

**Hira Lal Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/911348](http://sooperkanoon.com/911348)

**Court :** Delhi

**Decided On :** Mar-11-2011

**Judge :** Badar Durrez Ahmed; Manmohan Singh, Jj.

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

**Appeal No. :** CRL.A. 326/1997

**Appellant :** Hira Lal

**Respondent :** The State

**Advocate for Def. :** Ms Richa Kapoor, Adv.

**Advocate for Pet/Ap. :** Mr Javed Hashmi, Adv.

**Judgement :**

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

1. This appeal is directed against the judgment dated 20.08.1997 and order on sentence dated 21.08.1997 delivered by Additional Sessions Judge, Shahdara, Delhi in Sessions Case No. 6/96, FIR No. 40/95, P.S. Anand Vihar, whereby the appellant Hira Lal was convicted under Section 302 IPC and was sentenced to

rigorous imprisonment for life and a fine of Rs.500/- was also imposed upon him, and in default thereof, rigorous imprisonment for a period of one month.

2. The case of the prosecution was that on 12.2.1995 information was received by PW- 21 Irush Tiagga who was posted at Police Station Anand Vihar that a dead body was lying near railway line Road No.56, Anand Vihar, which was duly recorded as DD No.7A which is Ex.PW-21/A. On receipt of this information, SI Irush Tiagga reached the spot along with a constable at about 10.15 a.m. and found a dead body of a Sikh person aged about 25 years.

3. On search of the dead body, one purse was recovered from the pocket of the pant containing slips with the heading of K.K. Eggs Traders Bure Commission, Jawahar Nagar, Ludhiana and one black & white photograph of the deceased. A torn pocket of white coloured shirt lying near the right hand of the deceased was sealed vide memo Ex.PW15/A. A pair of shoes found lying near his feet was seized vide memo Ex.PW 21/2. The dead body could not be indentified at the spot. The then SHO Sh. Suraj Mal (PW- 23) arrived at the spot and carried out further investigation.

4. After inspection of the spot, a ruqqa Ex.PW23/A was sent to the police station for registration of the case. The body was sent to the mortuary along with the inquest documents. On that day the dead body could not be identified.

5. S.I. Sh. Suraj Mal flashed a message at different places on the basis of the telephone number which was found on the receipt recovered from the purse of the deceased. Next day, the brother and father-in-law of the deceased along with two other persons came to the police station and S.I. Suraj Mal told them the facts of the case and took them to the mortuary where they identified the dead body of the deceased Sukhvinder Singh @ Bitta who belonged to Ludhiana.

6. S.I. Sh. Suraj Mal conducted the investigation of this case till 13.02.1995 and thereafter the investigation was done by Inspector S.N. Khan (PW-24) of Special Investigation Unit.

7. On 13.02.1995 Dr. L. T. Ramani (PW-10) conducted the post mortem examination on the body of the deceased which revealed that the death was due to asphyxia resulting from strangulation.

8. PW-24 Inspector S.N. Khan who conducted the investigation deposed in the court that he, alongwith his staff, reached Ludhiana at the residence of the deceased and met his wife, bhabhi (sister-in-law), brother and neighbour. He recorded their statements on 15.02.1995 and they informed, inter alia, that the deceased had illicit sexual relations with the bhabhi of the accused, namely, Smt. Asha Rani residing at J-261-62, Old Seema Puri, Delhi. He further deposed that during the investigation on 28.07.1995, when he was showing the photograph of the deceased which is Ex.PW19/1 to the people door to door as to whether the deceased had visited the areas of Seema Puri, one Jaspal Singh (PW-14), r/o H-240, Seema Puri, Delhi, identified the said photo whose statement was recorded as Ex. PW- 14/A by him in which he stated that he knew the husband of Asha Rani, her husband Surender Kumar and Devars including the appellant and on 11.02.1995 at about 8:30 p.m., he had seen accused with the deceased (sikh person) aged about 25-26 years talking with each other and accused stopped a rickshaw and sat in it with the deceased and went away. And on the same day, he started searching for accused Hira Lal but, he could not be found and later on 30.07.1995, Hira Lal was overpowered while he was going towards the cremation ground.

9. On the basis of the disclosure statement, the appellant took the police party to Road No. 56 near a pond at the railway line and, at a distance of about 200 yds from the place of murder near railway line, he got recovered a shirt from inside the bushes which is Ex. PW8/1, the front pocket of which was missing. The shirt was seized vide memo Ex.PW8/D and on 05.09.1995 the recovered shirt and the torn pocket were sent to CFSL Lodhi Road in sealed parcels. After the completion of formalities of investigation the appellant was sent for trial.

10. Learned Sessions Judge recorded the statements of 25 prosecution witnesses. Thereafter, the statement of the appellant was recorded under Section 313 Cr.P.C. The appellant examined three witnesses in his defence.

11. The trial court convicted the appellant for the murder of Sukhvinder Singh under section 302 IPC and sentenced him to undergo rigorous imprisonment for life and to pay fine of Rs. 500/-. The three main circumstances, on the basis of which the trial court convicted of the appellant, are as under:

(a) That the evidence of PW-14 Jaspal Singh corroborates the evidence of PW-24 Inspector S.N. Khan because PW-14 Jaspal Singh identified the photograph Ex.PW19/1 of the deceased who was last seen with the appellant in the night of 11.02.1995 at 8:00 p.m. and thereafter no one saw him alive.

(b) That the prosecution has also proved on record that the appellant had a motive to kill the deceased which is corroborated by the statements made by the PW-1 to PW-6 that the deceased was having illicit relations with Smt. Asha Rani who is the bhabhi (sister-in-law) of the appellant.

(c) That there was recovery of the shirt of the accused after the crime, which was recovered at his instance. The pocket of the shirt was missing. The said torn pocket was recovered by police near the dead body. Both, the shirt and the torn pocket were sent to the CFSL. According to the CFSL report, the shirt and the pocket were having the same characteristics and the torn pocket belonged to the said shirt.

12. The trial court gave its finding on first circumstance by relying upon the testimony of PW-14 Jaspal Singh and came to the conclusion that he supported the prosecution case in the examination-in-chief but he seemed to have been won over by the accused. He had tried to help the accused in the cross-examination as the accused got sufficient time of five months, and as a result of which he completely denied the facts which were deposed by him against the accused in the examination-in-chief. The trial court had also found that had he been cross-examined on the same day when he was examined in chief before the Court he would not have supported the accused and he would have stuck to the statement which he made in favour of the prosecution. Therefore, the finding of the trial court on PW-14 Jaspal Singh went against the appellant because of delay of five months in cross- examination of this witness and it was held that the version given by this witness in the examination-in-chief is credible and more trustworthy rather

than what he deposed in the cross-examination.

13. It is evident that PW-14 Jaspal Singh supported the case of the prosecution in his examination-in-chief recorded on 06.09.1996, however he did not support the case of the prosecution in his cross-examination which was conducted on 03.02.1997. It is necessary to refer certain portion of his cross-examination which reads as under :-

"It is correct that whenever I appeared in the court Mr M S Khan took me from Delhi and I appeared in the court with him. I did not know the said sardar (Deceased) from prior to that day. I did not see deceased and Hira Lal talking with each other and nor I told so to the police. I was called by the police at the PS before recording my statement u/s 161 Crpc. But I was not harassed substantially. I was forced to set for one day at the PS. I had stated to the police that I did not know anything regarding the deceased. and It old relates to the day before my statement was recorded. and they had recorded that regarding my visits to Delhi meeting with my relations and my address of Jalandhar I have not stated to the police that I used to reside with Uttam Singh in Seema Puri. nor I used to work in Delhi. nor I used to take care or handle the transport business of Uttam Singh. I had gone to PS 15/20 days prior to the day my statement was recorded. and my statement was not recorded at the PS when I was made to sit forcibly. I was not shown the clothes of the deceased at the PS. I did not state his age and height of the deceased to the police. I do not remember if any photo of the deceased are shown to me at PS. On the day when I was made to sit and I did not identify any photo of any Sardar (Deceased) on that day at the PS. I had not told M S Khan to visit my native village on the day when I was made to sit at the PS. I had never seen any conversation between the accused and any Sardar. Uttam Singh had never accompanied with me to the PS. I know that Rani from prior to that day. I knew that police had been calling her and her husband her dever Hira Lal but I do not know if all these persons were tortured by the police. I do not know the Riksha Puller. I do not remember if he was a Sardar or a mona in which the accused let with the deceased together. I came to know about the murder of the Sardar after 3/4 months when I left for Rudharpur. It is correct that after seeing the photo Ex. PW-12/1 to 4 I had stated to the police that I cannot say who is the Sardar in the

photo and I cannot identify."

After the cross-examination, the request of APP was allowed by the trial court to cross-examine PW-14 as he was resiling from the earlier statement. The relevant extract of cross-examination of APP is reproduced below:

"I had made my statement on 6.9.96 in the court at the instance of SM Khan because he had told me to depose in that manner. Insp. Khan met me today also. But he had not told anything to me. It is incorrect to say that today I have made a false statement before the court knowingly and that I did not attend the court on the next date fixed after 6.9.96 i.e. on 4.10.96. It is correct that I have come today after the warrants were issued against me. It is incorrect to say that I made statement to the Police that I used to reside with Uttam Singh in Seema puri and I used to assist him in Transport business confronted with his statement Ex PW14/A portion A-A where it is as recorded. It is incorrect to suggest that I had stated to the police that I had seen the deceased and the accused present in court talking with each other on 11.2.95 at about 8.30 p.m. at Seema puri bus stand. I did not state so to the police. Confronted with his statement Ex PW14/A portion B-B where it is so recorded. It is also incorrect to say that I am now deposing falsely that I did not state so before the police. It is also incorrect to say that I was shown the photographs by the police of the deceased. I did not state this fact to the police. Confronted with his statement Ex Pw14/A portion C-C where it is so recorded. It is incorrect to say that I had seen the deceased and the accused on 11.2.95 at about 8.30 p.m. at Seema puri bus stand talking with each other and that I was shown the photos of the deceased by the police and thereafter told to the police that it was of the Sardar who was having talk with the accused on 11.2.95 at about 8.30 p.m. It is incorrect to suggest that today I have been won over by the accused and therefore I have made false statement today before the court."

14. As per the case of prosecution, he had seen the appellant in the company of deceased on 11.02.1995 at 8:00 p.m., if that is so, it is not possible to believe as to why he did not disclose this fact to anybody till 28.07.1995 when he identified the photograph of the deceased. The dead body of the deceased was found at a

distance of 6-7 kilometers from the place of bus stand of Seema Puri where the PW-14 Jaspal Singh is alleged to have seen them together.

15. Further PW-10 Dr. L.T. Ramani who conducted the postmortem examination on 13.02.1995 on the body of deceased deposed before the court that the stomach of the deceased contained undigested food mixed with fluid, and smell of alcohol could be identified in the stomach contents. The time of death was about 36 hours prior to the postmortem examination which was conducted at 11.30 am on 13.02.1995. The prosecution was unable to ascertain the correct time of murder of deceased. In case, we believe post mortem report Ex. PW10/A, the time of death comes to about 11.30 pm on 11.02.1995.

16. In view of the above, probably the deceased must have taken the food and alcohol somewhere before the incident. There was a smell of alcohol which could be found over after 48 hours of death as per the opinion of PW10. Hence, there was a time gap of about three hours between the point of time when the accused and the deceased were last seen together. Even otherwise the last seen evidence has to be connected with some other corroboration.

17. There is no other evidence except the testimony of PW14. In his cross-examination, he had totally denied the earlier statement made by him on 28.07.1995 in the examination-in-chief. After having considered the entire testimony of PW14 coupled with the fact that PW14 had only seen the deceased along with the accused, merely this evidence was not sufficient to prove the circumstance of last seen. Even otherwise, we feel that the statement of PW14 appears to be wholly untrustworthy and unreliable which has not been proved by the prosecution beyond reasonable doubt.

18. Therefore, we discard the testimony of PW14 as we have found serious improbability in the version of the last seen evidence and the fact that PW14 surfaced after five months and seventeen days from the date of incident. Since we are left with no evidence of the appellant being last seen in the company of the deceased on 11.02.1995, as the statement of PW14 appears to be unreliable, the benefit of doubt would go in favour of the accused. The finding of the trial court that PW14 has been won over by the accused does not appear to be correct

because of the reason that PW14 was prosecution witness and it was for the prosecution to produce him before the court.

19. The next circumstance relied upon by the trial Court was on the point of motive. The trial Court, on the basis of statement of family members, relation and known persons, came to conclusion that the prosecution had produced sufficient evidence to prove the fact that the deceased was having illicit relations with Smt. Asha Rani and the deceased used to visit Asha Rani at Delhi for a long time and, therefore, the prosecution has established reliable evidence to prove the said circumstantial evidence.

20. The prosecution has relied wholly on circumstantial evidence for bringing home the offence to the appellant. It is settled law that in a case based on circumstantial evidence the prosecution has to prove all the incriminating circumstances beyond any shadow of reasonable doubt and the circumstances so proved should complete the chain of events linking the accused with commission of the crime. There should not be left any chinks in such a chain and no circumstance should be of such a nature which could lead to any inference of innocence of the accused. All circumstances so alleged and proved must show the involvement of the accused in the crime.

21. The prosecution has examined PW-1 Amarjeet Singh, brother of deceased, PW-2 Balbir Singh, friend of the deceased, PW-3 Smt. Kuldeep Kaur, wife of the deceased, PW-4 Neelam, Bhabi of the deceased, PW-5 Harbhajan Singh, father-in-law of the deceased and PW-6 Ved Prakash, an RSS Worker/Social Worker in the area where deceased was residing. All the witnesses have mainly deposed that the deceased was having illicit relations with one Asha Rani who used to reside at a short distance from their house at Ludhiana and she was married in Delhi. PW-2 Balbir Singh deposed that he caught deceased with Asha Rani in a compromising position and had seen them watching a movie in Singar Cinema Hall in Ludhiana and he had also seen them at the roof of his mausis house. In his cross-examination, he stated that he had not told the Police that he had seen them together on the roof of the house of Asha Rani or seen them going together to watch a movie in Singar Cinema Hall, Ludhiana.

The testimony of PW-3, wife of the deceased, was that her husband came to the house of the accused, who is the devar (brother-in-law) of Asha Rani, as she was informed by the deceased that he was staying with his friend. She has also confirmed that the deceased was having illicit relations with Asha Rani. But in her cross-examination she changed her statement to the effect that she told the Police that her husband had stayed with his friend for eight days and in-fact her Jeth (brother-in-law) had told her that deceased was staying in the house of Asha Rani.

22. Similarly the testimony of PW-4, Bhabi of the deceased was that she had seen the deceased and Asha Rani together in their house in Ludhiana, they were in a room for two hours. The door of the room was not bolted, however, the room was closed. In her cross-examination, she deposed that she did not make any complaint in the Panchayat of Biradari about the illicit relations of the deceased.

23. The Investigating Agency, in order to prove the illicit relations, also produced a letter Ex. P-1 which was found placed inside the photo frame of the deceased and the said letter was given to the Police and the same was taken into possession vide seizure memo Ex. PW1/C with the presumption that this letter Ex. P-1 found at the house of the deceased was probably written by Asha Rani to the deceased during his life time. In order to connect Asha Rani with this, letter Ex. P-1 was sent for expert opinion which opined that the letter was not in the hand writing of Asha Rani. In cross- examination of PW1, he stated that he had not complained about the illicit relation to any member of the family or Biradari except his wife and in his presence Asha Rani had never come to meet Sukhvinder.

24. In this connection, no independent witness was examined from the neighbourhood of Asha Rani or otherwise. The prosecution examined only family members of the deceased or their relations/known persons from the Ludhiana. No witness was examined by the prosecution who could testify that the deceased had been visiting the residence of the appellant to see his bhabhi Asha Rani or from Seemapuri who could testify that the deceased was ever seen in the area for the last 15 years.

25. Smt. Asha Rani was admittedly married about 15 years ago prior to the incident. She has three children. She was residing in Ludhiana before her

marriage. She was examined as DW-3. She has denied any relation with the deceased. In cross-examination she stated that she did not know the deceased. He was residing in a different locality in Ludhiana.

26. As per the case of the prosecution, the deceased at the time of death was 25-26 years old. The witnesses produced by the prosecution, i.e., relation and family members, deposed that both deceased and Asha Rani had illicit relations before and after the marriage of Asha Rani. If the prosecution version about the age of the deceased is taken as correct, it means that before the marriage of Asha Rani the deceased might be between 10-12 years of age and in that case it is highly doubtful that the deceased would have had illicit relations with Asha Rani.

27. In view of the above, we feel that the prosecution failed to connect Asha Rani with the deceased. Further, it is not possible that the deceased could have been visiting Asha Rani who is living in a small house for fifteen years after her marriage without being noticed by the other inmates of the house. As already mentioned, no witness from Seema Puri, where Asha Rani resides, could testify that the deceased was seen in the area of Seema Puri and visiting Asha Rani, was produced. In the absence of evidence, it is difficult to accept the version of the prosecution on the point of motive.

28. It is settled law that if the motive which is set out by the prosecution is not proved beyond shadow of reasonable doubt the other incriminating circumstantial evidence may lose its importance and it may lead the court to draw an inference that perhaps the appellant was not involved in this crime.

29. The trial court committed an error in relying on the prosecution version of illicit relations between Asha Rani, sister-in-law of the appellant, and the deceased and to convict the appellant for the murder.

30. The other circumstance relied upon by the learned trial court for holding the appellant guilty is the torn shirt pocket. The finding of the trial court on the shirt of the accused, worn by him at the time of occurrence, is that the said shirt which was recovered at his instance did not have front pocket and that the said torn pocket was recovered by the police near the dead body. According to the CFSL

report, the shirt and the pocket had the same characteristics and the torn pocket belonged to the said shirt.

31. It is argued by the learned counsel for the appellant that the appellant was interrogated by the investigating agency on several occasions before the date of his arrest and disclosure i.e. 30.07.1995 but during those interrogations at no stage he revealed anything with regard to that shirt. Further it has been submitted that the shirt was recovered after a long time and the place of recovery was an open place accessible to all, still there was no independent witness with regard to the recovery of the shirt and there is every possibility that the shirt EX.PW 8/D1 was planted with a view to connect the appellant with the alleged commission of crime.

32. The date of incident in the present case was 12.02.1995. The accused was arrested on 30.7.1995 and on the same date the shirt Ex. PW-8/1 was recovered. In the cross-examination, PW-24 Insp. S.N. Khan, Investigating Officer, stated that since there was no evidence of involvement of the accused in the commission of crime available during the period of five months, therefore, he did not record any disclosure statement of the accused. He admitted that he had not visited the spot on the day when he took up the investigation as he felt it was not necessary to search that area. It was only after 28.07.1995 when PW-14 Jaspal Singh identified the photograph of deceased that he arrested the accused. There was no public witness present when he recorded the disclosure statement of the accused. In his testimony, he had admitted that various complaints were made by the family members of the accused for harassment before the arrest of accused. It was stated by him that he had not sent the torn pocket to the CFSL before the recovery of the shirt and also stated that no public witness was available at the place of recovery of shirt.

33. DW-2, in his examination has stated that he was lifted in the intervening night of 13/14.02.1995 and was detained at P.S. Anand Vihar by Inspector S.N. Khan and he and his other family members were being harassed by using third degree methods and on 20.04.1995 he made a complaint to the Police Commissioner which is Ex. DW2/A. Similar complaint was made by Asha Rani on 06.05.1995,

who was also being tortured by Insp. S.N. Khan who along with police staff came and lifted the accused from his house at Rani Garden. A telegram Ex. DW2/D was sent to the Commissioner of Police and the arrest was shown by PW24 on 30.07.1995.

In answer to question No.40, in his statement made under Section 313 Cr.P.C., the defence set up by the accused was as under : "Q. 40 Have you to say anything else?

Ans. I am innocent. I have been falsely implicated. My brother Madan Mohan and my Bhabhi Asha Rani had sent complaints against Insp. S.N. Khan for harassment, wrongful detention since 14th day of Feb. 1995 and extorting & due pressure and using illrd degree methods in order to extort confession in connection with death of some person allegedly named Bitta from Ludhiana as told by the Police & complaint by my Bhabhi for defaming, Blackmailing her & destroying her matrimonial life & taking absolutely false statt. of her husband & brother in law causing expression on her character. When the Police came to know about these complaints, I was falsely implicated in this case by making and creating false evidence against me. These complaints were made on 20.04.1995 & 6.5.95 & also telegrams were made to the Lt. Governor and Commissioner of Police & Deputy Commissioner of Police much prior to the date of his arrest. These telegrams pertains to 27.7.95 & 28.7.95 regarding the wrongful detention of the accused. I was detained at the P.S. since 28.7.95. My brother was also detained in the P.S. My brother Surrender was also detained but he was let off later on."

34. PW-20 Constable Ram Dayal deposed that on 30.7.1995 on the date of recovery, he was posted at the District Crime Cell, East District and on that day only he joined the investigation. In his cross examination he stated that at a distance of about 200 yds. from the place of recovery of the shirt there are residential jhuggis and he was not aware if the residents of those jhuggis/houses come to ease themselves near the place of recovery of shirt. According to him he prepared the site plan of the recovery of shirt and he had signed that memo. When he was asked that there is no memo of site plan of recovery of shirt on the file, he

stated that he is not aware if said memo had been destroyed by the IO.

35. PW-23 Suraj Mal who was S.H.O. P.S. Anand Vihar on the date of occurrence prepared the ruqqa Ex.PW-23/A at the spot and seized the pocket of the shirt stated in his cross-examination that the torn pocket of the shirt is not visible in the photographs Ex. PW-12/1 to 4 and he had also not noted down the size of the pocket nor he put any mark of identification of the said torn pocket. He admitted that on that day he searched the area around the dead body and whatever incriminating articles were lying there were seized by him. He stated that there are jhuggies at some distance from the place of recovery of dead body i.e. at a distance of 100/125 yds. and there are bushes and trees around that place and he did not find any foot print at that time. It was admitted by him that he did not record the statement of any independent public witness.

PW-21 SI Irush Tiagga in his cross examination has also stated that the dead body was lying in the Northern side of the water pond at a distance of 5-6 feet from the pond and the distance from Railway Line was 15-20 yards. The head of the dead body was in East direction and the feet in the West. The dead body was lying facing the ground. He inspected the adjoining area comprising about 100 yds. but he did not find any clue there except the items which were recovered from the spot and no other item or cloth was found on the date of occurrence.

PW-15 Constable Satender Kumar who was posted at PS Anand Vihar on that day i.e. 12.2.1995 in his cross examination has admitted that the entire area was searched upto the left side of the boundary wall of factory. The distance between the nala and the place of recovery of dead body might be about 100/125 yds. There are kikkar trees on the left on the railway line near the wall of the factory and nothing was seized from the bushes in his presence near the spot and he did not find any cloth, like shirt or any other thing in the bushes.

The case of the prosecution against the accused to connect him with the murder of the deceased was that the pocket of the shirt which was found near the dead body of the deceased was a piece of the same shirt which the accused/appellant got recovered from the bushes on 30.07.1995, after his disclosure statement at the time of his arrest.

36. In the decision reported as Narsinbhai Haribhai Prajapati v. Chhatrasingh and Ors : (1977)4 SCC 600(I) Supreme Court had held that in the absence of any other evidence the circumstances of seizure of blood stained shirt and dhoti from the person of an accused and dharias from the houses of the accused are wholly insufficient to sustain the charge of murder against the accused.

In the decision reported as Surjit Singh v. State of Punjab : 1993 Cri. L.J. 3901 a watch belonging to the deceased and one dagger which was found to be stained with human blood were recovered at the instance of the accused. It was held by the Supreme Court that said recovery by itself, does not connect the accused person with the murder of the deceased. It was further held that said circumstance may create some suspicion but the same cannot take the place of proof.

37. From the testimony of various witnesses and material placed on record, it is evident that the appellant was interrogated by the Investigating Agency on several occasions before the date of arrest and disclosure. At no stage during this interrogation he disclosed about throwing of the shirt in bushes wherefrom it was recovered on 30.07.1995 after a long period. It was an open area as per the testimony of the prosecution witnesses and was accessible to all. It was admitted by the prosecution witnesses that there are jhuggis/houses near the bushes. Admittedly, no public independent witness was present at the time of making the disclosure statement made by the appellant or at the time when the recovery was effected. Further the testimony of witnesses with regard to the recovery of shirt and also about the distance of area is contrary to each other. Therefore, the prosecution version about the recovery of the shirt is not free from doubt.

38. In these circumstances, the prosecution has failed to prove its case beyond reasonable doubt. Hence we give the benefit of doubt to the appellant and acquit him of the charge framed against him.

39. The appeal is allowed. The judgment and the order on sentence passed by the trial court are set aside and the appellant is acquitted. The appellant is on bail. The bail bond stands cancelled and the surety stands discharged.