

State of Rajasthan Vs. Khuma

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Court : Rajasthan

Decided On : Aug-20-1998

Reported in : 1999CriLJ5051

Judge : R.R. Yadav and; A.S. Godara, JJ.

Acts : Evidence Act - Sections 60; [Indian Penal Code \(IPC\), 1860](#) - Sections 201, 302 and 397; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Murder Reference No. 01 of 1998, Cri. Jail Appeal No. 121 of 1998 and Cri. Appeal No. 106 o

Appellant : State of Rajasthan

Respondent : Khuma

Advocate for Pet/Ap. : Sandeep Mehta, Adv.; Khuma, Adv. and; U.C.S. Singhvi

Judgement :

R.R. Yadav, J.

1. The aforesaid Criminal Murder Reference No. 01/98, Criminal Jail Appeal No. 121 /98 and represented Criminal Appeal No. 106/98, arise out of same impugned judgment, dated 6-2-1998, passed by the learned Additional Sessions Judge, No. 3, Udaipur, in Sessions Case No. 39/97 (234/97) whereby he convicted accused appellant Khuma for the offence under Section 302., IPC and sentenced him to

death and a fine of Rs. 100/- in default of payment of fine to undergo further 15 days' simple imprisonment. Learned trial Court also convicted accused appellant named above for the offence under Section 397, IPC and sentenced him to seven years' rigorous imprisonment and a fine of Rs. 500/-, in default of payment of fine to further undergo one month's rigorous imprisonment. Learned Additional Sessions Judge also convicted the accused appellant for the offence under Section 201, IPC and sentenced him to four years' rigorous imprisonment and a fine of Rs. 200/-, in default of payment of fine to further undergo one month's simple imprisonment.

2. The sentences imposed to accused appellant Khuma under Sees. 397 and 201, IPC have been ordered to run concurrently.

3. This common judgment will dispose of Murder Reference, Jail Appeal and represented Appeal filed by the accused appellant Khuma, as these are directed against one and same impugned judgment passed by the learned trial Court.

4. The brief facts leading to Murder Reference and two appeals filed by the accused appellant Khuma are as follows:

5. It is alleged that on 1-5-1997, PW3 Abhay Singh and his younger brother PW5 Badan Singh had gone to collect firewoods. After collecting fire-woods both PW3 Abhay Singh and his younger brother PW5 Badan Singh started to feel uneasiness for want of drinking water and they lowered down their kettle tied with rope in their well to draw water from the well to quench their thirst. In process of doing so, both brothers saw a dead body floating in their well. They informed to Sarpanch Kailash Dave (PW 25) who advised them to inform to Station House Officer, Police Station, Kheroda telephonically. After getting the aforesaid advise from Sarpanch Kailash Dave, PW3 Abhay Singh informed Bhanwar Singh (PW 35), Station House Officer, Police Station, Kheroda telephonically. Bhanwar Singh, Station House Officer, Kheroda, immediately proceeded to the well of Abhay Singh (PW 3) in village Mori, after lodging the Mrig FIR No. 2/97 at Police Station, Kheroda.

6. On search with the help of a petromax, it was found that there were two bodies floating inside the well. One dead body was noticed to be of a woman and another dead body was noticed to be of a child, aged one and half years. These dead bodies were located inside the well on 01 -5-1997, but due to non-availability of means and also looking to the dangerous depth and overall condition of the well, the recovery of the dead bodies in the night from the well was postponed by PW35 Bhanwar Singh. These two dead bodies were taken out from the well on 2-5-1997 in the day-time. The dead bodies were identified to be of deceased Mst. Laxmi wife of Mangi Lal and her daughter Vidya alias Meera, of village Mori.

7. The dead bodies of deceased Laxmi and her daughter Vidya alias Meera were subjected to post mortem by the Medical Jurist (PW34) Dr. Devendra Singh, which revealed homicidal death of Mst. Laxmi and Vidya alias Meera due to violence. Post Mortem report Ex. P33 of deceased Vidya alias Meera and Ex. P34 of Mst. Laxmi further revealed cause of death of each one of them coma due to ante mortem injuries noted in their respective autopsy reports, mentioned above.

8. PW6 Mangi Lal after intimation of the aforesaid occurrence informed that his wife Mst. Laxmi (deceased) used to wear silver 'kadiyas' in her feet which are missing.

9. On the aforesaid information, FIR No. 75/ 97 (Ex. P35) for the offences under Sections 302, 397 and 201, IPC was registered at Police Station, Kheroda and investigation commenced.

10. During the course of investigation, appellant Khuma was arrested on 5-5-1997 and on his personal search, it is alleged that he was carrying two silver 'kadiya' in his hand, which were seized vide recovery memo Ex. P9 by the Investigating Officer in presence of the motbir witnesses. It is also alleged that thereafter at pointing out of accused appellant Khuma, the place of occurrence was identified and blood stained articles were recovered vide Ex. PI2.

11. After conclusion of investigation, a challan was filed against accused appellant Khuma for the offences under Sections 302, 397 and 201, IPC, before committal Court. The committal Court committed the case to the Court of Session Judge,

Udaipur, who transferred the same to the Court of Additional Sessions Judge, No. 3, Udaipur for trial.

12. The learned trial Court framed charges against the accused appellant for the offences under Sections 302, 397 and 201, IPC. The accused appellant pleaded not guilty and claimed trial.

13. At the trial, the prosecution examined as many as 35 witnesses and produced documentary evidence from Ex. P1 to Ex. P40 in support of its case.

14. Accused appellant Khuma in his statement under Section 313, Cr. P.C. denied to have committed any offence and he claimed himself to be innocent. It is stated by accused appellant Khuma in his statement under Section 313, Cr. P.C. that he was labourer of Khem Raj Mali (PW12). It was PW12 Khem Raj Mali who got recovered two silver 'kadiyas' of deceased Mst. Laxmi from the house of Patwari. He denied any recovery made from him. It is stated by him that he had never gone to the house of deceased Laxmi. He had committed no offence.

15. The prosecution, at the trial, led circumstantial evidence to the effect that deceased Laxmi was last seen in the company of accused appellant Khuma, recovery of two silver 'kadiyas' of deceased Laxmi from possession of accused appellant soon after the occurrence vide Ex. P9 and recovery of blood stained articles vide Ex. P12 made at the instance of accused appellant. The learned trial Court placing reliance on the aforesaid circumstantial evidence, proceeded to convict and sentence the accused appellant Khuma as stated in the preceding paragraphs of this judgment.

16. We have heard learned counsel Mr. Sandeep Mehta, appearing on behalf of accused appellant and learned Public Prosecutor at length.

17. We have gone through the oral and documentary evidence on record with the assistance of learned counsel for the appellant Shri Mehta and learned Public Prosecutor, which reveals that there is no direct evidence in the case to show that accused appellant Khuma has committed murder, robbery and caused disappearance of evidence of any offence. The entire case of the prosecution

rests on circumstantial evidence.

18. Before addressing the rival contentions raised at the Bar, we think it proper to observe that there are series of decisions of Hon'ble Supreme Court propounding cardinal principles to be followed in cases in which nature of evidence is circumstantial. It is not practicable for us to recaptulate all decisions rendered by the Apex Court except stating essential ingredients, as noticed by Hon'ble Pandian, J., speaking for the Court in *State of U. P. v. Ravindra Prakash Mittal* (1992) 3 SCC (Cri) 300 : AIR 1992 SC 2045 : 1992 Cri LJ 3693. The ingredients of circumstantial evidence approved by their Lordships of Supreme Court in paragraph 20 of the decision rendered in case of *Dr. R. P. Mittal* (supra), are reproduced hereinbelow, which reads thus :

- (1) the circumstances from which the conclusion is drawn should be fully proved;
- (2) the circumstances should be conclusive in nature;
- (3) all the facts so established should be consistent only with the hypothesis of guilt and inconsistent with the innocence;
- (4) the circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than the accused.

[Vide *Rama Nand v. State of H. P.* AIR 1981 SC 738 : 1981 Cri LJ 298; *Gambir v. State of Maharashtra* AIR 1982 SC 1157 : 1982 Cri LJ 1243; *Earabhadrapa v. State of Karnataka* AIR 1983 SC 446 : 1983 Cri LJ 846; *Ram Avtar v. State of Delhi Administration* AIR 1985 SC 1692 : 1985 Cri LJ 1865.

19. With the aforesaid circumspection, let us examine the impelling circumstances attending the case on hand and analyse in the light of rival contentions raised at the Bar, whether the cumulative effect of those circumstances relied upon by the learned Additional Sessions Judge negatived the plea of innocence of accused appellant Khuma and serves as a definite pointer towards his guilt and unerringly leads to the conclusion that within all human probability, the offences alleged against him by the prosecution agency were committed by him alone and none else.

20. Now time is ripe to consider the rival contentions raised at the Bar. At the first instance, it is urged by the learned counsel for the accused appellant that only witness regarding last seen is PW7 Smt. Dauli who deposed that deceased Laxmi was sitting near her in the evening at about 7.00 p.m. where accused appellant Khuma came. After arrival of accused appellant Khuma, deceased Laxmi went to her house and accused appellant followed her. It is vehemently urged before us by the learned counsel for the appellant that in the present case the prosecution has miserably failed to establish from the statement of PW7 Mst. Dauli that deceased Laxmi was last seen in the company of accused appellant Khuma.

21. The learned Public Prosecutor with equal emphasis urged before us that in the present case, the prosecution has succeeded to establish beyond reasonable doubt that deceased Mst. Laxmi was last seen in the company of accused appellant Khuma on 28-4-97 before her death. Learned Public Prosecutor invited our attention towards the sworn testimonies of PW 7 Mst. Dauli, PW 8 Mst. Isha and PW 30 Bhagwati Lal in support of his aforesaid contention.

22. We have given our thoughtful consideration to the aforesaid arguments raised at the Bar. It is evident from perusal of the record that the prosecution has examined PW 7 Mst. Dauli, PW 8 Mst. Isha and PW 30 Bhagwati Lal to establish that deceased Mst. Laxmi was last seen alive in the company of accused-appellant Khuma before her death. PW 7 Mst. Dauli has deposed that she was sitting outside of her house at about 7.00 p.m. where deceased Mst. Laxmi was also sitting near her. At that time, her sister's son PW 30 Bhagwati Lal was also sitting with them and all of them were talking with each other. It is stated that while they were talking with each other, accused-appellant Khuma came there. After arrival of accused-appellant Khuma, Mst. Laxmi had gone inside her house. The accused-appellant also went with her. In her cross-examination, Mst. Dauli has admitted that she could not identify accused-appellant Khuma by his face because her faculty of sight is weak. It is deposed by her that her visibility is further reduced in night. She cannot identify a person by face even if he happens to pass near her.

23. A close scrutiny of the statement of PW7 Mst. Dauli throws a flood of light that she has never stated that she had identified accused appellant Khuma by his

speech or words spoken by him. The statement of PW7-Mst. Dauli further leads towards an irresistible conclusion that it is nowhere stated by her that accused appellant Khuma had spoken some words through which she could claim to have identified him.

24. It is urged by the learned Public Prosecutor that as PW 7 Mst. Dauli and accused-appellant Khuma are of the same village, therefore, it should be presumed that PW 7 Mst. Dauli had identified the accused-appellant by his speech. According to the learned Public Prosecutor, the learned trial Court has committed no error in raising presumption in this regard. The aforesaid argument of learned Public Prosecutor regarding presumption in favour of prosecution as raised by the learned trial Court to the effect that PW 7 Mst. Dauli had identified the accused-appellant from his speech or words spoken by him in absence of any evidence in this regard is not acceptable to us. There is no law for raising presumption about a fact which is required to be proved by oral evidence within the meaning of Section 60 of the Evidence Act which provides that oral evidence in all the cases be direct that is to say if it refers to a fact which could be seen it must be the evidence of a witness who says he saw it, if it refers to a fact which could be heard it must be the evidence of a witness who says he heard it; if it refers to a fact which could be perceived by any other sense or in any manner, it must be the evidence of a witness who says he perceived it by that manner.

25. Only what PW 7 Mst. Dauli directly saw and heard regarding accused-appellant Khuma last seen with deceased Mst. Laxmi is admissible not her opinion if she failed to recognise accused-appellant Khuma by his face due to her weak eye sight. We are of the view that the evidence of the senses of a person who is called as a witness must have direct correlation with his or her any sense of perception not his or her mere opinion unless he or she is an expert witness within the meaning of the proviso added to Section 60 of the Evidence Act. The statement of PW 7 Mst. Dauli in the present case regarding proof of Mst. Laxmi to have been last seen alive in the company of accused-appellant Khuma before her death, is beyond the scope of Section 60 of the Evidence Act which prohibits hearsay and opinion of a witness unless he or she is an expert witness. The learned trial Court has committed an error in evaluating and relying upon the

statement of PW 7 Mst. Dauli on the aforesaid point in utter ignorance of Section 60 of the Evidence Act.

26. Thus, from the statement of PW7 Mst. Dauli, the case put forth by the prosecution regarding deceased Laxmi to have been last seen alive in the company of accused appellant Khuma, cannot be said to be proved beyond reasonable doubt. No inference can be drawn, as suggested by learned Public Prosecutor, that PW7 should be presumed to have identified the accused appellant by words spoken by him. Learned trial Court erred in relying upon the deposition of PW7-Mst. Dauli to prove factum of deceased Laxmi to have been last seen alive in the company of accused appellant Khuma.

27. The statement of PW7 Mst. Dauli is not supported by her sister's son PW 30 Bhagwati Lal. PW 30 Bhagwati Lal has stated on oath before the learned trial Court that PW 7 Mst. Dauli who is his Mousi (his mother's sister) is living alone in village Mori in the neighbourhood of deceased Laxmi. PW 30 Bhagwati Lal admitted his presence at the house of PW7 Mst. Dauli with deceased Mst. Laxmi at the relevant time. He has further admitted that he saw PW 7 Mst. Dauli and deceased Mst. Laxmi sitting and talking together on a Chabutra but he denied the arrival of accused-appellant Khuma there at the house of PW 7 Mst. Dauli. Although PW 30 Bhagwati Lal is declared hostile by the prosecution agency but his aforesaid deposition is corroborated by PW 8 Mst. Isha who has been examined by the prosecution to prove the concocted story of deceased Laxmi to have been last seen alive in the company of accused-appellant Khuma. Statement of PW8 on oath did not support the story of last seen. PW 8 Mst. Isha in her examination-in-chief stated that she saw in the evening deceased Laxmi before her death sitting with PW 7 Mst. Dauli but she did not see accused-appellant Khuma with them. It is further stated by PW 8 Mst. Isha that she knew accused-appellant Khuma from before but she did not see him in the house of deceased Mst. Laxmi before her death. PW 8 Mst. Isha has not been declared hostile by the prosecution, therefore, her statement is to be believed.

28. From the statement of PW 7 Mst. Dauli, PW 8 Mst. Isha and PW 30 Bhagwati Lal, the prosecution has failed to establish that deceased Mst. Laxmi was last

seen alive in the company of accused-appellant Khuma before her death. The learned trial Court has not properly evaluated the testimonial value of PW 7 Mst. Dauli, PW 8 Mst. Isha and PW 30 Bhagwati Lal and as such, his appreciation of testimonial value of the aforesaid witnesses are not acceptable to us.

29. It is next contended by the learned counsel for the appellant that as regards the circumstance of recovery of two silver Kadias from possession of accused-appellant Khuma, it is highly improbable to believe that after recovery of dead-bodies of deceased Mst. Laxmi and her daughter Vidya alias Meera by the Investigating Officer inside the well of PW 3 Abhey Singh on 1-5-97 and after red alert was sounded by Police to apprehend the accused not only in village Mori but in the neighbouring villages, therefore, in such a situation, it is unbelievable that the accused-appellant Khuma was carrying two silver Kadias Article s 1 and 2 in his hand so as to create evidence against himself after committing heinous crime of murder robbery and causing disappearance of evidence. According to the learned counsel for the appellant, once the dead bodies of deceased Mst. Laxmi and her daughter Vidya alias Meera were detected in the well of PW 3 Abhey Singh, it is unbelievable that accused-appellant Khuma was roaming in the adjoining village Changed with two silver kadiyas in his hand.

30. The aforesaid argument of the learned counsel for the appellant deserves to be tested with reference to Ex. 8-Arrest and personal search memo of accused-appellant Khuma and Ex. P/9-Recovery memo of two silver Kadias together with deposition of Investigating Officer PW 35 Bhanwar Singh, PW 15 Mohammed Mushtaq, PW 16 Udai Singh, PW 19 Pushkar Lal Soni (Goldsmith) PW 23 Liyaqat Hussain (Naib Tehsildar) who is alleged to have conducted identification test of two silver Kadiyas, PW 6 Mangi Lal, PW 7 Mst. Dauli, PW 8 Mst. Isha and PW 10 Vardi.

31. It is evident from perusal of Ex. P/8 and Ex. P/9, that accused-appellant Khuma was arrested on 5-5-97 in village Changeri and from his possession two silver Kadias (Article s 1 and 2) which it is alleged he was carrying in a plastic bag wrapped with dhoti were recovered. It is observed by the Investigating Officer while preparing recovery memo Ex. P9 that one silver 'kadiya' was broken recently

and its broken pieces are also recovered whereas other silver 'kadiyas' was broken in the past. Both silver 'kadiyas' weighed on the spot by PW19 Pushkar Lal Soni and its measurement was found to be 880gms. These two silver 'kadiyas' were sealed on the spot, according to Investigating Officer.

32. It is to be noticed that the aforesaid fact, mentioned in Ex. P9 and stated by Investigating Officer PW35 Bhanwar Singh, before the trial Court, is not supported by witnesses of recovery PW15 Mohammed Mushtaq, PW16 Udai Singh and PW19 Pushkar Lal Soni. It is stated by PW15 Mohd. Mushtaq that recovery memo Ex. P9 was prepared in village Changeri, after its recovery from the accused appellant in the field of PW16 Udai Singh. These two silver kadiyas (Article s 1 and 2) were sealed in village Changeri and thereafter it were taken to Fatehnagar for its weighment whereas according to PW16 Udai Singh, these two silver 'kadiyas' were sent Fatehnagar and after its weighment, Article s 1 and 2 were sealed. It is not disclosed by PW16 Udai Singh at which place two silver 'kadiyas', articles 1 and 2 were sealed. It is not decipherable from the statement of PW16 Udai Singh as to whether these two silver 'kadiyas' were sealed on the spot as described by Investigating Officer in Ex. P9, recovery memo prepared by him and stated so on oath by him or at village Changeri, as stated by PW15 Mohammed Mushtaq, or at Fatehnagar as deposed by PW19 Pushkar Lal Soni (goldsmith). In his cross-examination, PW 19 Pushkar Lal Soni has stated that recovery memo Ex. P 9 was sealed at Fatehnagar which is found to be contradictory from his statement given in his examination-in-chief, expressing his ignorance on this point.

33. PW 6 Mangi Lal husband of deceased Laxmi stated on oath that before identification test of two silver 'kadiyas' (articles 1 and 2) at Tehsil headquarter, the Investigating Officer has shown him these two silver 'kadiyas' at police station. It is categorically stated by PW 6 Mangi Lal that at the time of test identification of two silver 'kadiyas' (articles 1 and 2), no other similar 'kadiyas' were mixed with it. PW 7 Mst. Dauli has deposed that no other similar 'kadiyas' were mixed with Article s Nos. 1 and 2 at the time of test identification at Tehsil headquarter. PW 10 Mst. Vardi deposed on oath that silver 'kadiyas' (articles 1 and 2) were shown to her at police station before test identification but at the same breath, she stated that these silver 'kadiyas' (Article s 1 and 2) were shown to her at Tehsil headquarter

and not at police station. She has categorically stated that these two silver 'kadiyas' (articles 1 and 2) were not mixed up with any other similar silver 'kadiyas' at the time of identification test. PW 23 Liyaqat Hussain Naib Tehsilder, Bhinder stated on oath that on 2-7-97 he conducted identification test of two silver 'kadiyas' (articles 1 and 2) by mixing three other similar 'kadiyas' with them but in cross-examination he failed to name the person who brought other three pairs of similar silver 'kadiyas' for the purpose of mixing with articles 1 and 2 in identification test. It is admitted by PW 23 Liyaqat Hussain that other three similar silver 'kadiyas' mixed up with Article s 1 and 2, were not broken hence we are of the view that identification test of these two silver 'kadiyas' (Article s 1 and 2) at Tehsil headquarter is farce and ridiculous and has no evidentiary value at all.

34. We decline to raise presumption to the test identification of two silver 'kadiyas' (Article s Nos. 1 and 2) conducted by PW 23 Liyaqat Hussain at Tehsil headquarter. It is for the prosecution to establish affirmatively that all necessary precautions were taken to ensure fair identification test. The most essential requirement is that the witnesses should not have had an opportunity of seeing the articles of identification after its recovery and before its identification before the Magistrate. For that purpose it is essential for the prosecution to establish that the seal of articles taken for identification before a Magistrate remained sealed from the time it were recovered till it is produced before a Magistrate for identification. The police officer who takes the sealed articles for identification before a Magistrate must be examined to prove that the sealed articles were not tampered in the way while taking these articles from Police Malkhana to the place of identification before a Magistrate which is lacking in the present case. The conduct of the Investigation Officer in preparing recovery memo Ex. P/9 and his conduct during identification test of these Article s 1 and 2 at Tehsil headquarter before PW 23 Liyaqat Hussain Mangi Lal (PW 6), Mst. Dauli (PW 7) and Mst. Vardi (PW 10) makes it crystal clear that he attempted to foist the crime of murder, robbery and causing disappearance of evidence on accused appellant Khuma. by fabricating Ex. P/9 recovery memo of two silver 'kadiyas' from his possession and further made an attempt to manipulate identification test of these two silver 'kadiyas' before PW 23 Liyaqat Hussain. In such a situation, we decline to raise presumption of robbery causing disappearance of evidence what to say of murder

of Mst. Laxmi and her daughter Vidya alias Meera against accused-appellant Khuma in the backdrop of fabrication and manipulation done by the Investigating Officer as discussed hereinabove.

35. Next circumstance relied upon by the prosecution and believed by learned trial Court is alleged recovery of blood stained stones, three blood stained bones, blood stained gudri, burnt shawl, ashes, two keys, two safety pins, blood stained thread of 'Dasamata' attached with blood soaked hairs, broken bangles at the instance of accused appellant near the field of PW 12 Khemraj Mali at a dilapidated well and recovery of blood stained chimta of a cycle. These recoveries which are alleged to have been made at the instance of accused-appellant are made from open places accessible to all and sundry, therefore, it cannot be said to have been recovered from exclusive possession of accused-appellant. It is stated that these articles recovered at the pointing out of accused appellant were blood stained, but a close scrutiny of Ex. P/40 report to State Forensic Science Laboratory, Rajasthan reveals that blood on these articles was not proved to be that of blood group either of deceased Mst. Laxmi or blood group of Vidya alias Meera. Much emphasis has been given by learned Public Prosecutor that three bones of deceased Mst. Laxmi from her head were found missing, therefore, it should be presumed that these three bones recovered at the pointing out of the accused-appellant which were found to be blood stained, should be held to be head bones of deceased Mst. Laxmi, as held by the learned trial Court.

36. The aforesaid argument advanced by learned Public Prosecutor is not acceptable to us for the simple reason that the prosecution agency did not make an effort even to verify from the Serological Examination report as to whether these three bones alleged to have been recovered at pointing out of accused-appellant Khuma were of human bones and tallied with the bones found to be missing from the head of deceased Laxmi. It is shocking to note that no attempt was made to verify from the Serologist report as to whether hairs soaked with blood, attached with thread of 'Dasamata' were of deceased Mst. Laxmi. These facts and blood stained articles alleged to have been recovered at the pointing out of accused appellant Khuma cannot be proved by raising presumption in favour of the prosecution.

37. Looking into the facts and circumstances of the present case, we are of the opinion that recovery of these articles at the instance of accused-appellant Khuma are not free from doubt and appeared to us tainted hence these circumstances cannot be said to be incriminating against accused-appellant Khuma, together with other circumstances discussed hereinabove.

38. From the evidence discussed hereinabove, we find that ingredients which are necessary to be satisfied before circumstantial evidence can be made basis of conviction, have not been fulfilled in the present case. In the instant case, the chain of circumstances are snapped. The chain of circumstances in the present case do not indicate towards a conclusion beyond reasonable doubt that it is accused-appellant Khuma who in all human probability committed the offence alleged against him by the prosecution and none else. There may be suspicion against accused-appellant Khuma but suspicion cannot be allowed by a Court of judicial conscience to take place of evidence. The approach of the learned trial Court in appraisal of evidence is found to be not satisfactory in recording findings of guilt against accused-appellant Khuma and convicting and sentencing him under Sees. 302, 397 and 201, IPC.

39. It is to be imbibed that in a case of circumstantial evidence on which the prosecution relies must be consistent with the sole hypothesis of the guilt of accused. It is not expected that every case depending on circumstantial evidence, law relating to circumstantial evidence should be set out in the judgment. The simple expectation of this Court from learned trial Courts is that judgment of learned trial Courts must show that the finding of guilt, recorded by it has been reached after proper and careful evaluation of ocular and documentary evidence on record. After considering the judgment impugned in the aforesaid perspection, we find the judgment of learned trial Court in the present case lacking in material particulars.

40. In the present case, at the initial stage, needle of suspicion of committing murder, robbery and causing disappearance of the evidence, was fastened upon PW 12 Khem Raj Mali. PW12 Khem Raj Mali has categorically stated on oath before the learned Sessions Judge that he was detained by the police for two days

for committing murder, robbery and causing disappearance of evidence of deceased Mst. Laxmi and her daughter Vidya alias Meera. Later on he was released from the police custody when he promised to give evidence against accused-appellant Khuma.

41. The aforesaid glaring facts and circumstances in the present case, sound death knell to the entire prosecution story and make it crystal clear that the prosecution has foisted the charges of murder, robbery and causing disappearance of evidence at accused-appellant Khuma, who was working as a agricultural labourer of PW 12 Khem Raj Mali. It is stated on oath by PW 7 Mst. Dauli and PW 8 Mst. Isha that it was known to the residents of village Mori that PW 12 Khem Raj Mali who was doing Sinjara of the agricultural land of deceased Mst. Laxmi, had illicit relationship with her.

42. PW6 Mangi Lal has stated before learned trial Court on oath that he was opposing his wife Mst. Laxmi to give his land on 'sinjara' basis to PW12 Khem Raj Mali. He was also opposing his wife deceased Laxmi to work as a labourer with PW 12 Khem Raj Mali. There were frequent quarrel between PW6 Mangi Lal and his- deceased wife Mst. Laxmi to break relationship with PW 12 Khem Raj Mali but she refused to do so. The illicit relationship of deceased Laxmi with PW12 Khem Raj Mali also travelled to her father PW9 Logar Ram, who had indirectly admitted this illicit relationship by expressing his ignorance but adding that his daughter deceased Mst. Laxmi was dominating her husband and she had implicit faith with PW 12KhemRaj Mali. PW7 Mst. Dauli and PW8 Mst. Isha had admitted in their depositions that deceased Mst. Laxmi was not under control of her husband. PW12 Khem Raj Mali himself has admitted in his deposition that there was a rumour in the village that he had illicit relationship with deceased Laxmi but this rumour was not correct.

43. From the aforesaid discussion, it is established that deceased Mst. Laxmi was not faithful to her husband PW6 Mangilal. Deceased Laxmi was humiliating, defaming and lowering down the prestige of her husband PW6 Mangi Lal, which was becoming unbearable to him day-by-day. PW6 Mangi Lal did not lodge any report at Police Station about disappearance of his wife deceased Laxmi and her

daughter Vidya alias Meera abottt; three days after his return to village Arinda. Answer to such suspicion is not always easy for the Courts to give in criminal cases. Suffice ta-observe in this regard that different motives operate in the minds of different persons when faced with brutal crimes and on such occasion, the village people start spinning stories out of their strong suspicions. In the instant case, at initial stage for two days after recovery of dead bodies of deceased Mst. Laxmi and her daughter Vidya alias Meera, residents of village Mori and Investigating Officer had strong suspicion upon PW 12 Khem Raj Mali who was taken in police custody. He remained in police custody for two days but for the reasons best known to the Investigating Officer (PW 35) he was released by him when PW 12 Khem Raj Mali promised to give evidence against his agricultural labourer accused-appellant Khuma.

44. It is noticed from the statements of PW7 Mst. Dauli, PW8 Mst. Isha, PW9 Logar and PW10 Smt. Vardi that as PW6 Mangi Lal, husband of deceased Laxmi was popular in village Mori about his simplicity, hence, no suspicion was raised against him. Defence has given a suggestion to PW6 Mangi Lal that it is he who killed his wife and her daughter due to illicit relationship of deceased Laxmi with PW 12 Khem Raj Mali but he has denied it.

45. It is alleged by the prosecution that accused-appellant Khuma was absconding after committing crime but this fact is not proved from the statements of the prosecution witnesses especially PW 12 Khem Raj Mali with whom he was working as an agricultural labourer. PW14 Udai Lal has stated on oath that after committing offence, accused appellant Khuma came to his shop on 29-4-1997 at 6.30 a.m. to sell 13 kgs. of gram. He purchased his 13 kgs of gram at the rate of Rs. 10/- per Kg. and paid him Rs. 130/- towards its price. It is stated by PW12 Khem Raj Mali that after his return from his sisters' house inviting them to attend a function at his house, he was informed by his mother and his wife that accused appellant is not coming on his work from Monday i.e. 29-4-1997. Prosecution has been examined his mother and his wife to substantiate the hearsay evidence of PW12 Khem Raj Mali regarding absconding of accused appellant Khuma. PW12 Khem Raj Mali in cross-examination admitted that he did not know correctly whether accused appellant Khuma remained in village Mori from Sunday to Friday

i.e. 28-4-1997 to 3-5-1997.

46. The cases where the case of prosecution rests purely on circumstantial evidence, motive undoubtedly assumes paramount consideration in order to tilt the scale against an accused person but converse is also equally true and if prosecution failed to succeed to establish motive against an accused person, the fairness of investigation becomes tainted and degree of reliability of circumstantial evidence is reduced. The contours of ratio of decisions rendered by the Hon'ble Supreme Court have demarcated the field occupied by motive alleged by the prosecution in those cases, which are based on circumstantial evidence. It is true that where a decision of criminal case depends on the eye witnesses, account, the motive is not essential to establish because in such cases, motive is always known to the accused alone. But in those cases, where the decision of a criminal case depends upon circumstantial evidence, the motive alleged by the prosecution assumes importance. In such criminal cases based on circumstantial evidence if the prosecution failed to establish motive alleged by it then degree of reliability of investigation and circumstantial evidence adduced by the prosecution agency both are reduced and the Courts are required to record finding of guilt against the accused-person after examining circumstantial evidence with greater caution and care.

47. The learned trial Court has noticed at the very out-set on page No. 3 of its judgment impugned that during course of investigation, it was found that accused-appellant Khuma pretended to call deceased Mst. Laxmi through PW 12 Khem Raj Mali to have sexual intercourse with her. When deceased Mst. Laxmi objected his evil design to outrage her modesty, accused-appellant Khuma to save his reputation committed her murder by causing injuries by stones and committed robbery by taking out her two silver Kadiyas which she was wearing in her feet-at the time of her death. To achieve the aforesaid object, the accused-appellant has also committed murder of her daughter Vidya alias Meera and threw their dead bodies in the well of PW 3 Abhey Singh.

48. The learned trial Court while dealing Issue No. 4 recorded a positive finding that the prosecution failed to establish motive alleged by it regarding rape of

deceased Laxmi by accused-appellant either from the post-mortem report (Ex. P/34) performed by Dr. Davendra Singh (PW 34) or by producing any other evidence. Learned trial Court has arrived at a conclusion that from perusal of the post mortem report (Ex. P/34) prepared by Dr. Davendra Singh (PW 34) no sign of rape was found on the body of deceased Laxmi. In our considered opinion it is unbelievable that accused-appellant Khuma, who was working as labourer of PW12 Khem Raj Mali will muster courage to call deceased Mst. Laxmi for outraging her modesty through his employer PW 12 Khem Raj Mali, especially when it is known to all the residents of village Mori that PW 12 Khem Raj Mali had illicit relationship with deceased Mst. Laxmi. the fact of illicit relationship with PW 12 Khem Raj Mali with deceased Mst. Laxmi if known to all villagers of village Mori as deposed by PW 7 Mst. Dauli, PW 8 Mst. Isha, PW9 Logar Ram and PW6 Mangi Lal, then it can be easily inferred that illicit relationship of PW 12 Khem Raj Mali with deceased Mst. Laxmi was also known to accused-appellant Khuma and, therefore, on this ground also, it cannot be presumed that accused-appellant Khuma had called deceased Mst. Laxmi for the purpose of outraging her modesty through his employer PW 12 Khem Raj Mali and to save his reputation he had committed her murder and murder of her daughter Vidya alias Meera, committed robbery of two silver Kadiyas which deceased Mst. Laxmi was wearing at the time of her death and threw their dead bodies in the well of PW 3 Abhey Singh to cause disappearance of evidence.

49. In the present case, before passing of the sentence of death, learned Additional Sessions Judge ought to have elicited his greatest concern in solicitude free from his emotions and sentiments because that is one sentence which cannot be recalled. At the risk of repetition, it is reiterated with emphasiss that there may be suspicion against accused appellant Khuma but suspicion cannot be allowed to take place of evidence, in view of the facts and circumstances discussed hereinabove. In the instant case, learned Additional Sessions Judge has not shown any judicious awareness of the fundamental principle of criminal jurisprudence which governs criminal cases dependent solely on circumstantial evidence, although he had quoted some of the land-mark decisions of the Apex Court and of this Court in his impugned judgment. It is to be imbibed that legal principles propounded by the higher Courts are not magic incantations merely for

the purpose of mentioning in judgment but its importance lies in their application to a given set of facts, which exercise is lacking in the present case by the learned Additional Sessions Judge. The learned Additional Sessions Judge has not properly evaluated the testimonial value of the prosecution witnesses while recording findings of guilt against accused appellant Khuma. In the present case, the learned Additional Sessions Judge has committed error in refusing to extend benefit of doubt to accused-appellant Khuma.

For the reasons aforesaid, we allow the represented Criminal Appeal No. 106 of 1998 filed by accused-appellant Khuma and set aside the judgment impugned of the learned trial Court dated 6-2-1998. The Criminal Jail Appeal No. 121/98 is also disposed of in the terms of the decision given in the represented Criminal Appeal. The Criminal Murder Reference No. 1/98 is hereby dismissed. The sentence of death under Section 302, IPC and other sentences under Sections 397 and 201, IPC imposed upon the accused appellant are set aside. We acquit accused-appellant Khuma from all the charges levelled against him and direct that he shall be released forthwith if not wanted in any other case.

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