

NazruddIn and anr. Vs. State

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Court : Delhi

Decided On : Feb-23-2011

Judge : PRADEEP NANDRAJOG; SURESH KAIT, JJ.

Acts : Code Of Criminal Procedure (Cr.P.C) - Sections 161, 313; Indian Penal Code (IPC) - Section 302, 34

Appeal No. : CRL.A.NO.70/1999; CRL.A.NO.461/1997

Appellant : NazruddIn and anr.

Respondent : State

Advocate for Def. : Mr.Pawan Sharma, Adv.

Advocate for Pet/Ap. : Mr.Sumeet Verma, Adv.

Judgement :

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

1. Vide impugned judgment and order dated 07.04.1997, appellants Nazruddin and Chandan have been convicted for the offence of having murdered Mohd.Saed-ul-Haq (herein after referred to as the 'Deceased;), for which offence they have been sentenced to undergo imprisonment for life and pay a fine in sum of `500/- each; in default to undergo rigorous imprisonment for six months.

2. Criminal law was set into motion at around 09.30 A.M. on 02.02.1994 when DD entry No.14B, Ex.PW-17/A, was recorded by ASI Ram Murty to the effect that an unknown person has informed over telephone that a destitute person is lying dead in a drain near PAC camp.

3. On receiving a copy of the afore-noted DD entry, Inspector Mahipal Singh PW-23, accompanied by Const.Mukesh Kumar PW-22, proceeded to the drain in question where they saw that the deceased was lying dead in the said drain. Inspector Mahipal Singh took out the body of the deceased from the drain and conducted the personal search of the deceased whereupon he found a letter Ex.PW-1/A and a slip of paper Ex.PW-2/A in the pocket of the shirt of the deceased, which documents were seized by him vide memo Ex.PW-23/A. The slip of paper Ex.PW-2/A found in the pocket of the shirt of the deceased contained following writing: - 'Dr. Kiran Pal Singh V.P.O. Shoram Dist. Muzaffarnagar (U.P.)'. Inspector Mahipal Singh clicked three photographs Ex.PW-23/F1 to Ex.PW-23/F3 of the body of the deceased from his camera.

4. On the same day i.e. 02.02.1994 the body of the deceased was sent to the mortuary where at around 03.30 P.M. Dr.L.K. Baruha PW-9, conducted the post-mortem of the deceased and gave his report Ex.PW-9/A which records that the death of the deceased was caused due to asphyxia following strangulation; that the stomach of the deceased contained about 3/4 ounces of partly digested food and that the death of the deceased had

taken place about 15 hours before the conduct of the post-mortem.

5. On the next day i.e. 03.02.1994 Inspector Mahipal Singh PW-23, proceeded to village Shoram where he met Dr.Kiran Pal Singh PW-4, who with reference to the photographs Ex.PW- 23/F1 to Ex.PW-23/F3 identified the same to be those of deceased Mohd.Saed-ul-Haq and informed the inspector that the deceased was a permanent resident of village Muzzaffarpur, Bihar and had come to village Shoram for employment; that the deceased was employed with him as an agricultural labourer at a salary of `600/- per month; that on 30.01.1994 his brother-in-law Sohambir handed over the letter Ex.PW-1/A to the deceased, which letter was written by the family members of the deceased informing him that he should come to his native place as his mother is seriously sick; that he and his brother-in-law Sohambir Singh gave `500/- and `2,300/- respectively to the deceased and that the deceased left for his native place on 31.01.1994. Thereafter Inspector Mahipal Singh met other acquaintances of the deceased; namely, Sohanbir PW-1, Rishipal Singh PW-2, Ashiq Ali PW-11, Mohd. Salim PW-21 and Nirbhay Singh PW-12, who corroborated the information supplied to him by Dr.Kiran Pal Singh. Additionally, Ashiq Ali PW-11, informed him that one Samirrudin, a relative of the deceased, resides in Yamuna Pushta, Delhi.

6. Thereafter Inspector Mahipal Singh proceeded to Yamuna Pushta, Delhi where he met Samirrudin PW-5 and recorded his statement under Section 161 Cr.P.C. in which statement Samirrudin stated that the deceased was his nephew had come to Delhi on 01.01.1994; that he had seen the deceased in the company of appellant Nazruddin in the night of 01.01.1994 and that he has a strong suspicion that appellant Nazruddin had murdered the deceased.

7. On the same day i.e. 04.02.1994 Inspector Mahipal Singh PW-23, prepared an endorsement Ex.PW-23/G noting therein the details of the investigation so far conducted by him in the present case and at around 05.25 P.M. handed over the same to Const.Mukesh Kumar PW-22, for registration of an FIR. Const.Mukesh Kumar took the endorsement Ex.PW-23/G to the police station where HC Dharamvir Singh PW-17, registered the FIR No.79/94, Ex.PW-17/D.

8. Since the needle of suspicion was pointing towards appellant Nazruddin, the police set out to apprehend him. On the basis of a secret information, appellant Nazruddin was arrested on 05.02.1994. Inspector Mahipal Singh interrogated appellant Nazruddin in the presence of a public person Anil Kumar Gupta PW-6. Appellant Nazruddin made a disclosure statement Ex.PW-6/A, wherein he stated that he along with appellant Chandan committed the murder of the deceased and that he can get recovered the belt used by him for strangulating the deceased. Thereafter appellant Nazruddin led Inspector Mahipal Singh to a park and got recovered three pieces of belt concealed therein in the presence of Anil Kumar Gupta and the same were seized vide memo Ex.PW-6/B.

9. Since appellant Nazruddin disclosed about the complicity of appellant Chandan in the crime of murder of the deceased in his disclosure statement, the police set out to apprehend him. On the basis of a secret information, appellant Chandan was arrested on 05.02.1994. Inspector Mahipal Singh interrogated appellant Chandan in the presence of SI Pankaj Arora PW-8 and public persons Phool Singh PW-7 and Mohd. Ismail PW-18. Appellant Chandan made a disclosure statement wherein he admitted having murdered the deceased and stated that he can get recover the suitcase of the deceased. Pursuant thereto, appellant Chandan led the afore-noted police officers to the workshop of Mohd. Ismail and got recovered a suitcase in the presence of Phool Singh PW-7 and Mohd. Ismail PW-18 and the same was seized vide memo Ex.PW-7/F.

10. On 28.02.1994 Inspector Mahipal Singh PW-23, sent the three pieces of belt recovered at the instance of appellant Nazruddin to Dr.L.K. Barua PW-9, for his opinion regarding the weapon of offence. Vide his opinion Ex.PW-9/C Dr.L.K. Barua that the three pieces of belt recovered at the instance of appellant Nazruddin are pieces of one belt and that the death of the deceased is possible to have been caused by the said belt.

11. During further investigation statement of one Mohd.Habib PW-3 was also recorded as per which the appellants along with the deceased had come to his shop on 31.1.1994 and deposited `2,900/- which amount

was taken back by the appellants on 2.2.1994.

12. Armed with the aforesaid materials, a charge sheet was filed against the appellants. A charge were framed against the appellants for having committed offence punishable under Section 302/34 IPC.

13. Apart from examining the police officers associated with the investigation and the doctor who conducted the post- mortem of the deceased, the prosecution examined Sohanbir Singh, Rishipal Singh, Mohd.Habib, Kiranpal Singh, Samiruddin, Anil Kumar Gupta, Phool Singh, Mohd.Ismail, Ashiq Ali, Nirbhay Singh, Mohd.Salim as PW-1, PW-2, PW-3, PW-4, PW-5, PW-6, PW-7, PW-11, PW-12, PW-18 and PW-21 respectively.

14. Nirbhay Singh PW-12, deposed that many persons from Bihar used to come to his village for employment and that the family members of said persons used to send letters to the said persons at his residential address. He received the letter Ex.PW-1/A addressed to the deceased by his family members at his residence and he gave the same to Ashiq Ali. Ashiq Ali PW-11, deposed that the letter Ex.PW-1/A addressed to the deceased by his family members was given to him by Nirbhay Singh. Mohd.Salim PW-21, deposed that the letter Ex.PW-1/A addressed to the deceased by his family members was given to him by Ashiq Ali and he gave the same to Sohanbir for delivering it to the deceased.

15. Sohanbir Singh PW-1, deposed that the deceased was employed by his brother-in-law Kiranpal Singh as an agricultural labourer. Mohd.Salim handed over the letter Ex.PW-1/A addressed to the deceased by his family members to him upon which he went to the residence of his brother-in-law Kiranpal Singh and delivered the letter Ex.PW-1/A to the deceased. He requested his brother-in-law Kiranpal Singh to give leave and some money to the deceased to enable him to go to his native place and meet his ailing mother, which request was accepted by him. On 31.01.1994 the deceased came to his residence and he gave a sum of `2,300/- to the deceased. On 31.01.1994 at about 01.00 P.M. the deceased left his residence to go to the railway station to catch a train to Delhi in order to reach his native place in Bihar via Delhi.

16. Rishipal Singh PW-2, deposed that the deceased was employed with his brother Kiranpal Singh. On 30.01.1994 his brother-in-law Sohanbir Singh came to his village and delivered the letter Ex.PW-1/A to the deceased. On 31.01.1994 the deceased left his village to go to his native place. His brother Kiranpal and brother-in-law Sohanbir Singh told him that they had given a sum of `500/- and `2,300/- respectively to the deceased. He identified the suitcase recovered at the instance of appellant Chandan as that of the deceased.

17. Kiranpal Singh PW-4, deposed that the deceased was employed with him as an agricultural laborer at a salary of `600/- per month. On 30.01.1994 his brother-in-law Sohanbir Singh came to his village and delivered the letter Ex.PW-1/A to the deceased. On 31.01.1994 the deceased left his village to go to his native place and he gave a sum of `500/- to the deceased at that time. He wrote his residential address on a slip of paper Ex.PW-2/A and gave the same to the deceased so that he could write letters to him.

18. Samiruddin PW-5, deposed that he is living in Delhi since last ten years and that appellant Nazruddin was known to him. On 01.02.1994 at about 11.30 P.M. the deceased who was his nephew met him. On making inquiries the deceased told him that he had arrived in Delhi from Muzaffarnagar at about 04.00 P.M. on 01.02.1994 and that he watched a movie with appellant Nazruddin earlier in the day. When he offered dinner to the deceased he told him that he had already taken dinner and that he is going with appellant Nazruddin to sleep in the garage of Mohd.Ismail. Appellant Nazruddin was present with the deceased at that time. The deceased requested him to keep his suitcase in his safe custody upon which appellant Nazruddin told the deceased that he would keep the suitcase in an almirah in the garage of Mohd.Ismail. Thereafter the deceased left with appellant Nazruddin to sleep in the garage of Mohd.Ismail. In the morning at around 08.00 A.M. he went to the garage of Mohd.Ismail but neither the deceased nor appellant Nazruddin were present there. At about 12.00 P.M. he met appellant Nazruddin and made inquiries from him about the whereabouts of the deceased upon which he told him that he has no knowledge about the same as the deceased had already left the garage when he woke up in the morning. He further told him that the deceased might have left for his native place to visit his ailing mother. He became suspicious as the deceased would not have left

Delhi without informing him. On 04.02.1994 he identified the dead body of the deceased in the police station.

19. Mohd.Habib PW-3, deposed that he runs a grocery shop and that the appellants used to deposit money with him. On 31.01.1994 at about 04.00 or 05.00 P.M. the appellants along with the deceased came to his shop and appellant Nazruddin deposited a sum of `2,900/- with him, which sum was taken by him from the deceased. On 02.02.1994 at about 04.00 or 05.00 P.M. the appellants again came to his shop and collected the said sum of `2,900/- from him.

20. Anil Kumar Gupta PW-6, deposed that the appellant Nazruddin got recovered three pieces of belt and a suitcase from a park and the slum-dwelling of Mohd.Ismail respectively in his presence. Phool Singh PW-7, denied that appellant Chandan got recovered any article in his presence. Mohd.Ismail PW-18, deposed that the appellants used to sleep in his slum-dwelling in the night and that appellant Chandan got recovered a suitcase from his workshop in his presence.

21. In their statements under Section 313 Cr.P.C. the appellants pleaded innocence and false implication. Appellant Nazruddin stated that he was falsely implicated in the present case at the instance of Samiruddin as he failed to comply with the demands of money made by him. Be it noted here that appellant Nazruddin denied being in the company of the deceased at the time when the deceased met his uncle Samiruddin at 11.30 P.M. on 01.02.1994 in his statement under Section 313 Cr.P.C.

22. As already noted herein above, vide impugned judgment and order dated 07.04.1997, the learned Trial Judge had convicted the appellants. Qua appellant Nazruddin, it has been held by the learned Trial Judge that the fact that the deceased was last seen in the company of appellant Nazruddin soon before his death when seen in the light of conduct of appellant Nazruddin of collecting the money of the deceased from Mohd.Habib is sufficient to conclude that appellant Nazruddin is the perpetrator of the crime of the murder of the deceased. Qua appellant Chandan, it has been held by the learned Trial Judge that the conduct of appellant Chandan of accompanying appellant Nazruddin to the shop of Mohd.Habib and collecting the money from Mohd.Habib despite being fully aware of the fact that the said money belongs to the deceased is sufficient to conclude that appellant Chandan was involved with appellant Nazruddin in the crime of murder of the deceased.

23. During the course of hearing of the present appeals, learned counsel for appellant Nazruddin contended that the learned Trial Judge committed a grave error in convicting appellant Nazruddin on the basis of last-seen theory. Counsel urged that last-seen theory comes into play when the circumstances of a given case are such that the possibility of any person other than the accused being the author of the crime becomes impossible, which is not the position in the instant case. In said regards, learned counsel for appellant Nazruddin pointed out that the post-mortem report Ex.PW-9/A of the deceased records that the post-mortem of the deceased was conducted at 03.30 P.M. on 02.02.1994 and that the death of the deceased had taken place 15 hours before the conduct of post-mortem, meaning thereby that the death of the deceased had taken place at 12.30 A.M. on 02.02.1994. Counsel urged that taking a margin of 2 hours plus or minus, the likely time of death of the deceased has to be anywhere between 10.30 P.M. to 2.30 A.M. on the intervening night of 01.02.1994 and 02.02.1994. Counsel urged that even assuming the testimony Samiruddin PW-5, to be true the possibility that the deceased did not go with appellant Nazruddin to sleep in his slum-dwelling as told by him to Samiruddin but went elsewhere where he was murdered by someone cannot be ruled out. According to the learned counsel, in such circumstances and in particular, the fact that there is no evidence to show that the deceased had actually gone with appellant Nazruddin to sleep in his slum-dwelling, the last-seen theory cannot be used to infer the guilt of appellant Nazruddin. Learned counsel for appellant Chandan argued that the judgment of the Trial Court convicting appellant Chandan for the offence of murdering the deceased is palpably wrong for he has been convicted merely on the basis of his suspicious conduct.

CASE AGAINST APPELLANT NAZRUDDIN

24. From the conspectus of facts noted in the foregoing paras, it is apparent that the prosecution relied upon

following 3 circumstances to infer the guilt of appellant Nazruddin:-

I The deceased was last seen alive in the company of appellant Nazruddin soon before his death.

II Appellant Nazruddin pocketed the money belonging to the deceased.

III Appellant Nazruddin got recovered three pieces of a belt, which belt is the possible weapon of offence in the present case.

25. Last-seen evidence is a specie of circumstantial evidence and the principles of law applicable to circumstantial evidence are fully applicable while deciding guilt or otherwise of an accused where the last-seen theory is fully applicable. It is settled law that to sustain a conviction on circumstantial evidence, the chain of circumstances has to be so complete that the finger of accusation unerringly points towards the guilt of the accused and rules out the innocence. If the single circumstance of last-seen, if of a kind, where a rational mind is persuaded to reach an irresistible conclusion that the accused should explain, how and in what circumstances the deceased suffered death, it would be permissible to sustain a conviction on the solitary circumstance of last-seen.

26. Samiruddin PW-5, the uncle of the deceased, categorically deposed that on 01.02.1994 at about 11.30 P.M. he met the deceased; that the deceased was in the company of appellant Nazruddin at that time and that the deceased left with appellant Nazruddin to sleep in the slum-dwelling of appellant Nazruddin. The witness was cross-examined but nothing tangible could be extracted therefrom which could discredit his testimony. The post-mortem report Ex.PW-9/A of the deceased records that the post-mortem of the deceased was conducted at 03.30 P.M. on 02.02.1994 and that the death of the deceased had taken place 15 hours before the conduct of post-mortem. Taking a margin of two hours plus or minus, as per the post-mortem report Ex.PW-9/A of the deceased, the death of the deceased had taken place between 10.30 P.M. to 2.30 A.M. in the intervening night of 01.02.1994 and 02.02.1994. The death of the deceased could not have taken place before 11.30 P.M. for Samiruddin met the deceased at about 11.30 P.M. on 01.02.1994, meaning thereby, that the death of the deceased had taken place between 11.30 P.M. to 2.30 A.M. in the intervening night of 01.02.1994 to 02.02.1994. Thus, the fact which emerges from the aforesaid that the death of the deceased had taken place within 3 hours from the time he was last seen in the company of appellant Nazruddin.

27. As regards the submission of the learned counsel for appellant Nazruddin that there is no evidence to show that the deceased had actually gone with appellant Nazruddin to his slum-dwelling and thus the possibility that the deceased went elsewhere cannot be ruled out, it would again be relevant to note the testimony of Samiruddin PW-5 categorically deposed that the deceased had told him that he had his dinner and that he is going with appellant Nazruddin to sleep in his slum-dwelling, which fact finds corroboration from the recording contained in the post-mortem report Ex.PW-9/A of the deceased that partly digested food was found in the stomach of the deceased. It has to be noted that when the appellant Nazruddin was seen in the company of the deceased it was 11:30 P.M. i.e. around midnight. The day was 1st of February 1994, a time of the year when it is fairly cold by said time and the normal human conduct of a person who has consumed dinner would be to go to sleep and not loiter about. In view of the categorical deposition of Samiruddin PW-5, that the deceased had told him that he is going with appellant Nazruddin to sleep in his slum-dwelling, we find no force in the aforesaid submission advanced by the learned counsel for appellant Nazruddin.

28. Samiruddin PW-5, deposed that on 02.02.1994 at around 12.00 P.M. he met appellant Nazruddin and made inquiries from him about the whereabouts of the deceased upon which he told him that he has no knowledge about the deceased as the deceased had already left the garage when he woke up in the morning. He further told him that the deceased might have left for his native place to visit his ailing mother. In this regards, relevant would it be to note that the suitcase of the deceased was lying in the slum-dwelling where appellant Nazruddin used to reside till 05.02.1994, on which date it was seized by the police. In view of the fact that the suitcase of the deceased was lying at the place of residence of the appellant it would be difficult

to accept the plea that the appellant Nazruddin bona fide believed that the deceased had left. It is apparent that Nazruddin was trying to mislead PW-5.

29. In the decision reported as Mohibur Rahman v State of Assam (2002) 6 SCC 751 the deceased was last seen on 24.01.1991 at about 05.00 P.M. at a bus stand in the company of accused Taijuddin and Mohibur Rahman and his body was found 13 days after at a distance of 30 to 40 kilometers from the bus stand where the deceased was last seen alive. Accused Taijuddin met the mother and cousin of the deceased and falsely told them that the deceased had eloped with one Balijan Begum. Supreme Court acquitted accused Mohibur on the ground that there is no proximate link between the time when the deceased was last seen alive in the company of the accused and the time of his death as also the place where the deceased was last seen alive in the company of the accused and the place from where the body of the deceased was recovered. However, Supreme Court convicted accused Taijuddin. One of the facts which led the court to convict accused Taijuddin was that he had tried to mislead the relatives of the deceased and said circumstance along with the circumstance of being last seen in the company of the deceased was held to be sufficient circumstantial evidence wherefrom guilt of Taijuddin could be inferred.

30. In the decision reported as Basanti v State of HP (1987) 3 SCC 227 accused Basanti and Asoo Ram were charged with the offence of having murdered the husband of accused Basanti. The case set up by the prosecution against the accused persons was that accused Basanti and Asoo Ram were having illicit relations and that they murdered the deceased by striking a blow on his neck while he was asleep. The High Court convicted accused Basanti but acquitted accused Asoo Ram, which decision was affirmed by Supreme Court. One of the reasons which led Supreme Court to arrive at the said conclusion was that she had tried to mislead the relatives of the deceased by falsely stating to them that the deceased had gone away from her village and had not returned.

31. Mohd.Habib PW-3, deposed that on 02.02.1994 at about 04.00 to 05.00 P.M. the appellants came to his shop and collected the money deposited with him by the deceased. Why did appellant Nazruddin collect the money belonging to the deceased? The aforesaid conduct of appellant Nazruddin of pocketing the money belonging to the deceased is also a circumstance of relevance and inculpatory of the guilt. It shows that Nazruddin knew that he could safely pocket the money.

32. That the dead body of the deceased was found at a spot which is at a distance of about 2 kilometers from the slum- dwelling of Nazruddin is not of much relevance as was sought to be projected during arguments inasmuch as there is evidence that Nazruddin was running a garage from near his slum-dwelling where he used to repair cycle rickshaws and thus he had the means to transport the dead body in the night. We once again highlight that the crime took place in the midnight of the intervening night of 1st and 2nd February 1994; a time when it is fairly cold in Delhi and hardly any people are on the street.

33. As already noted herein above, appellant Nazruddin falsely denied being in the company of the deceased at the time when the deceased met his uncle Samiruddin at 11.30 P.M. on 01.02.1994 in his statement under Section 313 Cr.P.C. It is settled law that a false answer given by an accused in his statement under Section 313 Cr.P.C. can be taken as an additional link in the chain of circumstances appearing against him. (See the decision of Supreme Court reported as State of Maharashtra v Suresh (2000) 1 SCC 471)

34. From the above discussion, following four incriminating circumstances appear against appellant Nazruddin:-

I The deceased was last seen in the company of appellant Nazruddin soon before his death.

II Appellant Nazruddin tried to mislead the uncle of the deceased.

III Appellant Nazruddin pocketed the money belonging to the deceased.

IV Appellant Nazruddin gave false answers in his statement under Section 313 Cr.P.C.

35. The well known rule governing circumstantial evidence is that:- (i) the circumstances from which the inference of guilt is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances; (ii) the circumstances should be of a determinative tendency unerringly pointing towards the guilt of the accused and (iii) the circumstances, taken collectively, are incapable of any explanation on any reasonable hypothesis other than that of the guilt of the accused. Of late, the courts have added two riders to the aforesaid principle namely, (i) there should be no missing links but it is not that every one of the links must appear on the surface of the evidence, since some of these links can only be inferred from the proved facts and (ii) it cannot be said that the prosecution must meet any and every hypothesis put forward by the accused however far-fetched and fanciful it may be. In the decision reported as Rakesh Kumar v State (183) 2009 DLT 658 a Division Bench of this Court of which one of us was a member of, namely Pradeep Nandrajog J., held that circumstantial evidence in order to furnish a basis for conviction requires a high degree of probability, that is, so sufficiently high that a prudent man considering all the facts, feels justified in holding that the accused has committed the crime with which he is charged.

36. From the aforesaid four incriminating circumstances appearing appellant Nazruddin, a prudent man would definitely come to the conclusion that appellant Nazruddin is the guilty of the murder of the deceased. We thus hold that appellant Nazruddin is the guilty of the murder of the deceased.

CASE AGAINST APPELLANT CHANDAN

37. From the conspectus of facts noted in foregoing paras, it is apparent that the prosecution relied upon following two circumstances to infer the guilt of appellant Chandan:-

I Appellant Chandan got recovered the suitcase belonging to the deceased.

II Appellant Chandan along with appellant Nazruddin went to the shop of Mohd. Habib to collect the money belonging to the deceased.

38. The evidence pertaining to the recovery of the suitcase of the deceased at the instance of appellant Chandan is most suspect for the reason Anil Kumar Gupta PW-6, deposed that a suitcase was got recovered at the instance of appellant Nazruddin in his presence whereas as per the case of the prosecution the suitcase was got recovered by appellant Chandan.

39. In view of the aforesaid glaring discrepancy in the evidence adduced by prosecution to establish the circumstance of recovery of the suitcase of the deceased at the instance of appellant Chandan no reliance can be placed upon the said circumstance.

40. No doubt, the conduct of appellant Chandan of accompanying appellant Nazruddin to the shop of Mohd.Habib and collecting the money belonging to the deceased is suspicious. But, however grave the suspicion may be, the same cannot take place of 'proof'. As already noted herein above, the well known rule governing circumstantial evidence is that the circumstances appearing against an accused are incapable of any explanation on any reasonable hypothesis other than that of the guilt of the accused. In the instant case, the possibility that appellant Chandan was told by appellant Nazruddin that the deceased had instructed him to collect the money from Mohd.Habib and thus he innocently went with him to the shop of Mohd.Habib and collected the money of the deceased cannot be ruled out. Thus, in absence of any other circumstance pointing towards his guilt, appellant Chandan cannot be convicted merely on the basis of the circumstance that he accompanied appellant Nazruddin to the shop of Mohd. Habib and collected the money belonging to the deceased.

41. In view of the above discussion, appellant Chandan is acquitted of the charge framed against him.

CONCLUSION

42. In view of the above discussion, the appeal of appellant Chandan is allowed. He is acquitted of the charge framed against him. His bail bond and surety bond are discharged. The appeal of appellant Nazruddin is dismissed. His bail bond and surety bond are cancelled. He shall surrender forthwith to serve the remaining sentence.

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