

State Through Cbi Vs. Gurpal Singh

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Court : Delhi

Decided On : Sep-27-2005

Reported in : 124(2005)DLT282

Judge : Manmohan Sarin and; Manju Goel, JJ.

Acts : Evidence Act - Sections 26 and 27; Foreign Exchange Regulation Act; Indian Penal Code (IPC) - Sections 201 and 302; Code of Criminal Procedure (CrPC) - Sections 161

Appeal No. : CRLMA 6/2003

Appellant : State Through Cbi

Respondent : Gurpal Singh

Advocate for Def. : Sushil Kumar, Sr. Adv., ; Ravi P. Wadhawan and ; Sanjay Jai

Advocate for Pet/Ap. : R.M. Tiwari, Adv

Disposition : Appeal dismissed

Judgement :

Manju Goel, J.

1. This is an appeal from the judgment of acquittal passed by Shri R.K. Gauba, Additional Sessions Judge, Delhi in the case of FIR No. 130/85 GRP Jaipur which

was subsequently also registered as RC No. 9/85-CIU(P). Although the incident, on which FIR was registered, took place at Jaipur the trial was transferred to Delhi by the Supreme Court on an application of the accused-respondent.

2. The facts as disclosed in the charge-sheet submitted by the CBI, who eventually took over the investigation, can be narrated, sans details, as under:

On 24.11.1985 at about 10.15 p.m. a dead body was noticed near Ajmer Pulia on the railway track in Jaipur by two Gangman at Jaipur Railway Station. A `Marg' at Serial No. 35/85 was registered at police station GRP, Jaipur. From a card recovered from the body the same was suspected to be of Suresh Chand Gupta, Advocate. It was so identified by his relatives. Inquest report was prepared at 8.00 a.m. on 25.11.1985. A post-mortem examination was conducted on the same day. Later a medical board was constituted for conducting a fresh post-mortem and a second post mortem was conducted on 26.11.1985 by Dr. P.P.S. Mathur and Dr. B.M. Gupta. All the injuries on the body of the deceased were found to be ante-mortem. Blood-stained earth and other material suspected to be containing human blood was collected from the spot on 25.11.1985. The local bar, of which Suresh Chand Gupta was a member, raised an agitation in the matter suspecting some foul play in the death of Suresh Chand Gupta and, therefore, the `Marg' inquiry was transferred to CID, Jaipur, who collected further material containing blood stains from the wall and pillar adjacent to the place of occurrence. On 11.12.85, i.e., twenty days after the incident, a written complaint by the wife of the deceased alleging murder of the deceased by accused Gurpal Singh was also received. Gurpal Singh, a Munsif Judicial Magistrate, who at the relevant point was posted in Jaipur is said to have been a close friend of Suresh Chand Gupta. She alleged in the complaint that her husband had told her about three months back that the accused had demanded a sum of Rs. 1,00,000/- to get him appointed a member of Board of Revenue by exercising his influence with the high-ups. Her husband had arranged for the sum by selling a lot of land and by borrowing money from her father and other relatives. She further alleged that her husband had further withdrawn a sum of Rs. 20,000/- from their savings as the accused wanted another sum of Rs. 50,000/- and gave the money to him. According to the complainant the accused started evading the demand for return of the money

when the appointment did not come through. She further alleged that on the insistence of her husband for return of the money, the accused had agreed to return the money and on 24.11.85 her husband had left his house at about 5 p.m. to meet the accused but did not return. She concluded that the accused had killed her husband on account of the dispute over money.

The investigation reports that the deceased and the accused were seen together at Rajhans Rest House, Station Road, Jaipur on 24.11.1985 at 7.30 p.m. They allegedly visited the office of M/s. Build Macho Pvt. Ltd. at 2, Hathroi, Ajmer Road, Jaipur which is the office of property dealers of Ramesh Chand Sharma and Deepak Sharma. Leaving the scooter of the deceased at the Ajmer Road, the two allegedly proceeded on foot towards Ajmer Pulia by a side road. The investigation finds that the accused brought the deceased in the corner formed by the pillar and the diagonal wall of the Ajmer Pulia towards the Jaipur Railway Station on the pretext that while he was urinating he lost his keys. The corner is an isolated place where the accused hit the deceased with a heavy stone on his head and face which caused grievous injuries on the head, skull, brain and face of the deceased. From these injuries blood oozed profusely and fell on the ground and splashed over the pillar, diagonal wall, pole and inner corner formed by the pillar and wall of the over-bridge. The blood that fell on the ground formed a small pool in the said corner which is at a distance of 262 cms. from the railway track. Thereafter the body of the deceased was dragged by the accused Gurpal Singh towards the railway track with the legs of the deceased inside the track and body outside.

3. Further the investigation claims that samples of blood were collected from the corner where the alleged incident of injuring the deceased by a heavy stone was done. The remains of the blood stained clothes of the accused which the accused had allegedly burnt were also recovered. Investigation further claims that blood stains were also recovered from the toilet of the house of the accused. The blood so recovered was found to be of Group 'A'. The same was the group of the blood taken from the place of incident. The shoes of the accused which were subjected to CFSL examination also revealed blood Group 'A' on the lace of the left shoe.

4. The conduct of the accused after the incident was considered to be abnormal inasmuch as the accused did not bear any expression of sorrow nor offered any condolence to the family of the deceased. He did not attend the condolence meetings of the bar at (sic) 0.30 a.m. on 25.11.1985 although the same was attended by other judicial officers including the District and Sessions Judge. It is further alleged that during the conversation on 25.11.1985 accused told the President of the bar that he had not seen the deceased for the last 2-3 days but later when one Advocate claimed to have seen the deceased with the accused on a scooter at about 6.30 p.m. on 24.11.1985 proceeding from railway station Jaipur to Gandhi Nagar, he accepted the fact that he was with the deceased on 24.11.1985 up to 7.15 p.m.

5. The charge-sheet further narrates that Nihal Chand Goel, the father-in-law of the deceased, who was in the know of the money transaction between the deceased and the accused, along with two or three other persons visited the accused in his court chamber on 28.11.1985 and the accused accepted to having taken the money from the deceased and promised to return the same shortly. Nihal Chand Goel with the other persons again visited the accused in his court chamber on 2.12.1985 when again the promise was reiterated. On 5.12.1985, the accused appeared at the residence of the deceased and returned the money to Nihal Chand Goel. This money was handed over to the investigating officer of CBI on the first encounter of Nihal Chand Goel with the investigating officer. The investigation also alleges that the accused had kept Rs. 85,000/- with his friend Dr. Anand Parkash Verma from 28.10.1985, which was later withdrawn on 1.12.1985 when the money was entrusted to Shri Radha Mohan Soni till 4.12.1985. The conclusion of the investigation from the above facts is that the accused murdered Suresh Chand Gupta and thereafter threw him on the railway track so as to eliminate all evidence of the crime.

6. On 29.1.1987, the accused was charged by Shri V.S. Agarwal, Additional Sessions Judge, Delhi (as he then was) with offence punishable under Section 302 as well as for the offence punishable under Section 201 of Indian Penal Code (in short 'IPC'). The prosecution examined as many as 57 witnesses and produced all the other evidence collected by the investigation. The acquittal was pronounced

on 1.5.2002 by a voluminous judgment of 112 pages.

7. As facts mentioned above reveal there is no direct evidence of the offence. The investigation entirely depends upon circumstantial evidence, namely, (1) presence of blood on the wall of the Pulia read with post mortem report indicates it to be a case of homicide; (2) of the accused and the deceased having been last seen together soon before the incident; (3) existence of a motive; (4) presence of blood of the same group as of the deceased on the clothes of the accused and the samples gathered from the pillar; (5) unnatural behavior of the accused soon after the incident. The trial court held that the prosecution had been able to prove that there was a long standing friendship between the accused and the deceased but had failed to prove beyond all reasonable doubts the theory of the accused having taken an amount of Rs. 1,20,000/- from the deceased on the promise of securing appointment as Member of the Board of Revenue or to have been haggling over the return of the same money when the appointment did not come through. It was also observed that there was a delay in lodging the FIR and that the evidence of last seen together has come out to be a fabricated one. The trial court also observed that the alleged recovery of blood stained clothes of the accused at his instance was doubtful. The trial court further observed that material exhibits in the case had been handled in an unauthorised manner. Eventually the accused was given benefit of doubt and was acquitted.

8. The state has challenged the acquittal claiming that the prosecution has led enough evidence on all the points and has been able to establish a complete chain of circumstances leaving no room for any doubt regarding the guilt of the accused. As such a thorough reappraisal of the evidence on record is called for the disposal of the appeal.

9. The first thing to be proved by the prosecution is that it was an incident of murder and not that of a railway accident. The defense would have the court believe that it was a case of sheer accident or at best of a suicide. There is no theory of suicide in the case because no motive of suicide has been proved. The reason for concluding that it was a case of murder was the circumstantial evidence of blood spattered near the diagonal wall of the puliya near the railway track. The

pillar and the surrounding area where plenty of blood were seen is shown as point 'F' in Ex.PW53/M which is the site plan of the place of occurrence drawn up by Inder Kumar, SHO, GRP, Jaipur in presence of two witnesses, Anil Parikh and Gopal. This point 'F' is said to be at a distance of 9 ft. from the railway track. It is explained in the index annexed to the plan that two big stones and three small concrete stones, blood stained, were found lying near these stones and blood spots and marks of rubbing were found in the corner. Prosecution case is that existence of blood in huge quantity at such a great distance from the railway track could not have been possible if the blood had oozed from the body of the deceased on account of an accident caused on the railway track.

10. The prosecution wants the Court to infer that it was a case of homicide rather than a case of accident. The basis of the claim of the prosecution is the availability of blood at some distance from the railway track. The prosecution says that the murder was committed at the point near the wall of the over bridge which is at the distance of nearly 9 feet from the railway track. This point is shown as point F in the plan exhibit PW 53/N drawn up by PW-53. The plan is witnessed by Anil Parikh and Gopal. The plan was drawn up in the morning of the 25th of November, 1985. The plan inter alia shows the position of the dead body and the severed parts of the dead body. PW-19, Bhagwana, a gangman, is categorical that the dead body was removed by 10.30 p.m. W-20 says that he received the information from Anil at around 5.30 a.m. that something had happened to Shri Suresh Chand Gupta and, thereafter, he went to the house of Suresh Chand Gupta and then came to the railway station and saw the dead body which was covered lying outside the railway station. PW-21, Gopal, a Safai Karamchari, says that the dead body was lifted at around 6.00 a.m. (on 25-11-1985) and site plan was prepared before it was lifted and he signed the site plan. PW-53 who deposes that the dead body was still there when he drew up the plan at about 8 or 9 a.m. cannot be taken as a truthful witness. Be that as it may, going back to the plan, the point F is the place where the blood was seen. The index to the plan says as under (translated from Hindi):

"Place F is the corner of the pulia which is at the distance of 9 foot from the Delhi railway line towards east and about 1 or 1+ foot blood is lying in the distance of

about one foot towards North and 1+ towards West from the corner of the pulia and two large and three small stones stained with blood are lying and there are blood spots and signs of dragging at many places."

11. In the evidence he stated that at point F there was a pool of blood. The plan does not depict the amount of blood lying at the spot. None of the witnesses appearing for the prosecution has said that there was a "pool of blood" at the spot. PW.4 who is an expert witness and who came to the spot and collected samples of blood from the spot also does not mention that there was any pool of blood, fresh or dry, found at the spot. Although PW 53 has not been found to be a truthful witness, the fact that there was blood lying at Point F is proved by several witnesses and for the purpose of the present analysis this fact can be taken to be correct. The question that arises is whether blood at such a distance from the railway track can be found if the deceased had died on the railway track on account of impact with the train, its bumper, its wheels or with the stones lying at the track. The prosecution has not produced any witness who can depose that blood at a distance of 9 feet from the track could not be found if the injuries to the deceased were caused on the railway track. On the other hand the doctor, PW-26, Dr. Prem Parkash Khandelwal, who visited the spot soon after the accident says that if major blood vessels are cut blood can splash up to a distance of 10 feet.

12. PW 53 has depicted the dead body at point A in exhibit PW 53/A. The point A is at some further distance from the point F. It may be improbable that on account of injuries caused at point A blood can be available at point F. But as stated earlier when PW 53/A was drawn up the dead body was not at all present there. PW 53 does not explain how he discovered the place where the dead body was seen. Even if it is assumed that the dead body was found at point A it cannot be said with any certainty that the impact between the victim and the train took place at point A. It is in evidence that the frequency of trains running over the track is about 15 minutes. There is no evidence of the number of trains that may have passed on the track from the time of the impact between the deceased and the train and the time when his dead body was first seen. therefore, it is possible that several trains may have passed after the impact before the time of discovery of the dead body so that the body might have been thrown to some distance on account of

impact with the bumper of one of such a train taking it to point A. Parts of the legs of the deceased were found near the point which is at a distance of nearly 9 feet on the opposite side from point F. It is, there more, not unlikely that the actual impact took place on the track very near point F but subsequently while the parts of the legs remained between the lines the rest of body was thrown down to point A.

13. Blood is also shown and point G where there are some gravels. This point is near the railway track on the other side of point F. Near this point is point E where one of the shoes of the deceased was found. The event therefore took place between point E on the track and point A. Point F falls between these two extremities. In case the murder was committed near point F, the murderer would certainly have left the body on the track near the point F. There is no reason why he would carry the dead body up to the point A or up to the point E for that would not only require more time but will also expose the killer to the risk of being spotted by some railway employee or the other. In case it was an accident, and the same took place on the part of the track near point F blood could splash to point F and the same could be noticed next morning. Hence we are satisfied that the presence of blood at point F does not necessarily indicate that it was a case of murder. A very important aspect of the case which is crying for an Explanation is how the two could reach the corner formed by the pillar and the diagonal wall. The charge sheet says "That it has transpired during investigation that accused Gurpal Singh brought deceased Suresh Chand Gupta in the corner formed by the pillar and diagonal wall of Ajmer Pulia towards Jaipur Railway Station on the pretext that while he was urinating he lost his keys so he called the deceased there." This part of the charge sheet is nothing but a piece of creative imagination on the part of the investigation. The prosecution alleges that having thus secured the presence of the deceased at the isolated place, killed or injured him.

14. The prosecution/appellant strongly relies upon the post mortem reports, Ex.PW-20/A and Ex.PW-7/A say that the injury on the head of the dead body could be caused by an impact with a stone and further that the injuries were ante mortem. In our opinion, this observation in the post mortem reports does not improve the case of the prosecution at all. Admittedly, stones were present on the

railway track as also near point 'F'. In the case of an accident also the head could have been hit by the stone lying near the railway track and in that case also the injury would be ante mortem. Further there is no evidence which can say that the injury on the head could not have been caused by an impact with the bumper of a railway engine. Further it was not only the head which got injuries. As mentioned earlier, the legs of the deceased got amputated probably under the wheels of the train. One hand of the deceased also got crush injuries. There are other injuries depicted in the post mortem report. In total there were 12 injuries in all identified in the post mortem examination. As per the second post mortem, which is accepted by both the sides, the cause of death is coma as a result of injuries to brain and skull and cumulative effect of all ante-mortem injuries.

15. The crush injuries on the lower limbs (which had been altogether severed from the body), the crush injuries of upper limbs and injuries on the chest were also found to be ante mortem. This signifies that the deceased was alive when the actual impact between the train and the man had taken place. The post mortem reports, Ex.PW-20/A dated 25.11.1985 and Ex.PW-7/A dated 26.11.1985, are, therefore, not inconsistent with the theory of accident.

16. The next step for the prosecution is to prove that the accused and the deceased were seen together near the place of occurrence and soon before the occurrence. The witnesses who have come to depose that the accused was last seen with the deceased are W-7, Surender Kumr Chajjer, PW-10, Kidar Narain Mathur, PW-11, Sita Ram Soni, and PW-35, Madan Gopal Sharma.

17. PW-7, Surender Kumar Chajjer, is an Advocate of Jaipur who was known to the deceased as well as to the accused. He deposed that on 24.11.1985 at around 6.30 p.m. when he was going to Jaipur Railway Station to see-off his brother's wife and children, he saw the accused and the deceased on a two-wheeler scooter at a distance of two furlong when they were coming from the side of the railway station while he was going towards the railway station. The deceased was then driving the scooter while the accused was sitting on the pillion. He says that he waived his hand in order to wish them as their scooter and his car crossed each other. In cross-examination, he disclosed that he had seen the deceased on a scooter

when he was wearing a dark suit (nearly black and that subsequently when he saw the dead body of the deceased in the hospital he was not having any clothes on him. He further says that the members of the bar had put in an application protesting against the burning of the clothes of the deceased. In his examination-in-chief he further said that when he learnt about the death of S.C. Gupta from the President of the Civil Court Bar, Shri Sajjan Raj Surana, he told him about his seeing the deceased and the accused on the previous day. He along with the resident of the Bar and other members went to the accused and inquired of him about his meeting with the deceased on which the accused first denied having seen the deceased on the previous evening but subsequently conceded to have been with the deceased in the previous evening. It may be added here that the members of the Jaipur Bar Association in their representation to the Chief Justice only alleged that the accused had told them that he had met the deceased at about 5 p.m. but later admitted that it could have been at 6 p.m. In cross-examination he failed to remember if he had told the investigating officer about the names of the other members of the bar present during the conversation with the accused. The statement under Section 161 Cr.P.C., Ex.PW7/B, did not carry the names of the members whom he named as persons accompanying the President on the occasion. In this statement under Section 161 Cr.P.C. it is also recorded that the accused had told the witness that he and the deceased were on their way to Bhagat Vatika on that evening. In his cross-examination, however, he says that he did not disclose any such fact to the investigating officer. He did not remember the colour of the scooter nor did he remember its number. He was, however, sure that it was the deceased and the accused whom he had seen on the evening of the 24.11.1985, although the time was evening and the sun was about to set. Having thus noticed the poor quality of the testimony of the witness, we proceed to examine the evidence of the other witnesses.

18. PW-10, Kidar Narain Mathur, said that he could identify the accused, that he had gone to House No. 2, Hathroi, Ajmer Road, Jaipur where Ramesh Chand Sharma and Deepak Sharma had been running the business of property dealers under the name and style of M/s. Build Macho, that an employee of that concern named Sita Ram Soni was also sitting there and that while he was about to leave at around 7.30 p.m. the accused had come to that place. He went on to say that

the accused had enquired about Ramesh Chand Sharma and Deepak Sharma and on knowing that none of them was expect to return to the office soon, he had left. He further said that when he had come out of the office to see off the accused, he found another person near a two-wheeler scooter in a dark coat and a neck tie, with whom the accused had talked and thereafter both of them had walked towards Ajmer Pulia leaving the two-wheeler scooter at the same spot. He identified the scooter in court which was Ex.1001. He identified the deceased as the other person in the photographs, Ex.PW-1009 to PW-1012. He said that Sita Ram had told him on that day that accused was a judicial officer. This witness was not previously known either to the accused or to the deceased and he is clearly a chance witness. His veracity is further shaken by the fact that before he saw the photographs he had read in the Rajasthan Patrika on 25.11.1985 that an Advocate had committed suicide near Ajmer Pulia and that later it was also printed in the newspaper that the lawyers of Jaipur had gone on a strike and one Magistrate was involved in the crime and that he thereafter immediately recollected that accused and the deceased may have been the same, whom he had seen on the evening of 24.11.1985. He said that despite this he had not talked to Sita Ram about his suspicion and had not talked to the police in this regard and had not made any inquiries. He insists that it was the deceased whom he had seen on that day as despite nightfall there was a lamp post nearby. After the date of incident, the scooter was shown to him only in court and despite that he unhesitatingly identified the scooter. He admits having seen the two together from a distance of nearly 200 yards. The statement under Section 161 Cr.P.C. does not give any description of the person, supposedly the deceased, with whom he saw the accused going away at around 7.30 p.m. on that evening.

19. PW-11, Sita Ram Soni, is produced to corroborate PW-10. He says that as he came out to see off the accused at the office of Build Macho Pvt. Ltd. he saw one person standing near the scooter, that the accused had gone up to the scooter and talked to that person for about 2 minutes and thereafter both of them walked towards Ajmer Overbridge which was at a distance of about 100 sq. yards from the place where the scooter was parked. He also identified the deceased in the photographs shown to him. He further stated that the scooter had been left there for 2-3 days. In cross-examination he admitted that the fact of the scooter lying

there for 2-3 days was told to him by a watchman only meaning thereby that he had not deposed of this fact from his personal knowledge. He had not described the other man in his statement given to the police. He denied any recollection of having seen the photograph of the deceased in the newspaper. He did not recollect if PW-10 had visited the office of M/s. Build Macho on 25th, 26th or 27th November.

20. The contradiction between the testimonies of PW-10 and PW-11 are quite clear. PW-11 has failed to confirm the presence of PW-10 on 24.11.1985 although PW-10 says that he had in fact had a conversation with PW-11 and it was PW-11 who told him that the accused, i.e., the person who visited the office of M/s. Build Macho was a judicial officer. Had PW-11 seen the accused going up to the scooter and thereafter going ahead with the deceased leaving the scooter behind, he would have deposed of his own knowledge having seen the scooter at the same place for three days. On the contrary, he deposed of this fact on information received from the gatekeeper. Had he actually been the witness to the fact of having seen the accused with the deceased, he would have been one of the first to point out that the scooter soon after the news of the incident had been carried by the newspapers and the photograph of the deceased had appeared in them.

21. The evidence of PW-10 and PW-11 have to be read with evidence of PW-35, Madan Gopal, the owner of Hotel Hansraj. In one room of this hotel, the deceased had his office. PW-35 says that he saw both the accused and the deceased coming to the office in the evening. In case the evidence of PW-10 and PW-11 is believed, the deceased and the accused proceeded towards the Ajmer Pulia, leaving the scooter in front of the building housing M/s. Build Macho. The plan, Ex.PW-53/M shows that the Station Road, in which Hotel Rajhans is situated is on the same side as the Ajmer Pulia when seen from the office of M/s. Build Macho. PW-35 testifies that deceased came to his office in the evening and he also saw the deceased leaving the office. He is, however, categorical that the deceased left the office alone. On being questioned by the prosecution whether he left by scooter, PW-35 says that the place where the deceased parked his scooter was not visible from his seat. Having got such answer, the learned Public Prosecutor did not think it wise to ask about the time when the deceased closed his office for

the day and left.

22. The testimony of PW-35 is the death knell to the story of the prosecution that the deceased and the accused ever were last seen together soon before the incident. PW-35 is an important witness of the prosecution. In the first place he is not a chance witness. Secondly he is friendly and sympathetic towards the deceased and his family as he has also been the prosecution witness to corroborate PW-1, the father-in-law of the deceased, produced to prove the alleged motive behind the killing. His testimony that the deceased left his office alone on the evening of the 24.11.1985 destroys the prosecution theory of the accused being last seen with the deceased soon before the death.

23. The next leg of the prosecution case is that following a disclosure statement the accused got recovered pieces of his own clothes with stains of blood which he burnt under bushes of 'Aak' or 'Aakra' near Shah Nursing Home. The disclosure statement is Ex.PW-52/B, which is as under:

"Disclosure statement under Section 27 of the Evidence Act - Case No. 130/85 under Section 302 IPC, P.S. G.R.P., Jaipur.

Date: 21.12.1985

At this time i.e. at 9.15 a.m., Accused Shri Gurpal Singh who was arrested and is presently under custody, voluntarily disclosed to me, the Additional Superintendent of Police - Investigating Officer, that:

"the clothes-pant, safa, coat, jacket, etc., which I was wearing at the time of offence, also got stained with the blood of deceased Suresh Gupta. These clothes i.e. steel coloured pant with self design and light embroidery and lining, one naswari coloured safa, coat and jacket (Terewoolen), were burnt by me at a dirty place near Shah Nursing Home, Kabir Marg, near the Aak. I can point out the said place and get the ash of burnt clothes recovered."The aforesaid information was recorded under Section 27 of the Indian Evidence Act. Read over and signed.

Sd/- Gurpal Singh

Sd/- [Ganpat Raj Mathur]

Addl. S.P., [Vig]

CID [CB]

Jaipur

Time 9.15 a.m."

24. All that can be proved out of the disclosure statement is what is discovered following the disclosure. The investigation claims to have recovered pieces of burnt clothes from near the Aak. The recovery of the burnt pieces of clothes is proved by PW-13, PW-14 and PW-52. PW-52 was the officer-in-charge of investigation at that time. The disclosure statement was recorded on 21.12.1985, nearly one month after the incident. PW-52 deposes in detail how he organized his visits to the place where the burnt pieces of clothes of the accused were to be found. He got a gazetted officer, Shri Sat Prakash Malhotra, an Asstt. Engineer (Irrigation) specially deputed for the purpose. He says that Inspector Sunder Lal brought Hamid Gaur, PW-14, to be a witness to the recovery. He also ensured a Serologist to accompany him. A photographer, Manohar Singh, Inspector Sunder Lal, PW-14 Hamid Gaur, another witness were also included in the raiding party. He says that the raiding party so formed along with the accused proceeded to the intimated spot in a Govt. vehicle up to Banni Park, near Shah Nursing Home and parked the vehicle there. Accused then led the raiding team to a place near the Shah Nursing Home from there to a Aak plant and pointed towards the ashes and half burnt clothes. The ashes were immediately examined by the I.O. and the Serologist. The button and hook pin were allegedly collected from the spot which were produced in court as Ex.P-1043. One front pocket of a pant, a piece of turban, a portion of the button hole of a jacket were also allegedly recovered which were shown as Ex.P-1023 to Ex.P-1025.

25. PW-52 made one parcel of his collections from under the bushes of aak. He says:

"Ex.P 1023 to P 1025(front pocket of the pant, a piece of turban and a third portion of button hole of a jacket) were put by us in one white paper; and the other items as above i.e. Semi-burnt pieces of clothes in another white paper; the hook-pin, Ex.P- 1043 in a brown envelope. We then put all these three packets containing button hole, hook pin and hook collectively in three packets in one parcel Ex.P-1022 and sealed the same with the seal.

This packet was marked as mark-A by me and the same was signed by me, accd. and other witnesses PW 13 and PW 14. The semi-burnt pieces of plant of Aak and the ashes were put by me in a parcel mark-B."

26. What was found by the Forensic Science Laboratory of Jaipur as mentioned in its report filed by the prosecution Ex.PW-44. Relevant for the present are as under:-

Parcel	Packet	Exhibit	No.	Details	of
B2	Ash and pieces of aak	A1	Burnt	pieces	of
			the	branches	of

27. Now so far as packet `A' is concerned, the same should have included several items namely (1) Ex.P.1023-1025 i.e. front pocket, button hole and a part of turban, (2) semi burnt pieces of clothes; and (3) the hook pin etc. Ex.P-1043. The Serologist opened the parcel but found only the burnt pieces of clothes. There is no mention that the hook pin, button and a hook which had been collected in a brown envelope or the three items, namely, the front pocket of a pant, a piece of turban and a button hole of the jacket were also there. PW-44 himself says that from the parcel `A' only one piece of cloth was found which is again quite contradictory to the testimony of PW-52.

28. After examination by the Serologist, the items were forwarded to Physicist for physical analysis. In Ex.1 the items are described as semi burnt and partially burnt piece of majanta coloured cloth; (ii) semi burnt and partially burnt small pieces of different types of clothes including aster, bukram(s) stitched together, (iii) charred materials along with fragments of grass, cloth etc. and (iv) charred and deformed

buttons apparently made of plastic, metallic hook, loop etc., which have been marked a Ex.1/1 , 1/ 2, 1/3 and 1/ 4 respectively. How the description of Ex.1 has changed from the report of the Serologist to the report of the Physicist has not been explained. Further it is not mentioned as to how the front pocket of the pant, the button hole and piece of turban went missing. Since the parcel marked `A' contained three definite packets, two of white papers and one of brown envelope, the packet containing the button hole, the piece of turban and the front pocket of the pant were distinct and should have found mention in these two reports specifically. This gives rise to a grave suspicion that the collection of exhibits were subjected to unauthorised handling at some time after their collection and before their submission to the laboratory.

29. The manner of recovery of the aforesaid articles leaves much to be desired. The evidence of recovery is given by PW-13 and PW-14. PW-13 was Engineer of the Irrigation Department. He does not corroborate the investigating officer to the extent of his being part of the raiding party leaving the police station. He says that he was picked up from his office at around 12.30 Noon. He has said that the place from where the recovery was made was an open space near a thoroughfare. He said that it was possible that in the bushes cowdung and other dirty stuff must have been lying and that the residents of the houses nearby may have been throwing their waste on that spot. Even on that day, the witness says the usual dirty stuff was lying although he could not remember if it included peeled vegetables, empty tin boxes etc. He did not notice nor did he know if there were burnt piece of clothes in the nearby bushes. He did not know if the sweepers may have collected the stuff and burnt the same on that very place. He said that there was no obstruction for anybody in approaching the spot.

30. Further he says that by the time he reached the Shah Nursing Home other witnesses had already reached. About seven policemen were present in the van in which the accused had been brought. He could not say if before he reached Shah Nursing Home the police had already visited the spot near that plants or if the police was already guarding the place some 24 hours before he reached the place. He could not say if the police had already set certain plants on fire at the place from where the recovery had been affected or that they created the scene

for the recovery of the burnt clothes. Admittedly, no pointing out memo was prepared.

31. The doubts raised in respect of manner of the recovery gets further confirmed by PW-14 who says in cross examination (when he was recalled for this purpose on 16.4.92) stated that garbage of Shah Nursing Home was lying in a burnt condition at that place and that one of the five or six persons at the spot was making the fire cold by shaking the garbage with his danda, that the accused was brought to that place about half-an-hour thereafter, that those persons had collected some burnt pieces from the guard age. He further revealed a fact which renders the collection of the material totally unworthy of any value. He said that Shah Nursing Home threw its garbage at that place and that he did not know if they also threw blood stains patti etc. at that place. He, like PW-13, says that the place from where the recovery was made was a public place and was open to all without any hindrance. According to him the garbage was already burning when he reached there. Thus, PW 13 and PW 14 read together clearly show that the alleged recovery of articles is a made up event and not a discovery made pursuant to a disclosure statement.

32. These facts put a question mark on the genuineness of the story of the recoveries made. If the police had already known the spot where the aforesaid exhibits were to be found, the discovery was not a consequence of the disclosure statement and, therefore, the entire disclosure statement becomes inadmissible in evidence. The circumstances of recovery in this case is somewhat similar to recovery in the case of *Krishan Mohar Singh Dugal v. State of Goa*; : 2000 CriLJ18 . It was a case of recovery of charts. Evidence showed that police had already been informed of the place where charas was kept, viz., the stem of a coconut tree, an open space accessible to all. It was held that it cannot be said that it was the accused who concealed it and it was found only on the basis of disclosure statement.

33. On the same day i.e. 21-12-1985, the Investigating Officer made some further recoveries from the spot near the Shah Nursing Home. The police proceeded to house D-124, Kabir Marg of the accused. The accused was living in the garrage

portion of the house which had been converted into a room. The room was searched and from the wall almirah in the front side wall of the room, a white colour saffi (patti) usually worn under the turban kept in an attachee was recovered. This patti along with certain papers of a society recovered from the left side of the almirah were seized vide seizure memo Ex.PW 13/B. The patti is Ex.P 1028. The police party then went to the house in front of D-124. This house bore house No. D-121 and the accused allegedly had been living in that house up to November, 1985. That house was searched. On the tiles above the wash basin they found some stains. Similar spots were seen on the floor of the bathroom, at some places in the lining of kota stones. The blood stains were removed by Inspector Sunder Lal with the help of cotton and were placed in two separate glass bottles and sealed.

34. The Serological report of the patti described it as a piece of cloth. The Serologist found some blood stains on it. However, the same had disintegrated and no report could be given about them. So far as the blood collected from the toilet of house No. (sic)-121 is concerned, two samples did not produce any result except the presence of blood. Blood on one cotton swab the blood was found disintegrated and the blood in the other insufficient for any test. It may be stated that the aak and the ash collected earlier did not have any blood. The burnt pieces of clothes were found to have some blood of 'A' group.

35. The Physical Analyst on examination of the articles seized from near the aak reported that the material were freshly burnt although no information could be offered in respect of precise date of burning. The prosecution case of recovery of patti with blood stains is highly improbable. If the accused had burnt his jacket, pant, turban etc. there is no reason for him to retain the patti which was, comparatively speaking, an insignificant part of his dress and of much lower value than that of those whom he had burnt. Further it is very unlikely that the accused would preserve the patti carefully in an attachee and to have kept the attachee inside the almirah. Further the patti being white anybody, including the accused, would have seen the presence of blood on it. With so much of time available with him, that is nearly one month, he would certainly have disposed it of. It appears that the prosecution in its zeal to fix the accused created the story of recovering a

blood stained patti from the house of he accused.

36. Similarly, the report of the Physical Analyst showing that the articles were freshly burnt also raises a doubt about the prosecution theory that those were parts of the clothes of the accused burnt by him after the commission of murder. It is in evidence that there had been rain in that area in the days prior to the recovery. There is no mention in the report of the Physical Analyst that the exhibits sent had received any rainfall or whether they were wet or semi wet or dried up parts of pieces of burnt clothes. There is no mention that these pieces had received any water on them after they were burnt. The prosecution has not made any effort to call the expert, namely, Dr. B.B.Arora in the witness box and to clarify the position. The discrepancy the before goes in favor of the accused. As mentioned earlier, it was suggested to PW-13 that the local sweeper collected garbage in that spot and burnt the same. This suggestion could not be denied by PW 13. In this situation, the evidentiary value of the collections made from near the bushes is almost becomes negligible.

37. What is more important is that the prosecution has no evidence whatsoever to prove that the pieces of clothes recovered including that of part of turban, front pocket of a pant or the button hole were parts of any dress wore by the accused. The portion of the disclosure statement admissible in evidence is that the accused burnt clothes near the spot. The portion of the statement namely that he wore the clothes on the date of the incident or that those clothes had any blood stains were not discovered pursuant to the disclosure statement and, therefore, not admissible in evidence. These two factors, therefore, have to be proved by other evidence which is hopelessly missing in the case.

38. The story of recovery of blood stains from the toilet taken in the cotton swab is equally improbable. It is an admitted fact that the bottles containing the cotton swabs were never entered in the malkhana register. Accordingly, there is no evidence to connect the samples sent to the Laboratory with the sample collected from the toilet. Thus, the recoveries made from under the bushes and recoveries made from that attachee kept in his almirah as well the recovery from the toilet fail to connect the accused with the crime of murder.

39. Another important discovery of fact claimed by the prosecution is the recovery of shoes and socks from the accused. PW-23 is the witness who has been produced to prove the recovery of shoes. PW-23, R.K.Ajwani, is an Enforcement Officer, Foreign Exchange Regulation Act. He joined the investigation on 30.12.1985. He along with Ms. Sneh Lata was called by his Assistant Director at around 3'o clock and was directed to go to the office of the CBI and contact Mr. M.C.Sharma, DSP, CBI. He says that he along with Ms. Sneh Lata went to the office of CBI where he found the accused in custody of Mr. M.C.Sharma, DSP. Mr. M.C.Sharma was interrogating the accused. He says that in his presence the accused disclosed to the police that the shoes which he was wearing were the same which he was wearing on 24.11.1985 and that he had washed away the blood stains from the shoes. Thereafter the shoes were taken in possession vide the seizure memo prepared at the spot. The disclosure statement is Ex.PW-23/A and the seizure memos Ex.PW-23/B. Apart from the shoes a pair of socks of brown colour were also seized which were taken into custody vide Ex.PW-23/B. In cross-examination the witness says that there were no blood stains either on the shoes or on the shoe laces or on the shocks. These articles were sent to the forensic laboratory and the report in respect of these is Ex.PW-55/F dated 31.12.1985. As per this report the blood was detected on Ex.1/a which is a pair of shoes with laces. Blood stains on the left shoe lace was opened to be human but the material was found to be insufficient for examining as to whether the blood group was A, B or O. Traces of blood on the right shoe lace were insufficient for any examination and, therefore, the report does not even say that the blood was human. Unfortunately, for the prosecution the laces were not produced before the court during trial when PW-23 was in the box. What was shown to him was 2 inches of one lace. There is absolutely no evidence as to what happened to the rest of the to laces. The version of the prosecution that the laces were altogether consumed in course of examination is totally unbelievable. The prosecution has not made any effort to obtain any such evidence from the CFSL which gave this report. Hence no reliance can be placed on the evidence of the prosecution regarding finding any blood on the shoe lace. Another important thing in respect of seizure of the shoes and the laces is that after the same was seized and sealed in a parcel the seal was retained by the investigating officer and he did not hand over

the same to anyone in order to prevent any tampering with the seal.

40. So far as the disclosure statement in respect of accused wearing the same shoes on the day of the incident as well as on the day they were seized is concerned, the same is entirely inadmissible in evidence being hit by Section 26 of the Evidence Act. the statement did not lead to any discovery. The shoes that he was wearing were seized for the purpose of ascertaining whether there were any blood stains on them. His statement that he was wearing the shoes on the date of the incident is not something that is discovered pursuant to the disclosure statement. therefore, the disclosure statement itself is inadmissible in evidence.

41. The alleged fact that the accused was wearing the same shoes on the date of the incident has to be proved by independent evidence. The prosecution has made no effort to do so. The shoes were taken off from the feet of the accused more than a month of the incident and there can be no presumption that he wore the same shoes on the relevant date. Thus disclosure of blood on one shoe lace, even if presumed to be correct, is of no significance at all.

42. This is a case of circumstantial evidence. The settled law is that in the case of circumstantial evidence, the chain of circumstances should be unbroken and the circumstances proved must be consistent only with the guilt of the accuse and totally inconsistent with his innocence. This principle has been reiterated umpteen number of times. For the present we may quote from the judgment of Supreme Court in the case of C. Chenga Reddy and Ors. v. State of A.P. : 1996 CriLJ3461 "In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence."

43. In the present case, the major links between the alleged offence and the accused are entirely non-existent. The above discourse shows positively that the prosecution has failed at every step to bring home the guilt of the accused. The first step was to prove that it was a case of murder rather than a case of accident.

The prosecution has failed to prove beyond reasonable doubt that it was a case of murder and not that of an accident.

44. The second step was to prove that the accused and the deceased were last seen together soon before the incident. The prosecution has also failed to prove this fact beyond reasonable doubt. Apart from what has already been stated above an important fact in this case is that post-mortem report along with the CFSL report, Ex.PW-34/DA proves existence of alcohol in the stomach of the deceased. This tends to support the accident theory.

45. The third step was to prove that the prosecution had recovered incriminating articles, either following the disclosure statement or on its own initiative. The prosecution has failed even at doing the same. In this situation, even if the prosecutions able to prove existence of motive, the same by itself would not be of any value. The trial court has disbelieved the story of motive. However, for us it is not necessary to go into those details.

46. The subsequent conduct of an accused can also be an important piece of evidence in a case of circumstantial evidence. In the present case, the subsequent conduct is not so conspicuous as can immediately raise a pointing finger. One subsequent conduct is lack of exhibition of sorrow by the accused on the death of his friend, the deceased. The other is the alleged denial by the accused of his having seen the deceased on the previous evening. The second point has already been discussed in detail while considering the evidence of the accused having been last seen with the deceased. So far as the other question is concerned, it is a matter of subjective assessment and not much reliance can be placed on it. We, therefore, refrain from going into these aspects. The prosecution has failed to prove firstly that there was any murder and secondly that the accused is the one who committed it. There is absolutely no merit in the appeal and the same is accordingly dismissed.