

Satya Narain Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-01-2003

Reported in : II(2003)DMC621; RLW2003(4)Raj2711; 2003(3)WLC255

Judge : Shiv Kumar Sharma and; Fateh Chand Bansal, JJ.

Acts : Indian Penal Code (IPC) - Sections 302

Appeal No. : D.B. Criminal Appeal No. 405 of 1997

Appellant : Satya Narain

Respondent : State of Rajasthan

Advocate for Def. : S.S. Rathore, Public Prosecutor

Advocate for Pet/Ap. : R.S. Chauhan, Adv.

Disposition : Appeal dismissed

Judgement :

Sharma, J.

1. This appeal unfolds a tragic incident where on the allegation of murder of his wife Nirmala @ Rekha, the appellant has been convicted by the learned Special Judge, Dacoity Affected Area and Additional Sessions Judge Karauli vide judgment dated October 29, 1996 under Section 302 IPC and sentenced to suffer

imprisonment for life and a fine of Rs. 1000/- and in default to further undergo simple imprisonment for six months.

2. Coming to the broad facts of the case it may be indicated that on March 11, 1995, the appellant lodged a report Ex. IPC 40 with the Police Station Karauli stating there in that on the said day he left his village Bhuapura in District. Murraina (M.P.) by a scooter along with his wife Nirmala @ Rekha for going to Kaila Devi Temple in Karauli. Around 8.30 P.M. while he was descending on the slope of a pullia suddenly someone shouted to stop. He slowed down his scooter as he was afraid. When he tried to accelerate the scooter, one of the person shouted, 'kill them'. He had seen one person standing near the road and two others near the Nalla. They had covered their faces with cloth. Suddenly the person who was standing near the road fired a shot which hit his wife on the left side near her ear. Consequently his wife expired on the spot. Leaving the scooter and dead body of his wife at the spot he rushed to lodge the report. On the basis of the said report a formal FIR bearing No. 82/95 was chalked out for offence under Section 302 IPC. and the investigation commenced. Site was inspected. Autopsy on the dead body of the deceased was conducted. The Investigating Officer in the course of investigation found that the appellant himself was involved in the crime, therefore he got the appellant arrested and on the basis of appellant's disclosure statement recovered Katta (fire arm) allegedly used in commission of offence. On completion of investigation charge sheet was filed. In due course the case came up for trial before the learned trial judge who framed the charges under Sections 302 and 304B IPC against the appellant. The appellant the charges and claimed trial. The prosecution in support of its case examined as may as 31 witnesses and produced 52 documents and 9 articles. In the statement under Section 313 Cr. P.C. the accused appellant claimed innocence and examined three defence witnesses. On hearing the final submissions, the learned trial judge convicted and sentenced the appellant as indicated here in above. Since the appellant was convicted under Section 302 IPC the learned trial judge did not incline to punish him under Section 304 R IPC.

3. Admittedly there is no direct evidence to connect the appellant with the guilt and the case is based on circumstantial evidence. The law relating to circumstantial

evidence in clear unmistakable terms has been laid down by their Lordships of the Supreme Court in *Tanviben Pankaj Kumar Divetia v. State of Gujrat* (1). It was indicated thus : (Para 45)

'The principle for basing a conviction on the basis of circumstantial evidence has been indicated in a number of decisions of this Court and the law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and circumstances so proved must form a chain of events from which the only presistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. This court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The court must satisfy that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot, in any manner establish the guilt of the accused beyond all reasonable doubts. It has been held that the court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and legal proof. It has been indicated by this court that there is a long mental distance between 'may be true' and 'must be true' and the same divides conjectures from sure conclusions. .

4. Bearing these principles in mind we propose to examine each set of evidence and to see whether taken together they are sufficient to raise inference that Rekha @ Nirmla was done to death by the appellant.

5. The Circumstances which the prosecution presented can be recast as follows:

(i) The deceased was last seen in the company of the appellant.

(ii) The deceased died due to fire arm injuries and the fire arm allegedly used in commission of offence was recovered at the instance of the appellant.

(iii) The appellant had a motive to kill his wife. As his greed of dowry was not fulfilled the appellant eliminate his wife.

(iv) From the site plan itself it appeared that the appellant lodged a false report.

6. The learned trial judge has relied upon the following evidence to convict the accused appellant-

(i) In the FIR the appellant admitted to go to Kaila Devi Temple on the scooter with the deceased and she died of fire arm injury received by her while sitting on the rear seat of scooter. Thus this circumstance was found established that immediately before her death deceased was in the company of the appellant.

(ii) As per post-mortem report (Ex. P. 35) and the statements of Dr. Nand Lal Sharma PW.15, Or. Bhagwan Singh PW.16, and Dr. M.L. Kawat PW. 31, the cause of death of the deceased was antimortem fire-arm injuries.

(iii) From the signs appeared in the site plan the facts stated in the report by the appellant were found false.

(iv) The firearm which was used in commission of offence got recovered at the instance of the appellant.

(v) As per the statement of Narendra Singh (PW.19). Udal Singh (PW.20) and Ramavtar Singh (PW.26) the appellant had greed of dowry and because of lack of dowry he killed his wife.

7. Mr. R.S. Chauhan, learned counsel appearing for the appellant vehemently canvassed that two views of evidence are possible in the instant case but the learned trial judge has failed to apply the legal principle that in case two views of the evidence are possible then the view in favour of the accused should be accepted. The investigation was highly unfair and the appellant was rope in the case. The recovery of katta at the instance of the appellant is highly doubtful. Moreover since the report of the Ballistic expert was indefinite, therefore the recovery does not connect the appellant with the offence. The learned trial judge has himself supplied missing link in the circumstantial evidence through sheer

surmises and conjectures. He has convicted the appellant not on the basis of proof, but on the basis of suspicion. The learned trial judge has failed to appreciate that PW.19, 22, 23 and 26 were highly interested witnesses and their statements were full of exaggerations and contradictions, therefore their statements could not have been relied upon. Mr. Chauhan further canvassed that PW.2 and PW.3 substantiated the case of the defence. Recovery of shirt allegedly worn by the appellant also corroborates the defence version and Kundan PW.9 knocks the bottom out of the prosecution case with regard to the recovery of Katta at the instance of the appellant. Tika Ram PW.2, who is an independent witness, deposed in his cross examination that the place where the occurrence took place is the jungle, and often even previously many a times robbers had stopped trucks and buses and looted them. This statement is further corroborated by Laxman Meena PW.3 who stated that there had been incidents of robbing trucks at the place of the incident. Another independent witness Amrit Lal (PW. 10) in his cross examination deposed that at the place of incident similar incidents have taken place and the robbers have robbed and assaulted people on earlier occasions. These witnesses were not declared hostile, but their statements were overlooked by the learned trial judge.

8. The learned counsel further urged that the appellant is not a resident of Karauli and thus not familiar with the area. Kalyan Prasad PW.13 clearly stated that the man and woman came on a scooter asked as to how far Karauli and temple of kaila Devi were. Therefore the case of the prosecution that the appellant had intentionally brought his wife to the place of occurrence and killed her at that very spot which was notorious for robbery and assault is unsubstantiated. In fact, the statements of PW.2, PW.3 and PW.10 support the case of the appellant that robbers attacked him and his wife and consequently his wife died. Their statements singularly point towards the innocence of the appellant. The learned trial judge has also ignored the conduct of the appellant immediately after the incident. According to Tika Ram PW.2 the appellant embraced his dead wife and started crying and was nervous. In his cross examination he stated that the appellant accused requested that the body be carried to the well otherwise he himself will go and jump in the well. Laxman PW.3 further corroborates testimony of PW.2 when he deposed that the appellant was crying when he saw the dead

body of his wife. According to be in a shocked condition on sudden death of his wife and like a normal human being he expressed his desire to die with his wife because of her sudden death. The appellant was crying like a normal human being on sudden demise of his wife. Therefore his immediate conduct after the occurrence points towards his innocence and is inconsistent with his guilt.

9. The learned counsel further contended that even the Investigating Officer Dinesh Vashista PW.18, stated in his cross examination that when the appellant came to lodge the FIR, there was nothing unusual in his behaviors to arouse his suspicion that he was the culprit. He further stated that the appellant was with the police throughout the investigation right from March 11, 1995 till his arrest on March 13, 1995. This circumstance is also consistent with the innocence of the appellant. In case the appellant was the real culprit he could have abandoned his wife's body at the lonely place in the dead of the night and could have run away. Instead the appellant rushed to the nearest farm and sought the help of the people of the locality. Therefore his conduct immediately after the incident clearly reveals his innocence and does not point towards his guilt. There is an overwhelming evidence on record that the appellant was attacked by unknown robbers whose faces were masked and that his wife was killed by one of the robbers. Despite this evidence being on record, the learned trial judge has not given the benefit of this possible view to the appellant.

10. The learned counsel further, urged that unfair investigation was conducted by the investigating officer to succeed in solving this case. It is indeed common knowledge that in case there is increase in crime, the SHO can be hauled up by the authorities for his inefficient handling of law and order situation. Therefore in order to save his own skin the Investigating officer conducted a most unfair investigation in the instant case. The unfair investigation is obvious from the fact that the confessional statement of the appellant was recorded by the police in a cassette while he was in police custody. Ex.P/2 is the recovery memo of the cassette about which Ram Swaroop PW.1 clearly stated that when the police recorded the confessional statement the appellant was in the police custody. Both PW.18, the investigating officer and Satya Narain Khinchi PW.30, who was Dr. S.P. at that time recorded the confessional statement of the appellant in a

cassette, were well aware of the bar contained in Section 25. Confessional statement was forced and given under duress cannot be ruled out. Even the learned trial judge concluded that the investigation is highly unfair, despite such a conclusion the learned trial judge convicted the appellant.

11. Learned counsel next contended that recovery of katta at the instance of the appellant could not be established beyond reasonable doubt and the prosecution has failed to give any explanation as to where and how the sealed packets were kept for three days. Thus the possibility that the sealed packets were tampered with can not be ruled out. The reports of Ballistic Experts do not connect the appellant to the offence. But the learned trial judge himself supplied the missing links in convicting the appellant. The conviction of the appellant is based on suspicion and the same is not sustainable. Learned counsel in support of these submissions placed reliance on *Tanviben Pankaj Kumar Divetia v. State of Gujarat* (supra), *Sudama Pandey v. State of Bihar* (2), *Kanhai Misra v. State of Bihar* (3), *Pawan Kumar v. State of Haryana* (4), *Madan Lal v. State of Rajasthan* (5), *Dharanjaya Reddy v. State of Karnataka* (6), *Babu Lal v. State of Rajasthan* (7), *Husan Murtaza v. State of Haryana* and *Rang Bahadur Singh v. State of U.P.* (8).

12. Per contra Mr. S.S. Rathore learned Public Prosecutor supported the findings of the learned trial judge and urged that each and every incriminating circumstance has been clearly established by reliable and clinching evidence adduced by the prosecution. The circumstances so proved formed a chain, of events from which the only irresistible conclusion about the guilt of the appellant can be safely drawn and no other hypothesis against the guilt is possible. The appellant eliminated his wife in a calculated manner. The site plan itself shows that it was appellant who first got his scooter halted by the side of the road and after firing a shot at his wife, slowly pushed the scooter to the road, to establish the false story that some identified robbers with covered faces shorted at them and killed his wife. As ornaments were found intact on the dead body of the deceased, the learned trial judge rightly disbelieved the story concocted by the appellant. .

13. On a close scrutiny of the material on record, we have noticed following admitted facts :-

(i) As per report Ex. p. 40 lodged by the appellant himself, the appellant and the deceased were together at the time of incident. The appellant was driving the scooter and his wife Nirmla @ Rekha was sitting on the rear seat.

(ii) Nirmla @ Rekha died on account of injury caused by firearm.

(iii) Gun shot was fired at a short distance which hit Nirmla @ Rekha on the left side near her ear but the appellant did not receive any injury although both were sitting very close to each other on a running scooter.

14. As per post mortem report Ex. P. 35 of Nirmla @ Rekha received following antimortem injuries-

(i) Oval fire armed wound of Entrance 2.1/2 cm. x 2.1/2 cm. x skin-Muscle and bone deep on left side of Neck 2cm below left Ear Lobule and below Left Angle of mandible, Left side of face, with collar of abrasion around the wound with blackening, Tattooing, through and through muscle side vascular deep, with fracture of 2nd cervical vertebra, which injuring to cervical spinal cord, with bleeding and clots with integrated margins, straightly in direction.

(ii) Irregular fire armed wound of Exit 4 c.m. x 4 c.m. in Right side of Neck. Everted margin 8 cm. below Right nostril Region, Skin, muscle and bone deep through and through with fracture of 2nd cervical vertebra, carotid 5 subclavian vessels and here injuring with cut of Trachea, spinal cord injuring with bleeding in clots.

(iii) Oblique lacerated type of fire armed wound 2c.m x 3c.m x skin deep on left side of cheek in front of Tragus of ear in the Parotid region caused by Fire armed weapon cork. (Cork removed from the wound) Plastic like matter blackening and tattooing around the wound.

(iv) Semicircular lacerated wound 2c.m. 2 c.m x skin deep in left side of cheek caused by fire armed weapon Cork with blackening and tattooing around the wound.

(v) Supernal Blackish Abrasion 3.0 cm x 1 c.m left side of cheek.

Allwounds were antemortem in nature and caused by firearm. The injury No. 1 was sufficient to cause death in ordinary course of nature.

15. In order to properly consider and analyse the circumstances exist in the instant case, a close look at the site plan Ex. P. 31 appears necessary. The details given in the site plan are as under:

'Road Karauli to Saramathura' which is near Kundana Ka Nallah, is shown as Mark 'A' Marks 'O' and 'E' denote 'mounds' on both sides of the road. Mark, 'F' is Kachha road. Apportion 'G' shown in the site plan is a place where the scooter RJ 11 M 0492 was lying. No scratch of any type was found on the scooter. It was in a neutral condition, switch of the petrol was off and key got removed. There are marks on 'Kachha Road' which demonstrate that scooter got halted on its stand by the side of the road and then slowly pushed down. Blood was found under steepen but not a single drop of blood was seen on the stepney. At portion marked 'H' deadbody of Rekha @ Nirmala is lying which is 1 feet below the main road. At portion marked 'I' are the fields of Tika 'Ram Meena and Laxman Meena. Marked 'J' is the field of Ramswaroop Sarpanch.'

16. Let us now scan the testimony of prosecution-witnesses. Ramswaroop PW. 1 is the motbir of certain recovery memos drawn during investigation. Teekaram PW.2 in his deposition stated that at about 9.00 p.m. while he was sleeping on his field, the appellant came to him and told him that three dacoits fired at his wife and killed her, Teekaram then accompanied the appellant and found his wife and scooter lying near drain. The appellant then embarrassed his wife and started weeping. The appellant asked Teekaram to carry the deadbody to his well. Teekaram to carry the deadbody to his well. Teekaram then took the appellant to Police Station Karauli. In the cross examination Teekaram stated that the place of incident was a lonely place and miscreants used to rob trucks and buses there.

17. Laxman PW.3 deposed that around 10 p.m. the appellant came to his well. Field of Teekaram was also nearby. The appellant told them that some two three dacoits opened fire. Laxman then accompanied appellant and found a woman lying in a pool of blood. The appellant after touching the hand of woman exclaimed that she was dead. The appellant also asked the witness to help in lifting the

deadbody but the witness persuaded the appellant to go the Police Station Karauli. In the cross examination Laxman stated that place of incident was such a place where miscreants used to rob trucks and buses. Nasruddin PW.4 is the motbir of recovery of blood stained shirt of the appellant. Chandrapal Gotam PW.5 is the motbir of arrest memo, sealed packets, envelope and one bottle. Hanuman Singh PW.6 conducted the mechanical examination of the scooter and found it in running condition. Sumer Chand Chaturvedi PW.7 is the photographer, who snapped the photographs of the deadbody, scooter and the place of incident. Hakim Singh PW.8 is the motbir of recovery memo of katta (fire arm), site plan and the memo of recovery, Rakesh Meena PW.9, Amrit Lal PW.10, and Mani Ram Meena PW. 11 are the signatories of inquest report. Pappu PW. 12, carried the sealed packets, envelop and one bottle from the General Hospital to Police Station Karauli. Kalyan Prasad PW. 13 deposed that appellant along with one woman came on a vehicle to his Hotel and asked him as to how far karauli was. The witness then informed the appellant that Karauli was 10 km away and temple of kaila Devi was at a distance of 3 kms. He further deposed that they were coming from Gwalior. This witness was declared hostile. Ram Swaroop PW.14 was also declared hostile as he did not toe the prosecution story. Dr. Nand Lal Sharma PW. 15, Dr. Bhagwan Singh PW. 16 and Dr. M.L. Kawant PW. 31 conducted the autopsy on the deadbody. Sanwalram PW.17, is the constable who carried the sealed packets to FSI Jaipur. Dinesh Vashista PW. 18 conducted the investigation of the case. Narendra Singh PW. 19, the father of deceased Rekha @ Nirmala, deposed that Rekha when returned after marriage from the house of appellant complained about the demand of dowry by the in-laws. In Feb. 1995 the appellant came to his house and demanded money from him to purchase land and he gave Rs. 10,000/- to the appellant. Uddal Singh PW. 20 and Latoori Singh PW. 21 did not support the prosecution story. Smt. Devkanwar PW. 22, the mother of deceased Rekha @ Nirmala, stated that her daughter was harassed for dowry by their laws. She stated that in Feb. 1995 the accused appellant came to her house and demanded money from her husband who arranged and paid Rs. 10,000 to the appellant.

18. Arvind Singh PW. 23 uncle of deceased Rekha @ Nirmala deposed that the appellant, his father Hakim Singh and brother Ramraj, mother Rambeti, and sister Urmila used to bit Rekha as she was issueless. The appellant demanded Rs.

50,000 for purchasing land from them but they pay only Rs. 10,000. Tilak Singh PW. 24 and Rajveer Singh PW. 25 did not support the prosecution case and were declared hostile. Ramavtar Singh PW. 26 grand father of Rekha @ Nirmala, stated that as Rekha was issueless her in-laws used to threaten her for second marriage of appellant. He further deposed that in Feb. 1995 he paid Rs. 10,000 to the appellant. Srinarain PW. 27 the incharge of the malkhana stated that the articles were kept duly sealed in the malkhana and the same were sent to the FSI in sealed condition.

19. Salient features of the case appear from the above facts may be summarised thus :

(i) On the date of incident the appellant was serving in the Army.

(ii) The appellant's wife Nirmla @ Rekha was issueless even after six years of her marriage. Against demand of Rs. 50,000/- made by the appellant from the parents of Nirmala, a sum of Rs. 10,000/- was paid to the appellant.

(iii) At the time of her death Nirmla @ Rekha was with the appellant and they were proceeding on a way towards kaila Devi Temple on a scooter.

(iv) Nirmla @ Rekha died on account of injury caused by fire arm from a close range.

(v) There were signs by the side of the road which demonstrated that scooter got halted on its stand and then slowly pushed down to the road. No scratch of any type was found on the scooter. It was in a neutral condition. The switch of the petrol was off and key got removed. Although there was blood on the road, but not a single drop of blood was seen over the stepney of the seats of the scooter.

(vi) 12 bore country made pistol was recovered at the instance of the appellant.

(vii) One cartridge case, two cartridges and one piece of wood were recovered from the place of incident.

(viii) The appellant did not receive any injury although as per the FIR lodged by appellant himself, he was driving the scooter and Nirmla was sitting close to him

on the rear seat of the scooter.

(ix) After the incident the appellant himself approached Teeka Ram Meena and Laxman Meena who were present in the nearby fields.

(x) No robbery was committed either with the appellant or with Nirmla. Ornaments, watch and other valuable articles were found intact. Even the scooter was not taken away.

(xi) As per FSL report, recovered fire-arm was serviceable fire arm and on examination of barrel residue it was found that the said pistol had been fired. The recovered 12 bore cartridge case was fired from 12 bore country made pistol. Two 12 bore cartridges were found to be fireworthy ammunition fired from 12 bore pistol and the wad piece could have come out from 12 bore cartridge case.

20. Let us recapitulate the facts incorporated by the appellant in the FIR about three assailants with covered faces. As already noticed by us the appellant stated in the FIR that around 8.30 p.m. while he was descending on the slope of the pullia some one shouted to stop as soon as he tried to accelerate the scooter, one of the persons shouted 'kill them'. He had then seen one person standing near the road, and two others near the Nalla with covered faces. Suddenly the person who was standing near the road, fired shot which hit his wife on the left side near her ear. Consequently his wife expired on the spot. In the FIR it was not stated as to what the assailants did after killing the wife of appellant. Why did they not make attempt to rob him Why did they spare him If the assailants were not interested in ornaments or money, could they not have taken with them at least the scooter These questions remained unanswered throughout and even learned counsel for the appellant could not properly meet them. Learned counsel could only canvas that these questions only give rise to suspicion and suspicion can not take the place of proof. We with the help of site plan, ourselves tried to search the answers to these questions. A close look at the site plan reveals that the scooter of the appellant which was found lying down on the road, initially got halted on its stand by the side of the road and after switching off petrol and removing the key, it was slowly pushed down on the road. No scratch of any type was seen on the scooter. No blood was found over the stepney or the seat of scooter. All these facts

demonstrate that facts stated in the FIR were not correct and Nirmala @ Rekha was shot while she got down of the scooter and the scooter got halted on its stand by the side of the road. Had Nirmala @ Rekha sustained gun shot injury while sitting on the rear seat of the scooter, the appellant must have been hit by the gun shot as according to post mortem report Nirmala @ Rekha had exit wound measuring 4cm x 4cm over right side of her neck. It is difficult to believe that shot was fired while scooter was running and it could only hit Nirmala @ Rekha sitting on the rear seat and not the appellant who was driving the scooter. We are not impressed with the submission of learned counsel for the appellant that in the instant case two views of evidence are possible. From the material on record the only possible view is that Nirmala @ Rekha was shot at while she was standing by the side of the road and that is why no blood was found over the stepney and the seats of the scooter.

21. It is no doubt true that there was over enthusiasm on the part of the Investigating Officer in recording the confession of the appellant while he was in custody, but merely on that basis we cannot discard entire action of the Investigation Officer in conducting the investigation of the case. We can not approach the action of the Investigating Officer with initial distrust. The Investigating Officer had no enmity with the appellant and we find ourselves unable to presume the recovery of the fire arm at the instance of the appellant as untrustworthy, merely on the ground that the independent witness did not support the recovery.

22. Their Lordships of the Supreme Court in State Govt. of NCT of Delhi v. Sunil and Anr. (2001) 1 SCC 652 indicated in para 21 thus :

'It is an archaic notion that actions of the police officer should be approached with initial distrust. It is time now to start placing atleast initial trust on the actions and the documents made by the police. At any rate the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognized even by the legislature. Hence when a police officer gives evidence in court that a

certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.'

23. We do not find any force in the submission of the learned counsel that recovery of the fire arm at the instance of the appellant is highly doubtful. The appellant gave information under Section 27 of the Evidence Act about the recovery of fire arm used in commission of the offence. The said information was recorded in the memo Ex. P. 44 and on the basis of the disclosure statement of the appellant the investigation officer got recovered the 12 bore katta vide recovery memo Ex. 27. We do not find any reason to disbelieve the testimony of Dinesh Vashistha. Investigating Officer (PW, 18). In the cross examination Dinesh Vashistha categorically stated that at the time of site inspection katta was not found but it was recovered on the basis of disclosure statement of appellant. On examining the testimony of Dinesh Vashistha from the point of trustworthiness we find element of truth in it and the testimony has not been polluted.

24. In addition to 12 bore country made pistol, one 12 bore Shaktiman express cartridge case (without percussion cap) two 12 bore Shaktiman express cartridges, and one piece of wad were also sent to the Forensic Science Laboratory and as per report Ex. C.2 the FSL found 12 bore country made pistol as a serviceable firearm. On examination of barrel residue, it was found that 12 bore country made pistol had been fired. The definite time of its last fire could not be ascertained. On stereo and comparison microscopic examination, the FSL opined that recovered 12 bore cartridge case was fired from 12 bore country made

pistol. The FSL further found that the wad pieces recovered were normally used in 12 bore ammunition and could have been come out from 12 bore cartridge case. Two 12 bore cartridges were found to be fireworthy ammunition on test fire from 12 bore pistol in the laboratory. In view of the FSL report we are of the view that recovered 12 bore country made pistol does connect the appellant with the crime.

25. The place of incident may be the place where earlier the robbers had stopped trucks and buses and looted them but from the facts and circumstances of the case we do not find any iota of evidence which can show that unknown robbers were involved in the incident.

26. The essential ingredients to prove guilt of an accused by circumstantial evidence as earlier noticed are:-

(a) the circumstances from which the conclusion is drawn should be fully proved:

(b) the circumstances should be conclusive in nature :

(c) all the facts so established should be consistent only with the hypothesis of guilt and inconsistent with innocence and

(d) the circumstances should with a moral certainty, exclude the possibility of guilt of any person other than the accused.

27. In considering the validity of the conviction of the appellant, therefore we have to apply the above strict test before relying on the circumstantial evidence. From the facts round and reasoning adopted by the learned trial judge we find that the circumstantial evidence in the instant case does not fall short of the required standard of proof. We do not find any merit in the submission of learned counsel that the learned trial judge entered into the arena of surmises and tried to visualise by imagination the manner of commission of offence. In our opinion the chain of circumstances unerringly lead to one conclusion and that is the guilt of the appellant. It has been established that Nirmala @ Rekha sustained gun shot injury in the company of the appellant. 12 Bore country made Pistol from which shot was fired was recovered at the instance of the appellant and the FSL report about the pistol, wad and cartridges connects the appellant with the crime. It is also

established that motive behind the killing was lack of dowry and the appellant gave false explanation as to the manner of the incident. In *Swapan v. State of West Bengal* (10), their Lordships of the Supreme Court indicated that in a case of circumstantial evidence when the accused offers an explanation and that explanation is found not to be true then the same offers an additional link in the Chain of circumstances to complete to complete the chain. The same principle has been followed and reiterated in *State of Maharashtra v. Suresh* (11), Where it has been held that a false answer offered by the accused when his attention was drawn to a circumstance, renders that circumstance capable of inculcating him. Hon'ble Supreme Court further pointed out that in such a situation false answer can also be counted as providing a missing link for completing the chain.

28. We are thus of the view that the circumstances so established are consistent only with the guilt of the appellant and inconsistent with his innocence. All the circumstances exclude with certainty the possibility of guilt of any person other than the appellant. The trial court therefore was right in convicting the appellant under Section 302 IPC.

29. For the reasons stated above, the appeal fails and the same is dismissed.