

**Anil Kumar Vs. State**

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**Court :** Delhi

**Decided On :** Mar-03-2011

**Judge :** S. Ravindra Bhat; G.P.Mittal, Jj.

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

**Appeal No. :** CRL. A. 6/1998

**Appellant :** Anil Kumar

**Respondent :** State

**Advocate for Def. :** Mr. Lovkesh Sawhney, Adv.

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

**Judgement :**

1. Whether reporters of local papers may be allowed to see the Order? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the Order should be reported in the Digest? Yes

1. This Appeal is directed against the judgment dated 22.12.1997 and the order on sentence dated 23.12.1997 whereby the Appellant was convicted for the offence punishable under Section 302 of the Indian Penal Code (Code) and was sentenced to undergo imprisonment for life.

2. Succinctly stated, the prosecution case is that on 12.04.1989 at about 8:45 A.M. Mohan Lal Jain, husband of the deceased Rita Jain (R) as usual left for his shop. His two children Master Kapil, aged 12 years and Kumari Shikha, aged 11 years also left for their school. At about 10:30 A.M. one boy came there and straight away entered the house of R. At that time, R was talking to PW-3 Smt. Manju Gupta, her neighbour. On inquiry as to the identity of the said boy, R informed PW-3 that the boy (Appellant) was her nephew (Nanad's son).

3. After a few minutes R went inside and prepared tea for the said boy and herself and sat in the bedroom. Tea was also served to the maid servant PW-4 Smt. Suraj Wati. R was addressing the boy as Anil Kumar and the boy was addressing R as Mami. The maid servant (PW-4) finished her work and left the house at about 11:00 A.M. R asked PW-4 to shut the door.

4. At about 12:30 P.M. Kapil along with his younger sister Shikha (children of R) returned from school. The outer door of the house was open. They went inside and found their mother (R) lying dead in a pool of blood on the double bed in the bedroom. Panicked by the gruesome incident, they immediately approached their neighbour PW-5 Jagjit Nath Behl, who informed PW-12 Mohan Lal Jain, husband of R about the incident. PW-5 Jagjit Nath also informed the police.

5. PW-19 Inspector K.K. Kaushik, SHO Police Station (PS) Vivek Vihar, Investigating Officer (IO) of the case rushed to the spot. He found the dead body of R lying on a double bed in a pool of blood in a room in house No.C-1/61. The clothes of R were found to be in disorder. The IO observed an injury on her neck caused by some sharp edged weapon. Some broken pieces of bangles were lying on the floor near the bed. A small kitchen knife with a broken handle and another knife with a twisted blade and plastic handle were also found lying near the bed. The crime team was summoned by the IO. By that time PW-12 Mohan Lal Jain, husband of R also reached the spot.

6. The IO got the scene of crime photographed. He recorded statement Ex.PW-12/A of Mohan Lal; made his endorsement Ex.PW-19/A and sent the rukka to the PS through Constable Baljit Singh for registration of the case. The photographs Ex.PW-19/11 to PW-19/20 of the crime scene were obtained by Head Constable

Harbhajan Singh from different angles on the direction of the IO. The aforesaid knives; one bed sheet; one pillow with pillow cover; one cotton Khes, stained with blood; and one pair of Hawai Chappal were seized vide seizure memo Ex.PW-10/A. The IO prepared sketches of both the knives. He also took into possession one Tiffin box without lid Ex.P-1 and two glasses Ex.P-11/1-2.

7. The IO prepared inquest papers Ex.PW-19/B. To find out if there was any rape (or sexual angle to the crime) vaginal swab was also obtained. The dead body was sent for postmortem examination by the IO.

8. There was a needle of suspicion on the Appellant as he was suspected to be present at the time of the crime. A police team headed by PW-10 SI Surender Kumar and PW-6 Ashok Jain was sent in search of the Appellant to Baraut.

9. According to the prosecution, at about 9:30 P.M., PW-10 SI Surender Kumar, along with other members of the police team met the IO and other police officers near ESI Hospital when the IO was proceeding towards the PS. The Appellant was interrogated, and thereafter arrested. The bloodstained shirt worn by the Appellant was taken in to possession to find out if the blood stain on the shirt tallied with the blood group of R. The semen sample of the Appellant was also taken, and sent to the CFSL to detect its presence on the appellants trouser and to find out the possibility of sexual assault. He made a disclosure statement Ex.PW-18/B resulting in the recovery of a ladys purse Ex.P-12 from the house of R which contained some currency notes.

10. After completion of the investigation a challan for the offence punishable under Section 302 of the Code was filed against the Appellant.

11. By the impugned order, the learned Additional Sessions Judge on the basis of the circumstantial evidence i.e. evidence of the Appellant being last seen in the company of R; and the presence of the bloodstain of group O which tallied with the blood group of R, found the Appellant guilty as aforesaid.

12. We have heard Mr. Sumeet Verma, learned Amicus Curiae on behalf of the Appellant and Mr. Lovkesh Sawhney, learned APP for the State and have perused

the record.

13. During trial, the prosecution examined 19 witnesses. PW-2 Kapil Jain, PW-3 Smt. Manju Gupta, the neighbour with whom R was talking just before the Appellant had reached her (Rs) house; PW-4 Smt. Suraj Wati, maid servant who was working in the house of R on 12.04.1989 at 10:30 A.M. (the time of arrival of the Appellant in the said house); PW-5 Shri Jagjit Nath Behl, the neighbor of R who informed the husband of R about the incident; PW-6 Ashok Jain, a close relation of R as also the Appellant and who accompanied the police party to Baraut for apprehension of the Appellant; PW-10 SI Surender Kumar (head of the police party), who visited Baraut on direction of the IO to apprehend the Appellant; PW-12 Mohan Lal Jain, husband of R; PW-18 Inspector Hem Chand, who was posted as Sub Inspector in PS Vivek Vihar on the day of the incident and was associated in the investigation of this case and PW-19 Inspector K.K. Kaushik are the important witnesses on the crucial pieces of circumstantial evidence relied upon by the prosecution.

14. It is not in dispute that the semen of the Appellant was not found on the vaginal swab. Thus, there is no evidence of any sexual assault on R by the Appellant.

15. The prosecution has not come out with any motive for commission of this crime by the Appellant to which we shall advert a little later. At the moment, we shall examine the two important pieces of circumstantial evidence i.e. recovery of blood stained shirt and the evidence of last seen relied upon by the prosecution to connect the Appellant with the offence, on the basis of which the Appellant was convicted.

16. It is very well settled that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:-

- a) The circumstances, from which an inference of guilty is sought to be drawn, must be cogently and firmly established;
- b) Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

c) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

d) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

(Mahmood vs. State of U.P., (1976) 1 SCC 542; Gambhir vs. State of Maharashtra, (1982) 2 SCC 351; Henry Westroller Roberts vs. State of Assam, (1985) 3 SCC 291; Ashok Kumar Chatterjee vs. State of M.P., 1989 Supp (1) SCC 560; Kishore Chand vs. State of H.P., (1991) 1 SCC 286; Trimukh Maroti Kirkam vs. State of Maharashtra, (2006) 10 SCC 681; Satni Bai vs. State of M.P., (2010) 2 SCC 646).

#### RECOVERY OF BLOOD STAINED SHIRT

17. Evidence of PW-6 Ashok Jain, PW-10 SI Surender Kumar, PW-18 Inspector Hem Chand and PW-19 Inspector K.K. Kaushik is relevant on the factum of recovery of shirt Ex.P-2 from the Appellant. It is proved from the CFSL Report Ex.PW-19/E that the blood group detected on the Shirt Ex.P-2 was of O group which tallied with the blood group of R. PW-6 Ashok Jain, on the factum of recovery of shirt Ex.P-2, deposed that on 12.04.1989 after coming to know of the murder of his Aunt R, he had joined the police party and went to Baraut in search of the Appellant. The Appellant was found present in his house. He produced shirt Ex.P-2. He saw blood stains on the said shirt. He stated that the police took the shirt into possession at that time. He identified his signatures on the recovery memo Ex.PW-6/A in respect of the shirt. He, however, could not tell as to where the said memo was signed by him. He further stated that he did not remember whether the shirt was sealed or not. The witness was allowed to be cross examined by the learned Additional Public Prosecutor for the State. He denied having told the police that the clothes of the Appellant were sealed in his presence. He was confronted with the statement Ex.PW-6/P-A where it had been so recorded.

18. As per the case of the prosecution it was PW-10 SI Surender Kumar who had led the police party to the house of the Appellant at Baraut. He, however, was completely silent about his visit to Baraut or recovery of any shirt from or at the instance of the Appellant. So much so, that when cross examined on behalf of the defence he stated, " So far as I remember the police party which had (sic) went to arrest the accused came back to Vivek Vihar, the place of occurrence with the accused in my presence in the evening time. I cannot tell the name of police men who had gone in search of the accused. I cannot tell whether one or more than one police officials and which of the police official had gone in search of the accused. I do not remember whether the police official who had gone in search of the accused had taken the police jeep or had gone on their own. I cannot tell when that police party left for search of the accused and after how much time they had come back to the spot." We cannot infer from the testimony of PW-10 whether he had gone to Baraut in search of the Appellant or not. Since he was completely silent about the same it was for the prosecution to elicit the factum of the visit either by putting leading question or by cross examination. Neither was this done nor was the witness declared hostile. The prosecution, therefore, cannot be allowed to say that PW-10 had visited Baraut. Who were the other members of the police party is also not known as he/they were not examined / cited as witnesses by the prosecution.

19. PW-18 Inspector Hem Chand and PW-19 Inspector K.K. Kaushik, IO on the other hand deposed that the shirt which the accused was wearing at the time when he was brought to Delhi was stained with blood and was taken into possession vide memo Ex.PW-6/A. Both PW-18 and PW-19 stated that SI Surender Kumar (PW-10) and the accused met them near ESI Hospital while they were proceeding to the PS from the spot. As stated earlier, PW-10 is silent about meeting the IO of the case and other members of the police party near ESI Hospital, Vivek Vihar but, PW-6, PW-10, PW-18 and PW-19 are signatory of the memo Ex.PW-6/A.

20. There is a discrepancy in respect of the manner the shirt Ex.P-2 was recovered because PW-6 Ashok Jain deposed that the shirt was recovered from the accused/Appellant at Baraut where he (the Appellant) was sitting in baniyan

and a trouser; however PW-18 and PW-19 talk about the recovery of shirt at Delhi while on their way from the spot to the PS near ESI Hospital.

21. The Appellant himself in his statement under Section 313 Cr.P.C. admitted that his shirt Ex.P-2 was taken by the IO. He further stated that the blood of the deceased was planted on the shirt.

22. PW-6 clearly testified that the blood stained shirt Ex.P-2 was produced by the Appellant. The report of the CFSL has found the shirt to contain blood of O group. From the evidence adduced on record, we are convinced that the Appellant had produced the shirt at Baraut and the same was formally seized vide memo Ex.PW-6/A at Delhi.

23. In his examination under Section 313 Cr.P.C. in reply to the question that a blood stained shirt was taken into possession from him vide memo Ex.PW-6/A, the Appellant had stated that the shirt was taken from him but there was no blood stain on it. He stated that the blood was planted on the shirt by the IO. However, no suggestion was given to PW-6 in the cross examination that there was no blood stain on the shirt (Ex.P-2) seized from the Appellant. Admittedly, PW-6 is a close relation of the deceased as well as the Appellant. The Appellant has not alleged any motive or illwill by PW-6 against him. He (PW-6) had no reason to depose falsely against the Appellant. The Appellant was apprehended the same evening. He could not have reached his house without shirt. Thus he had no opportunity to dispose of or wash the shirt Ex.P-2 by that time. We see no reason to disbelieve the testimony of PW-6 regarding recovery of the blood stained shirt from the Appellant.

24. Sealing of the shirt Ex.P-2 in the case loses significance, because (i) the ownership of the shirt is not disputed by the Appellant and (ii) its containing blood stain is established from the testimony of PW-6. Thus if on the blood stained shirt any other blood group i.e. of R would have been planted, the CFSL report would have detected two blood groups. Moreover, the shirt as per seizure memo Ex.PW 6/A had only one blood stain.

25. We, therefore, conclude that the circumstance of recovery of bloodstained shirt Ex.P-2 which was later on found to be containing the blood of group O from the Appellant is established.

#### EVIDENCE OF LAST SEEN

26. PW-3 Smt. Manju Gupta testified that on 12.04.1989 between 9:00 and 10:00 A.M. she was talking to R outside her (Rs) house. The house of R was opposite to her house. While she was returning towards her house after finishing her talks with R, she saw one boy entering the house of R. Upon enquiry, R informed her that the said boy was son of her Nanad (husbands sisters son). She further deposed that the police had arrested the aforesaid boy that very night. During her examination in the Court, the Appellant was also identified as the said boy who had been arrested by the police.

27. When cross examined, the witness deposed that she knew R for about two years prior to her death i.e. since the time R came to reside in that area. After this incident, she came to know that R had 2-3 sisters-in-law (husbands sister). This witness was confronted with the part of her statement of having not told the police that the witness had asked the deceased about the boy entering her house. The factum of the boy being Bhanja however was found to be recorded in the statement Ex.PW-3/D-M recorded by the IO during investigation.

28. PW-4 Smt. Suraj Wati the maid servant working in the house of R at the relevant time deposed that she had been working in the house of Shri Mohan Lal Jain as a domestic help for about a month prior to the incident. On that day at about 10:30 A.M., R was talking to PW-3 Smt. Manju while standing in the stair case. In the meantime the Appellant came inside the courtyard of the house and occupied a chair on the dining table. At that time she was working in the kitchen. After about ten minutes R came inside the house. Since she was not feeling well, she went into her bedroom and lay down. The Appellant was addressing R as Mami and R was addressing the appellant as Anil Kumar. R prepared tea for herself and the Appellant. Both of them took tea and she left the house at about 11:00 A.M. At the time she left the house, R and the Appellant were inside the house. R instructed her to shut the door while leaving the house. This witness also

identified the Appellant during her testimony in the Court.

29. When cross examined PW-4 deposed that she used to come to the house of Mohan Lal Jain at about 8:30 A.M. On the date of occurrence too she had gone to the house, at the same time. On that day Mohan Lal Jain left the house at about 9:00 9:30 A.M. after having his breakfast. She used to wash utensils and clean the house of Shri Mohan Lal and used to be free by about 10:30 A.M. In answer to further question she deposed that she used to come in the afternoon also for the aforesaid purpose.

30. PW-2 Kapil Jain is another important witness on this aspect of the prosecution case. He testified that "my mother Smt. Reeta Jain died on 12-4-1989. On that date, I alongwith my younger sister Shikha had come back home from the school at about 12.30 p.m. The outer door of the house was open at that time and both of us came into the house. In the bed room, my mother was lying in the pool of blood on the double-bed. We came out of the house and told to the neighbor Shri Taneja".

31. When cross examined this witness deposed that they had gone to the house of their neighbour where Mrs. Manju Gupta met them and they told her what they had seen. Mrs. Manju Gupta telephoned his father and also the police. He saw his father at their (PW-2) house at about 2:00 P.M. When his father came Mrs. Manju Gupta and other neighbours were also there. He denied having told the police that he had reached home on that day at about 1:15 P.M. and was confronted with his statement Ex.PW-2/DA in this regard.

32. There is neither any motive nor any enmity between the Appellant on the one hand and these three witnesses on the other. Nothing could be brought in their cross examination which could suggest that any of them lied on this aspect

33. It has been urged by the learned Amicus Curiae that according to the prosecution the Appellant was not known to PW-3 and PW-4 previously. It was, therefore, incumbent on the prosecution to have a Test Identification Parade to establish the identity of the Appellant. The identification of the Appellant later in the day of the incident should not have been got done by the police. Since the

Appellant was shown to PW-3 and PW-4 on the day of the incident, the identification of the Appellant in the Court becomes valueless.

34. It is not a case where an assailant fled from the spot a few minutes after committing the crime. We have already extracted the relevant portions of the testimony of PW-3 and PW-4. PW-3 categorically testified that during her conversation with R, on inquiry, she was informed that the boy who had entered the house was her Bhanja (husbands sisters son). Similarly, PW-4 was specific that while R was talking to PW-3 the Appellant came inside the courtyard of the house and occupied a chair on the dining table. After about ten minutes R also came inside the house, she (R) went inside her bedroom and lay down. The Appellant was addressing R as Mami while R was calling the appellant as Anil Kumar. R prepared tea for herself and the accused/Appellant and she left the house at about 11:00 A.M. Thus, PW-3 had an opportunity to see the Appellant as also to identify him through his relationship with R. In fact, the evidence of PW- 4 is quite clinching on this aspect as she had an opportunity to closely see the Appellant for about half an hour during the time the Appellant sat on the dining chair, as also when tea was served and taken by R as well (as by the Appellant) and till the time PW-4 left. Since the identity of the Appellant had been established during inquiry, the police party had been sent to Baraut and the Appellant was brought to Delhi. Under these circumstances, there was no necessity of holding any TIP.

35. We are supported in our view by *Munshi Singh Gautam & Ors. vs. State of M.P.*, (2005) 9 SCC 631 and *Ramanbhai Naranbhai Patel vs. State of Gujarat*, (2000) 1 SCC 358.

36. In *Munshi Singh Gautam*, the Honble Supreme Court held:-

"17. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused

person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is, accordingly, considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration." (emphasis supplied).

37. Similarly, in Ramanbhai Naranbhai Patel where the witnesses had sufficient time to see the face of the assailants, the absence of Test Identification Parade was held to be inconsequential.

38. PW-4 has categorically stated that she left the house of R at about 11:00 A.M.; at that time R and the Appellant were in the house. She had even been asked by R to shut the door while leaving the house.

39. Of course, PW-2 Kapil Jain was confronted with his statement under Section 161 Cr.P.C. regarding the time at which he returned from the school along with his sister Shikha. Therefore, even if it is assumed that PW-2 had noticed his mother R lying dead in a pool of blood a little later than 12:30 P.M. or for that matter at 1:15 P.M. because the police had also reached the spot just thereafter, there is not much time gap between R being seen alive in the company of the Appellant and her being found murdered. The time gap is just about two hours.

40. The place where R and the Appellant were seen alive together and where the dead body of R was found is also very important. The Courts, do not attach much value to the evidence of "last seen" where there is considerable time gap or where the deceased and the accused are seen together alive at one place and the dead body (of the deceased) is found at another place.

41. The learned Amicus Curiae for the Appellant has referred to Ramreddy Rajeshkhanna Reddy & Anr. vs. State of Andhra Pradesh, 2006 (10) SCC 172 and Inderjit Singh and Anr. v. State of Punjab, AIR 1991 SC 1674 in support of his contention that last seen evidence alone is not sufficient to base conviction of an accused.

42. In Inderjit Singh the deceased and the Appellant were seen together on 31.07.1975 while the deceased had left his house and the dead body of the deceased Gurbax Singh was found at another place on 13 th September, 1975. Similarly, in Ramreddy Rajeshkhanna Reddy there was a time gap of 8 1/2 hours in noticing the dead body and when the deceased was seen alive in the company of the appellants.

43. In Amit @ Ammu vs. State of Maharashtra, 2003 (8) SCC 93, the facts were:-

"2. On Ex.28, it has been recorded that on 29-3-2001, PW1 accompanied by Ajay, PW11, had gone to the rear portion of a place known as Gaimukh for grazing she-buffaloes. One of the buffaloes went into a dilapidated building close by. In order to drive out that animal on going inside, he noticed the dead body of a school girl in school uniform lying in supine condition. He informed the police. The two police officials came to the site along with him. The said unidentified girl was seen by him the previous day as well in the forest in the area where he usually goes for grazing of the animals. At that time she was in the company of a boy aged about 20 years. She was carrying a school bag. At that time too, PW11 was with PW1. The description of the boy has also been given. The said boy was having with him a bicycle like that of Ranger type. The boy on being asked gave his name as 'Gandhi' and stated that the name of the accompanying girl is Vidya who was his sister and as her family members were going to come to Devi Temple, he had brought her directly from her school. Both were brought to the road and they went

away sitting on the bicycle. The girl seen by PW1 and PW11 was the same whose body had been found. The investigation led to the arrest of the appellant at 11.00 p.m. on 29-3-2001".

44. On the basis of the postmortem examination, the time of death in that case was found to be 3-4 P.M on 29-3-2001 which was just about the time when the Appellant and the deceased were last seen together by PW-1 and PW-11. No explanation was offered by the Appellant (in that case) in his statement recorded under Section 313 Cr.P.C. His defence was of complete denial. Relying on Mohibur Rahman vs. State of Assam, 2002 (6) SCC 715, the Supreme Court observed that there may be cases where on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability of the homicide.

45. The present case is squarely covered by the judgment in Amit @ Ammu. Rather the instant case stands on a much stronger footing in as much as in Amit @ Ammu, the dead body was discovered only on the next day whereas in this case the dead body was discovered by an eye witness i.e. PW-2 Master Kapil at about 1:00 P.M. i.e. just within two hours of PW-4 leaving the Appellant and the deceased R together in the house of R.

46. According to Ex.PW-15/A, the postmortem was conducted at 10:00 AM on 13.04.1989 and the time since death was given to be about 24 hours which coincide with the time when the Appellant was present with R.

47. The Appellant as in Amit @ Ammu has not come forward with any explanation as to how he parted company with R; rather, his case is also of simple denial.

48. As argued by the learned Amicus Curiae for the Appellant, and held in Vikramjit Singh @ Vicky vs. State of Punjab, 2006 (12) SCALE 321, it is true that initial burden is always on the prosecution to prove its case and Section 106 of the Evidence Act does not relieve the prosecution to prove its case beyond reasonable doubt.

49. In this case, the prosecution has discharged its initial burden of proving that the Appellant and R were together at the place and time of close proximity of death of R. The Appellant was under obligation to explain how and under what circumstances he had left R after 11:00 A.M. on 12.04.1989. Rather, his complete denial becomes an additional link in the prosecution case, as held in *State of Rajasthan vs. Kashi Ram*, (2006) 12 SCC 254.

50. It has been urged by the learned Amicus Curiae that where the case depends solely on circumstantial evidence, it is essential for the prosecution to prove motive for commission of the crime. This is true that the present case is based solely on circumstantial evidence and the prosecution has not come out with any motive for the Appellant to have committed the murder of his Mami. But there is always motive for commission of any crime. The Courts look for some motive in circumstantial evidence because it provides an additional link, to the Court that it is the accused who has committed the crime.

51. In *State of U.P. vs. Babu Ram*, 2000 (4) SCC 515; the Supreme Court observed as under:-

"Motive is a relevant factor in all criminal cases whether based on the testimony of eye witnesses or circumstantial evidence. The question in this regard is whether the prosecution must fail because it failed to prove the motive or even whether inability to prove motive would weaken the prosecution to any perceptible limit. No doubt, if the prosecution proves the existence of a motive it would be well and good for it, particularly in a case depending on circumstantial evidence, for such motive could then be counted as one of the circumstances. However, it is generally a difficult area for any prosecution to bring on record what was in the mind of the respondent."

52. Thus, absence of proof of motive does not weaken the prosecution case, if it is otherwise proved from circumstantial evidence.

53. It is contended by the learned Amicus Curiae that one tiffin and two glasses were seized from the spot by the IO, yet the report of the Finger Print Expert has not been placed on record which casts great shadow of doubt on the credibility

and truthfulness of the prosecution case in view of the law laid down in *Ashish Batham vs. State of M.P.*, 2002 (7) SCC 317.

54. We have carefully perused the record of this case. It is nowhere the case of the prosecution that chance prints were available or were lifted from any of the articles available at the spot. In *Ashish Batham*, the case of last seen was not credible. The recovery of chain of the deceased was found to be doubtful. The finger prints and foot prints were taken from the spot as also of the accused but its result was not placed on record and the report of CID investigation regarding Lie Detector Test was also not filed. Under those circumstances, it was held that the non production of the report/test would cast great doubt on the credibility and truthfulness of the prosecution case. *Ashish Batham* therefore, is not attracted to the facts of the case in hand.

55. The learned Amicus Curiae has argued that suspicion, however, strong cannot take place of proof. There is a long distance between may be true and must be true and that the said distance shall have to be travelled by the prosecution by cogent and convincing evidence. We fully agree with the contention of the learned Amicus Curiae that an accused cannot be convicted merely on suspicion. Suspicion, however strong cannot take place of the proof, but at the same time an accused cannot be acquitted merely on account of small discrepancies or variations in the testimony of the witnesses.

56. In *Krishna Mochi & Ors. vs. State of Bihar*, 2002 (6) SCC 81, the Supreme Court deprecated the practice to pass orders of acquittal on the basis of minor discrepancies and contradictions.

57. It is true that there is no direct evidence of commission of murder of R in this case. The Appellant being last seen with R in this case, in the circumstances, which we have discussed earlier is so strong so as to base conviction of the Appellant on that evidence itself. Moreover, there is corroboration to the evidence of last seen by recovery of shirt Ex.P-2 from the Appellant which was found to contain blood group O which tallied with the blood group of deceased R. The circumstances proved by the prosecution unerringly point to the guilt of the accused. The evidence produced is incapable of explanation of any other

hypothesis than to the guilt of the Appellant. The evidence adduced meets the tests as laid down in Mahmood (supra).

58. In view of the foregoing discussions, we do not find any error or infirmity in the impugned judgment. The Appeal is without any merit; it is accordingly dismissed.

59. We place on record our appreciation for Mr. Sumeet Verma, learned Amicus Curiae who has taken pains and put in great efforts to put up the case of the appellant from all possible angles.

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