile Singh, another resident of village Mitraon has similarly deposed that the Appellant 'belongs to my village and is of my cast.' He was also not cross examined by the counsel for the Appellant. No suggestion was given to him that though the Appellant belonged to village Mitraon but he had not been residing in village Mitraon or had been residing with his other wife Shakuntala. PW4 Om Prakash is another resident of village Mitraon. He has in his deposition also stated that 'the Appellant is a resident of my village and is my neighbour. I knew his wife but I do not know her name.' This witness also was not cross examined by the counsel for the Appellant challenging his testimony of Appellant being a resident of village Mitraon. PW6 Kaptan Singh another resident of village Mitraon has similarly deposed 'I know the accused present in court as he is of my village.' He was also not cross examined by the Appellant. PW7 Nand Kishore is yet another resident of village Mitraon who has identically stated 'I know the accused present in the court as he belongs to my village.' He was also not cross examined by the counsel for the Appellant. PW10 Samey Kaur is another resident of village Mitraon. She has also stated 'I know the accused Maman Chand present in court. He belongs to my

village.' She was also not cross examined by the counsel for the Appellant. PW11 Daya Kishan is also a resident of village Mitraon and deposed that he was functioning as a Pradhan of the village even after the dissolution of the Panchayat and deposed that the' accused Maman Chand present in court belongs to my village.' He was also not cross examined by the counsel for the Appellant.

13. We may notice that all the aforesaid witnesses, resident of village Mitraon, had turned hostile and did not support the case of the Prosecution. However, that would not debar us from looking into their testimony. All of them were consistent in their statements that the Appellant belonged to or was a resident of village Mitraon. inspire of their not deposing against the Appellant, none of them stated that the Appellant though belonging to village Mitraon, had not been residing in village Mitraon or had been residing with his other wife Shakuntala in Wazirpur. The counsel for the Appellant also did not deem it appropriate to put any such suggestion to the said witnesses in their cross examination. The only legal inference can be that had any such question or suggestion been put to the said witnesses/residents of village Mitraon, their answers would not have supported the Appellant and the said witnesses would have reiterated that the deceased at the time of the murder was residing in village Mitraon only.

14. Even in the statement of the Appellant under Section 313 Cr.P.C. it was put to the Appellant :

Q. It is further in evidence against you that S.I. Ganga Dass also inspected your house in village Mitrau and he made his endorsement Ex.PW-11/A on Ex.PW-1/A and got this case registered vide FIR Ex.PW-19/A. What have you to say?

The only answer of the Appellant was 'it is incorrect.' The purpose of a statement under Section 313 is to give an opportunity to the accused to explain any circumstances appearing in the evidence against him. The Appellant on the date of recording of his statement under Section 313 Cr.P.C. was aware of the deposition of various residents of village Mitraon examined by the Prosecution to the effect that the Appellant was belonging to or was a resident of village Mitraon. The Appellant did not deny that the 'house in village Mitraon' inspected by S.I. Ganga Dass was not his.

15. There is direct evidence also of the presence of the Appellant at the cremation ground. PW12 lady constable Sharda has deposed of having received phone call at about 08:20 PM on 09.01.1991 in Police Control Room from Jai Kishan Pradhan from public call that in village Mitraon 'a lady was being burnt after her murder'; she further deposed of having conveyed this information to P.S. Najafgarh. There is no cross examination of this witness. PW1 Head Constable Rama Nand has deposed of receiving this information at P.S. Najafgarh from PW12 and of having diarised the same and of handing over to S.I. Ganga Dass for investigation. This witness was also not cross examined by the counsel for Appellant.

16. The senior counsel for the Appellant has argued that Jai Kishan Pradhan has not been examined. This is, however, not correct. The Prosecution has examined as PW11 Daya Kishan who has deposed that he was functioning as Pradhan of village Mitraon. In telephonic conversation Daya Kishan can be understood as Jai Kishan. PW11 Daya Kishan has deposed :

In the month of January, 1991, I do not remember the exact date. At about 4.00 or 4.15 p.m. one Om Prakash Balmiki came to me and told me that one lady had died and he asked me to report the matter to the police. I told Om Parkash that it was a matter of his caste and so they should report the matter.

His aforesaid testimony was not challenged by cross examination by the appellant. From the aforesaid testimony, it stands established that it was known in village that the demise of the deceased was reportable to the police. Natural deaths are not reported to the police. The very fact that PW11 Daya Kishan stated that the matter should be reported to the police shows that offence in the matter of demise of the deceased had been committed.

17. Thus the reporting of the offence to the Police, in the normal course, has been established, leading to the visit of the Police Party to the cremation ground of village Mitraon.

18. S.I. Ganga Dass appeared as PW22. He has deposed that on receiving DD from PW1:

I Along with S.I. Zile Singh and constable Jaivir Singh went to the cremation ground of village Mitrau and we found that many persons were present there and one dead body was under the flames. The public persons on seeing the police van ran from there. One person remained standing there whose name later on revealed to be Maman Chand. He was having plastic can in his right hand which smelled kerosene oil. I interrogated him. He told that the dead body which was in flames was of his wife Vidya. Two persons namely Om Prakash and Jawahar Singh also came there and with their help the dead body was taken out from the pyre. The body was half burnt and blood was oozing from its neck. There was also a cut mark on the neck of the dead body.

Constable Jaivir Singh has also appeared as PW18 and deposed to the same effect. Though both these witnesses were cross examined by counsel for Appellant but nothing could be elicited to contradict or shake their testimony of finding the Appellant at the cremation ground.

19. We find the chain leading to reporting of the offence to the police and the consequent visit of the police officials to the cremation ground to have been established. The body was by then only partly burnt. It is not unusual to find people around a cremation pyre. We believe the testimony of police officials to the said effect, including of finding appellant there.

20. The learned APP has rightly relied upon Anil v. State of Maharashtra : 1996 CriLJ1698 holding that there is no rule of law that evidence of police officials has to be discarded. Even in Girija Prasad v. State of M.P. : AIR 2007 SC3106 it was held :

24. In our judgment, the above proposition does not lay down correct law on the point. It is well-settled that credibility of witness has to be tested on the touchstone of truthfulness and trustworthiness. It is quite possible that in a given case, a Court of Law may not base conviction solely on the evidence of Complainant or a Police Official but it is not the law that police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption that every person acts honestly applies as much in favor of a Police Official as any other person. No infirmity

attaches to the testimony of Police Officials merely because they belong to Police Force. There is no rule of law which lays down that no conviction can be recorded on the testimony of Police Officials even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. But, if the Court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence.

We have carefully and critically analysed the evidence of the Police officials. There was nothing to show that they were hostile to the Appellant. Their evidence is consistent.

21. It is the unrebutted testimony of PW23 ACP Dal Chand who was the IO in this case that after the postmortem, the body of the deceased was claimed by Kali Ram, the father of the Appellant and handed to him vide receipt Exhibit PW23/M. This part of his testimony was not challenged in his cross examination. When even after the Appellant had been arrested and FIR registered of the murder of his wife, the body of the deceased was collected by the father of the Appellant, we find hard to believe and against the normal course of human conduct and behavior that the appellant would not be at the cremation of his wife.

22. The statement of the accused under Section 313 Cr.P.C. of his being arrested from the house of his father-in-law DW1 at 6.00 a.m. in the morning of the next day i.e., 10th January, 1991 and the evidence of DW1 to the same effect is not believable. DW1 in cross examination denied that the accused was married to Vidya who was living in village Mitraon. The denial by DW1 of the accused being married to Vidya, which fact has been admitted by the accused himself in his statement under Section 313 of the Cr.P.C. shows that DW1 is not speaking the truth and his evidence cannot be relied upon. DW1 appears to be motivated to protect the appellant who he claims to be the husband of his daughter Shakuntala.

23. We, thereforee hold that the presence of the Appellant at the cremation ground cremating the deceased has been established.

24. Once the presence of the accused at the cremation is held to have been established, the timing of cremation and the haste of the Appellant to cremate his

wife in a manner out of the ordinary become relevant circumstance. The cremation was being done at about 8.30 p.m. in the night in the winters of January 1991. Cremation is normally not done between sunset and sunrise. Even if the demise occurs in the later hours of the day in the winter months, there is no fear of the body decomposing and ordinarily one would have waited for the next morning to cremate.

25. It is further the case of the Prosecution that the accused was found to be holding a plastic can smelling of kerosene oil. We will now proceed to consider whether this is established from the evidence on record. If, established, in our view it would be a relevant fact as kerosene oil is ordinarily not used in cremation and would again show attempt to hasten cremation.

26. Undoubtedly the other persons claimed by the Prosecution, to be present at the cremation ground have not supported the Prosecution case to the said effect. What we have to examine is whether this fact is proved from the testimony of the other witnesses, namely, the police officials and from the other documents on record.

27. PW22 S.I. Ganga Das has deposed that the can was seized vide memo Exhibit PW4/C. The can was proved before the trial court as Exhibit P-4. He further deposed of seizing of half burnt wood sticks and ashes (proved as Exhibit P-10) from the site of the cremation vide Exhibit PW4/D. The seizure memos Exhibit PW4/C & D are witnessed by PW4 Shri Om Prakash and PW21 Shri Jawahar Singh. PW4 Shri Om Prakash in his deposition has stated that the police officials had come to him and obtained his signatures on blank papers when he was working in his field. Thus, PW4 has not denied his signatures on the seizure memo Exhibit PW4/C & D. It belies logic as to why the police officials would, out of the entire village, take the signature of PW4 Om Prakash and PW21 Jawahar Singh only on the seizure memos and why they, otherwise in no way connected with the crime signed on blank papers and even if they did so, why they would not immediately protest against the same or not make complaint of the same to the authorities with whom the complaint against the police officials could be made. Otherwise no defect has been brought out with respect to the said seizure memos.

The police, in the normal course of duty and investigation is required to seize the articles connected with the crime/offence and nothing untowards or out of the ordinary can be said with respect to the seizure of the plastic can and burnt wooden sticks and ash and of the preparation of the seizure memos. PW23 A.C.P. Dal Chand has deposed of sending the exhibits of the case to CFSL and reports Exhibit PW23/J to L being received from CFSL. The CFSL found kerosene residue in the plastic can as well as wood sticks and ashes.

28. From the chain of events of seizure of plastic can and wooden sticks and ash from spot of cremation to the finding of CFSL of kerosene residue on the same, coupled with statements of police officials reaching the cremation ground on receipt of information as aforesaid, we hold the factum of accused holding the plastic can smelling of kerosene, and use of kerosene for cremation to have been established.

29. It is further the case of the Prosecution that the weapon of murder namely a 'churri' (Exhibit P-1) was recovered on disclosure made by the Appellant. PW5 Dr L.K. Baruah has deposed that the injury found on the deceased are possibly with the weapon, Exhibit P-1. There is no cross examination of PW5 on this aspect.

30. PW23 ACP Dal Chand has deposed

During the interrogation the accused made the disclosure statement Ex.PW-14/C. The accused had told that he could get the churri recovered from a wheat field near village Mitrau. Thereafter, the accused lead the police party to the field of Maharam which is situated on the road leading to village Kahir and got the churri Ex.P-1 recovered. I prepared the sketch Ex.PW-14/A of the churri and I sealed the same in a packet with the seal of `DCY' and it was taken into possession vide memo Ex.PW-14/B. Near the joint of blade and handle I noticed blood. The churri got recovered by the accused from the crop standing in the field.

Save for suggesting in cross examination that the Appellant did not make any disclosure statement and no churri was got recovered by Appellant, there is no other cross examination in this respect.

31. PW14 Constable Ram Karan who is witness to the seizure memo of churri has deposed:

He took out a chhuri from a field of wheat crop and produced the same before the SHO. The SHO prepared the sketch Ex.PW14/A of the churri and then converted it into a sealed parcel and sealed it with the seal of 'DC YADAV' and was taken into possession vide memo Ex.PW14/B. I can identify the chhuri.

Court Q. Give the description of the chhuri.

Ans. The handle of the chhuri was of wood. The disclosure statement of the accused is Ex.PW14/C which also bears my signatures at point `A' . (At this stage a sealed packet sealed with the seal of CFSL is opened and a chhuri is taken out). The witness after seeing the chhuri states that chhuri Ex.P-1 is the same which was got recovered by the accused.

In the cross examination it was suggested to him that the accused had not made any disclosure statement and had not got the chhuri recovered and which suggestion was denied by him. The site plan of the field from which the churri was recovered has been proved as Exhibit PW23/H. The same also bears the legend 'chhuri was recovered from mark XA from the field of Maharam where small crops of wheat is present.'

32. The senior counsel for the Appellant has, however, argued that there is no evidence of discovery of churri within the meaning of Section 27 of the Indian Evidence Act as discovery is from a open space accessible to all. He has in this regard relied upon Salem Akhtar v. State of U.P. 2003 SCC (Cri) 1149 and Amit Singh Bhikam Singh Thakur v. State of Maharashtra : 2007 CriLJ1168

33. We, however, do not accept the aforesaid contention of the senior counsel for the Appellant. We have culled out the statements of the police witnesses with respect to the field from which the churri was recovered as well as reproduced the language used on the sketch plan of the place from which the recovery was made. If the Appellant intended to challenge the same, the Appellant, in the cross examination of the witnesses of the Prosecution ought to have put questions with

respect to the same. However, nothing of this sort was done. It is now, at this stage, not open to the Appellant to aver that the discovery was not from a place which could be known to the accused only. Even otherwise, when all the witnesses as well as the documents are speaking of a wheat field, it is not possible to believe that there was no wheat crop on the said field. No field can be reserved for the purposes of wheat crop only and depending on the season can be used for different crops. Moreover, at least one witness and the sketch plan talk of the standing wheat crop. If the Appellant did not agree with the same, the Appellant ought to have suggested to the witnesses that the field was barren or was open to all or the place where the churri is alleged to have been discovered was visible and accessible to all concerned. If there was wheat crop, the churri was hidden in the same and the judgments relied by Appellant do not apply. Without cross examination to the said effect, the Appellant cannot, in arguments for the first time, challenge the discovery. We, thus, hold churri to have been discovered in consequence of information received from Appellant.

34. The CFSL also examined the said chhuri and found blood of B group on the same. PW22 S.I. Ganga Dass has deposed that, on 09/01/1991, after taking out the body of deceased from the pyre in the cremation ground:

I Along with accused went to his house. Om Prakash and Jawahar Singh were also with us at that time. In the House of the accused one blood stained quilt was found on the chair. Some bloodstains were also found on the bed which was lying in the room. It appeared that the blood had been washed from the bed. Blood was also found on the ground.

The quilt was sealed in a packet with the seal of `DCY'. The blood was taken from the plung with the help of cotton which was sealed in a packet with the seal of DCY. The blood was also taken from the ground and sealed with the seal of DCY. Earth control was also seized after sealing the same with the seal of `DCY'. The plung was also taken into possession. These articles were seized vide memo Ex.PW-4/B. (At this stage a sealed parcel sealed with the seal of CFSL is opened) and a quilt P-8 has been taken out and the witness states that it is the same which had been seized from the house of the accused. The bed (plung which was seized

has not been brought by the MHCM. The learned Counsel for the accused states that he does not dispute the identify of the plung and it may be given exhibit mark. Plung Ex.P-9 was also seized from the spot vide memo Ex.PW-4/B.

I found that there were some blood stains on the sleeve of the shirt of the accused. The shirt Ex.P-2 and P-3 pant of the accused were seized vide memo Ex.PW-14/D which bears my signatures at point `C'. These clothes were sealed in a packet and sealed with the seal of `GD' and the seal after use was handed over to H.C. Rajinder Singh.

35. PW5 Dr. L.K. Baruah who conducted the postmortem has also deposed that sample blood (obviously from the body of deceased) was preserved, sealed and handed over to Police for chemical analysis. CFSL found the same blood group B on the quilt collected from the house aforesaid in village Mitraon as well as from the Pant & Bush shirt aforesaid and on the bloodstained gauze. There was much controversy with respect to the bloodstained gauze because no mention was made by PW5 Dr Baruah with respect to the same in his testimony. PW5 in his testimony deposed of having sent the blood sample of the deceased for examination. It was contended by the senior counsel for the Appellant that there was no report with respect to the said blood sample and there was no reference to the gauze examined by the CFSL. We, however, do not find any inconsistency. Dr Baruah had equivocally deposed about sending the blood sample of the deceased whose postmortem he had conducted, for chemical analysis. Though he did not state that the blood sample was in the form of a gauze but the blood sample of a person who had been dead for over 16 hours prior to postmortem, as per the deposition of doctor, could not be in liquid form and necessarily had to be in the form of a gauze only. We, thus, hold that there is evidence of the blood group of the deceased being of B group and evidence of the blood found on the weapon of murder to be of the same group, thus linking the weapon of murder to the deceased.

36. To summarize, we have the following facts/circumstances :

(a) That the deceased was the wife of the Appellant;

(b) The deceased was murdered by slitting of her throat;

(c) The murder was not reported as it ought to have been;

(d) The accused was in village Mitraon in the morning as well as in the afternoon/evening of the day of the murder, contrary to his Explanationn under Section 313 Cr.P.C. that he was living elsewhere;

(e) The deceased was being cremated in unnatural circumstances at night and with the use of kerosene;

(f) The appellant was present at the cremation;

(g) The churri / weapon of crime was discovered in consequence of information received from the Appellant;

(h) The blood on the weapon and of the deceased and on the cloths worn by the Appellant as well as found on quilt in the house of the deceased matched.

37. The senior counsel for the Appellant has argued that the aforesaid circumstances also are not sufficient to lead to the inescapable inference of the guilt of the Appellant inasmuch as the bodily injuries leading to death has to be proved to have been inflicted by the Appellant. Our attention has been invited to a number of judgments on circumstantial evidence, in cases where the same has not been found to be sufficient. The crux of the submission of the counsel for the Appellant is that strong suspicion cannot take the place of proof and there is a long distance between 'may be true' and 'must be true'. We, however, do not feel the need to discuss each and every judgment cited by the counsel for the Appellant, having already referred to Bodh Raj case of the Apex Court in which the case law with respect to the circumstantial evidence has been summarized. The counsel for the appellant has further argued that the prosecution has not examined any witness to the deceased being carried to the cremation ground or to prove as to who made arrangements that is purchase the wood etc for cremation. The counsel has further sought to draw holes in the story of the prosecution by arguing that while PW5 Dr Baruah has deposed that the death had occurred 16 hours prior to postmortem which would be at about 7.30 p.m. in the evening of 9th January,

1991, it was suggested in the cross examination of the hostile witnesses of the neighborhood that they had given a statement that the Appellant had announced to the neighbours at about 4.30 p.m. on 9th January, 1991 that he had killed the deceased. It was also pointed out that the date on the Exhibit PW21/A being the rukka on the basis of which the FIR was registered, was changed from 10th January, 1991 to 9th January, 1991 and that the seizure of the plastic can was not mentioned on the same. He has further argued that there is no evidence to the effect that the deceased was living with the accused. The counsel for the Appellant has further cited the case law to the effect that when two views are possible, the one favourable to the accused should be taken and the burden of proof in criminal jurisprudence remaining on the prosecution and on the accused having no duty in criminal jurisprudence to explain anything.

38. There can be no dispute as to the aforesaid propositions of criminal jurisprudence. However, the facts of each case are distinct. For a crime to be proved, it is not necessary that the crime must be seen to have been committed and must, in all circumstances, be proved by direct ocular evidence by examining before the court those persons who had seen its commission. The offence can be proved by circumstantial evidence also.

39. In the present case, we find that the evidence of various facts established is so closely associated with the fact in issue that if taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed. All the facts which we have, on the basis of the evidence, held to have been established are found to be incompatible with the innocence of the Appellant or the guilt of any other person. We have already held that the facts/circumstances have been proved beyond reasonable doubt. We do not find any gap left in the chain of evidence. We may, at this stage, notice that the Apex Court in Anthony D' Souza v. State of Karnataka : 2003 CriLJ434 has held that in a case of circumstantial evidence where an accused offers false answer in his examination under Section 313 Cr.P.C. against the established facts and denying in toto, that can be counted as providing missing link for completing the chain. It was also reiterated that a false answer of the accused when his attention is drawn to a circumstance, renders that circumstance capable of inculpating him. As far as

other submissions of the counsel for the Appellant noticed by us above are concerned, we find that from the circumstances culled by us hereinabove, the bodily injury leading to the death has been proved to be inflicted by the accused. From the evidence aforesaid, it transpires that the injury was inflicted inside the house where none else could be present. The Apex Court in Trimukh Maroti Kirkan v. State of Maharashtra : 2007 CriLJ20 has held that the law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible/difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading having regard to facts and circumstances of the case. In the present case, the deceased was 27 years old wife of the appellant and the prosecution case is of the deceased having been killed in the house. The Apex Court in the said judgment has taken note of there being no witness to happening in the house.

40. Similarly in State of Gujarat v. Anirudhsing and Anr. : 1997 CriLJ3397 the Apex Court has held that motive of the offence gets locked in the mind of the makers and it is difficult to fathom it and if motive is proved that would supply a chain of links but absence thereof is not a ground to reject the prosecution case. In the present case, it is admitted that there was 'another wife', so it cannot be urged that implicating appellant is preposterous. We have already held that the presence of the appellant at the cremation has been proved and as such no holes can be driven in the case of the prosecution for the prosecution having not examined any witness to prove how the deceased was carried to the cremation ground or as to who collected wood etc for cremation. As far as the overwriting on Exhibit PW22/A is concerned, the said document was admittedly written late in the night between 9th January, 1991 and 10th January, 1991 and there is nothing suspicious in the author erring on whether the date had changed or not. There is no merit in the argument of the seizure of the can being not mentioned in the rukka as the rukka is meant to be only an intimation for registration of an FIR. The time of death deposed by the doctor is never accurate and as such the inconsistency pointed out does not shake the case of the prosecution.

41. We, thereforee, do not find any merit in the appeal. No submissions on the sentence awarded for the offence under Section 201 of the IPC were made before

us. The sentence of the Appellant was suspended and was enlarged on bail during the pendency of the appeal vide order dated 22.07.1993. In view of the dismissal of the appeal, the bail bonds are cancelled and the accused is directed to be taken in custody.