

Anoop Kumar Konkde Vs. State

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Court : Delhi

Decided On : May-26-2011

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

Acts : Indian Penal Code (IPC) - Sections 302, 394; Code of Criminal Procedure (CrPC) (CRPC) - Sections 173, 160, 313

Appeal No. : CRL.A.No.147/2011

Appellant : Anoop Kumar Konkde

Respondent : State

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

Advocate for Pet/Ap. : Mr. Manish Kumar Khanna, Adv.

Judgement :

1. This is an Appeal against the Judgment dated 20.01.2011 and Order on sentence dated 21.01.2011 whereby the Appellant was held guilty for the offence punishable under Section 302 and 394 Indian Penal Code (IPC). For the offence punishable under Section 394 IPC, the Appellant was sentenced to undergo Rigorous Imprisonment for ten years and to pay a fine of ` 4,000/- or in default of payment of fine to further undergo simple imprisonment for a period of three months whereas for the offence punishable under Section 302 IPC, the Appellant was sentenced to undergo imprisonment for life and to pay a fine of ` 5,000/- and

in default of payment of fine to further undergo simple imprisonment for a period of four months. and

2. The Appellant was employed as a driver by PW-1 Naresh Kumar Mittal on 24.12.2007 on the recommendation of PW-3 Nand Kishore who was working as a Security Supervisor at Gangotri Enclave. PW-1 Naresh Kumar Mittal and his wife Meera Mittal were residing at C-28 Gangotri Enclave, Alaknanda, New Delhi. PW-1 Naresh Mittal used to frequently travel out of Delhi in connection with his official work. Both the children of Naresh Mittal and Meera Mittal were settled abroad. The Appellant used to drive the car of Meera Mittal (the deceased).

3. According to the prosecution, the work of the Appellant was not satisfactory as his driving skills were not up to the mark. Moreover, Meera Mittal also made a complaint to her husband that **"Anoop jaban larata hai and ulta jawaab deta hai."**

4. On 12.01.2008 when PW-1 Naresh Kumar Mittal was in Bhopal in connection with his official work, at about 7:15 P.M. PW-13 Dr. Ramesh Kumar (brother of the deceased) was informed by a Security Guard of Rishi Apartments that the house of his sister (Meera Mittal) was bolted from inside and there was no response to the door bell. He was further informed that the lights in the house were switched off and the rear door of a room was slightly ajar. PW-13 went to Gangotri Apartment and found several persons gathered outside the apartment of his sister. One Security guard was asked to go inside the courtyard by jumping over the railing. He went inside the house and opened the front door. When PW- 13 entered the house and switched on the lights, he saw his sisters dead body on the floor just near the door. PW-13 who was a qualified doctor felt his sisters pulse and declared her dead. He also noticed a cut mark on his sisters neck. PW- 13 immediately informed Meeras husband Naresh Kumar Mittal (about the incident) who was at Bhopal at that time. He also contacted his brother-in-law Shri V.S.Rana to further inform the police.

5. On the basis of the statement Ex.PW-12/A made by PW-13, the First Information Report (FIR) was registered in Police Station Chitranganj Park. Naresh Kumar Mittal (PW-1) also reached Delhi the same day.

6. According to the prosecution, washer men and servants working in the adjacent flat including the Appellant were summoned for interrogation but the police not get any clue. The Appellant was allowed to leave with direction to appear at the Police Outpost, Alaknanda Market on 14.01.2008.

7. The Autopsy on the dead body of Meera Mittal was performed on 14.01.2008. Inspector Anil Dureja (IO) and SI Hari Prakash Gulia were present at the Police Outpost outside Gangotri Apartment.

8. It is the prosecutions case that the Appellant was fed up with the nagging behavior of the deceased as she used to scold him on petty matters. According to the prosecution the deceased threatened the Appellant that he would be sacked from the job on arrival of her husband Naresh Kumar Mittal. On 12.01.2008 as soon as the deceased and the Appellant reached the house of the deceased, he asked for a glass of water from the deceased. After serving water to the Appellant the deceased proceeded towards her bedroom. According to the prosecution, the Appellant lifted a knife from the kitchen and entered the deceaseds bedroom. The Appellant tried to snatch the deceaseds purse upon which she raised an alarm as a result of which he (the Appellant) got enraged and inflicted several knife blows on her. The deceased fell down on the carpet and became unconscious. The Appellant took out some currency notes of various denomination from the purse of the deceased, removed the jewellery from her person and he lifted another pouch containing gold jewellery from the room. While the Appellant was making search for other valuables, he heard the door bell, he, therefore, lifted the booty and escaped to the Jahapanah forest by jumping over the boundary wall of the house.

9. It is alleged that the Appellant concealed the jewellery and the currency notes in the forest by digging a pit with the knife which he was carrying.

10. It is alleged, that on sustained interrogation the Appellant broke down and made a clean breast of his guilt. In pursuance of the Appellants disclosure statement Ex.PW-17/C, the police recovered jewellery articles Ex.P-5 to P-12 and cash amounting to ` 13,920/- Ex.P-14 (collectively).

11. On completion of the investigation, a report under Section 173 Cr.P.C. was filed in Court.
12. The Appellant pleaded not guilty to the charge for the offence punishable under Section 394/302 IPC.
13. In order to establish its case, the prosecution examined 19 witnesses.
14. PW-1 Naresh Kumar Mittal husband of the deceased deposed that he was in Bhopal on the day of the incident and returned to Delhi immediately on getting information that his wife Meera Mittal had been murdered. He testified that he identified the jewellery Ex.P-5 to P-12 and blue colour jewellery pouch Ex.P-13 belonging to his wife.
15. PW-2 Niraj Kumar Gupta is a brother of the deceased. He deposed having received a telephone call from Police Station Chitranjan Park on 14.01.2008 requiring him to reach the Police Post in front of Alaknanda market at 9:00 A.M, which he did within 2-3 minutes. He was informed by the police officials that the Appellant, who was the driver of his sister, had confessed about the crime of murdering his sister and stealing valuables from her house.
16. The Appellant led them to Jahapanah forest and dug out the earth with his hands at a place where the earth was loose. He took out a gathri made of black and white cloth having red checks. The Appellant opened the gathri, containing cash amounting to ` 13,920/- in various denominations i.e., one currency note of ` 1,000/- denomination, 22 notes of ` 500/- denomination, 18 notes of 100 denomination, two notes of ` 50 denomination and two notes of ` 10 denomination. A blue zipper bag was taken out of the gathri which contained two pairs of Kara (bangles), 12 pairs of ear rings, one single ear ring, one ring, three chains with pendants and four other pendants. PW-2 stated that one of the chains having Ganesh Ji locket was stained with blood. The entire jewellery was kept in a plastic bag and sealed with the seal of AD. The cash was separately sealed in a polythene bag with the seal of AD. The witness identified the jewellery recovered by the Appellants disclosure, as Ex.P-5 to P-12.

17. PW-3 Nand Kishore is an important prosecution witness. He deposed about having come to know on 12.01.2008 at about 7:00 / 7:30 P.M. about the robbery and the murder of Meera Mittal. He testified that the brother and father of the Appellant were working at Gangotri Enclave. The Appellant got employment at the house of Naresh Kumar Mittal due to his recommendation 10-15 days prior to the incident. At about 5:25/5:30 P.M., he noticed the Appellant going towards the Jahapanah forest and saw him return after some time. On his enquiry, the Appellant with a sullen face (utra hua) informed him that he had gone to the forest to relieve himself. The witness stated that on that day the Appellant returned to Mrs. Mittals house at about 5:00 P.M.

18. PW-5 Ms. Kamlesh Gupta is the sister-in-law of deceased Meera Mittal. She deposed that on 12.01.2008 after finishing her duty at the college she called Meera Mittal. They (Meera Mittal and she) had their lunch at 3Cs mall, Lajpat Nagar where she discussed with Meera Mittal about the (ill) behaviour of the Appellant. She deposed that Meera Mittal informed her that they would decide about the Appellant on her husbands return from Bhopal. In the evening she got a message from her brother that Meera Mittal was lying dead in the house and she immediately exclaimed that "Mujhe Pata Tha Ki Who Yeh Karega".

19. PW-13 Dr. Ramesh Kumar is brother of deceased Meera Mittal. He testified that he reached the spot on getting information that his sister was not responding to the door bells and that door of one of the rooms was slightly open. Further, he deposed that when he reached the apartment one security guard was asked to enter the flat from the rear side. When the security entered the house and opened the front gate, he noticed that Meera Mittal was found lying dead in a pool of blood.

20. PW-17 SI Hari Prakash Gulia was associated in the investigation of the case with Inspector Anil Dureja, SHO, Alaknanda Police Station. On reaching the apartment he noticed that a lady was found lying dead inside the bedroom in House No.C-28, Gangotri, Tara Apartment, Alaknanda. He testified about various formalities completed by the IO at the spot. He deposed that on direction of the IO, he went to the house of the Appellant and brought him and his father to PS

Chitrangan Park. The IO interrogated the Appellant and gave him a notice under Section 160 Cr.P.C. to appear on the next day. According to PW-17, after the dead body of the deceased was handed over to her husband, they reached the police booth Alaknanda where the Appellant and his father were present. When they were interrogated, the Appellant disclosed about his involvement in the case consequent to which, he was arrested. His disclosure statement Ex.PW-17/C was recorded. PW-17 deposed that in pursuance of the disclosure statement 19 jewellery articles were recovered contained in a blue colour pouch and cash amounting to ` 13,920/- from Jahapanah forest by digging earth. The witness also deposed about recovery of the blood stained shirt, jacket and jeans from the house of the accused on 14.01.2008 at about 4:30 P.M.

21. In cross-examination, the witness deposed that they reached police booth at about 1:00 P.M. on 14.01.2008. The Appellant made confession at about 1:30 P.M. They called the husband of the deceased at about 2:00 P.M. and the brother of the deceased reached there at about 1:50 P.M.

22. PW-18 Inspector Anil Dureja is the IO of the case. He deposed on the lines of PW-17.

23. Other witnesses examined by the prosecution were formal in nature as the homicidal death of Meera Mittal is not in dispute.

24. On closure of the prosecution evidence, the Appellant was examined under Section 313 Cr.P.C. The Appellant denied having made any disclosure statement or getting any jewellery or cash recovered from Jahapanah forest. He stated that on 12.01.2008 after finishing his duty he left for his home along with his father in a TSR at about 4:30 P.M. and reached there at 5:30 / 5:45 P.M. He stated that Nand Kishore, Supervisor of Gangotri Apartment informed him that the wife of his employer (Meera Mittal) had been killed. He, with his brother immediately reached Gangotri Apartment and informed the police that he was the deceaseds driver. The police officials noted his name. Thereafter, his father was asked to leave and he was detained the whole night in the Police Station for questioning. The next day he was taken to the crime branch office where he was tortured and beaten severely. His signatures were obtained on some blank papers and he was given

some medicines as he was unable to walk. On the next day, when was produced in the Court he raised an objection that he was not medically examined. He was then taken for medical examination after which he pleaded his false implication in the case.

25. We have heard Mr. Manish Kumar Khanna learned counsel for the Appellant, Mr. Lovkesh Sawhney learned APP for the State and have seen the records.

26. It is argued by the learned counsel (for the Appellant) that the evidence relied by the prosecution against the Appellant is the disclosure statement Ex. PW-17/C and recovery of the jewellery articles Ex. P-5 to P-12 and cash amounting to `13,920/- in pursuance of the disclosure statement. Further he contended that the recovery is unbelievable in view of the contradictions regarding the timing of the disclosure statement and the recovery, deposed to by PWs 2, 17 and 18. It is urged that the alleged recovery of blood stained blue jeans, shirt and jacket from the Appellants house is planted which was established from the FSL Report Ex.PW-12/B as no blood was detected on the shirt and the jacket while the blue jeans was not found to contain any human blood.

27. It is contended that PW-3 Nand Kishore, according to the prosecution had seen the Appellant going to Jahapanah forest and then coming back, but surprisingly he did not notice any blood stains on the Appellants clothes. There is no opportunity available to the Appellant to wash the knife or his hands as, according to the prosecution, the Appellant fled the apartment on hearing the sound of the door bell. If that were so, the Appellant could have concealed the knife only in his clothes. However, none contained even any trace of human blood, let alone the deceaseds blood.

28. The prosecution, it is argued, failed to prove as to who wrote the disclosure statement Ex.PW-17/C which strengthens the defense version that the writing work etc. was done at the back of the Appellant on blank papers signed by him. No independent witness, although available, was summoned at the time of the alleged disclosure statement made by the Appellant and for the recoveries effected in pursuance thereof which makes the recovery suspect and unreliable.

29. It is urged that the last seen evidence does not connect the Appellant with the commission of the crime as he has given an explanation about dropping the deceased at her house at 4:00/4:30 P.M.

30. It is argued that the testimonies of PW-3 Nand Kishore and PW-5 Kamlesh Gupta who deposed about the alleged conduct of the Appellant before and after commission of the crime is of no consequence as their statements were recorded after a delay of two months.

31. On the other hand, it is submitted by the learned APP that there was suspicion on the Appellant since the beginning as recorded in CR DD No.1868 Ex.PW-9/A at 8:39 P.M. The Appellant was noticed by PW-3 Nand Kishore going to Jahapanah forest. On his return, he was noticed with a sullen face by PW-3. PW-2 Niraj Kumar Gupta witness of the recovery of jewellery and cash is a literate person. He could have no motive for him to falsely depose against the Appellant. There was recovery of 19 pieces of jewellery in pursuance of the disclosure statement of the Appellant within two days of the murder of Meera Mittal. In the absence of any explanation by the Appellant how he came into possession of the jewellery, an inference that he was responsible for committing the murder of Meera Mittal, can be drawn against him considering the small time gap between the murder and the recovery of jewellery items.

32. It is urged that the investigating officer who was SHO of the Police Station remained busy in other official matters and no adverse inference can be drawn against the prosecution for delay of two months in recording the statements under Section 161 Cr.P.C. of PW-3 Nand Kishore and PW-5 Kamlesh Gupta.

33. There is no direct evidence regarding commission of the offence by the Appellant. The prosecution case solely rests on circumstantial evidence. The Trial Court referred to *Joseph v. State of Kerala* (2005) 5 SCC 197; *Bhagat Ram v. State of Punjab*, AIR 1954 SC 621; and *Sharad Birdhichand Sarda v. State of Maharashtra*, AIR 1984 SC 1622 to state the standard of evidence required in a case which is solely based on circumstantial evidence. The law is well settled that the circumstances from which the inference of guilt is to be drawn should be fully established; the circumstances should be of a conclusive nature; the facts

established should be consistent only with the hypothesis of the guilt of the accused; the circumstances established should be incompatible with the innocence of the accused and the chain of evidence should be complete so as to show that in all probability the act must have been done by the accused.

34. The Trial Court relied upon the circumstances of **"last seen"** evidence; recovery of jewellery articles etc. in pursuance of the disclosure statement Ex.PW-17/C, the weird behaviour of the Appellant and recovery of blood stained clothes from the house of the Appellant by recovery memo Ex.PW-17/D.

35. We shall deal with the circumstances and the contentions raised on behalf of the parties one by one.

RECOVERY OF THE JEWELLERY BELONGING TO THE DECEASED

36. The murder of Meera Mittal took place on 12.01.2008 in between 5:00 7:00 P.M. According to the prosecution, the Appellant was available on that night and he was interrogated along with the Servants and washer men of nearby flats by the IO (PW-18). According to PWs 17 and 18, the Appellant and his father were permitted to leave after inquiries. PW-17 SI Hari Prakash Gulia says that a notice under Section 160 Cr.P.C. was given to the Appellant to come to the Police Station on the next date i.e. 14.01.2008 (not on 13.01.2008). In his cross-examination, PW-17 specifically stated that on 12.01.2008 the IO interrogated the Appellant in his presence and gave him a notice under Section 160 Cr.P.C. to appear on 14.01.2008 at about 1:00 P.M (the said notice under Section 160 Cr.P.C. has not been placed on record). PW-18, the IO on this count stated that the Appellant was asked to come on 14.01.2008 at about 11:00 A.M. / 12:00 noon. He stated that he did not issue any summon (notice) to the Appellant to report for inquiry / interrogation on 14.01.2008.

37. There is a contradiction as to how PW-2 Niraj Kumar Gupta reached the Police Post Alaknanda. PW-2 says that he received a call from the police on 14.01.2008 at 9:00 A.M. requiring him to reach the Police Post Alaknanda Market. PW-17 SI Hari Prakash Gulia gave a different version altogether and stated that the IO disclosed regarding the involvement of the Appellant to the husband of the

deceased i.e. PW-1. PW-1 was not feeling good and, therefore, he sent PW-2 his brother-in-law to join the investigation. Thus, according to PW-17, PWs 1 and 2 were aware that the Appellant had confessed his guilt, before PW-1 sent PW-2 or for that matter PW-2 came to the Police Post on being summoned by the IO. The testimony of PW-2 varies on this count as he stated in his examination-in-chief that (in pursuance of the call from the police officers) he reached the Police Post and they told him that the Appellant had confessed that he had murdered his (PW- 2s) sister and stolen the jewellery articles. This was an important fact from the point of view of PW-1 (the husband) and PW-2 (the brother of the deceased) and PW-17 SI Hari Prakash Gulia who was associated in the investigation as to how they were informed about the extra judicial confession made by the Appellant and how PW-1 reached the Police Post. We may, however, not attach much importance to this contradiction, if there is other reliable evidence to connect the Appellant with the offence. The same, however, is lacking.

38. There is a vital contradiction as to the time of making the disclosure statement Ex.PW-17/C and recovery of the jewellery and cash in pursuance thereof. PW-2 says he reached the Police Post Alaknanda at about 9:00 A.M.. He was told that the Appellant had confessed having committed the murder of Meera Mittal and that he had stolen valuable articles. PW-17 Hari Prakash Gulia and PW-18 Inspector Anil Dureja, the IO, gave an entirely different time with regard to the making of the disclosure statement. PW-17 testified that he reached the police booth outside Alaknanda market, in front of Gangotri Apartment at about 1:00 P.M. on 14.01.2008. The Appellant was already present along with his father. The IO made inquiries from both of them and certain contradictions emerged from their statements. Thereafter, the Appellant confessed to his guilt and was arrested. To the same effect is the testimony of PW-18, the IO. The postmortem examination of the dead body (of the deceased Meera Mittal) was conducted by PW-4 Dr. Shalini Girdhar and Postmortem Report Ex.PW-4/A was proved by her. The postmortem report showed that autopsy on the dead body was started on 14.01.2008 at All India Institute of Medical Sciences at 12:00 noon and was completed at 1:30 P.M. It was only thereafter that the body could be handed over to the relations of the deceased. There is a receipt Ex.PW-1/F on the record purported to be prepared by PW-18 (the IO) whereby the dead body was handed over to Naresh Kumar Mittal.

At the earliest, dead body could have been handed over after 1:30 P.M. Therefore, Insp. Anil Dureja, IO could not have reached the Police Post Alaknanda at 1:00 P.M. (as he was also to travel from AIIMS to Alaknanda) as is sought to be projected by PWs 17 and 18.

39. We may not attach much importance to a difference of an hour or so to the time when the Appellant was interrogated and then made a disclosure statement but there is a world of difference between 9:00 A.M. (the time of disclosure-cum-confessional statement given by PW-2 Niraj Kumar Gupta) and the time of about 2:00 P.M. (given by PWs 17 and 18).

40. The learned counsel for the Appellant has relied on Harjinder Singh @ Bhola v. State of Punjab, 2004 (11) SCC 253. In that case there was a contradiction of about three hours in the testimonies of PWs 3 and 4 about the time of the incident. The Supreme Court disbelieved the prosecution case on the ground that the version was inconsistent and distorted as to the time of the commission of the offence.

41. In Harjinder Singh (supra) the incident had taken place in a village. In this case, the alleged disclosure statement has been made and recovery effected in pursuance thereof in the Metropolitan City of Delhi. PW-2 is a literate person residing in a high-end area i.e. Aradhana Colony in R.K. Puram. Because of this difference of five hours in recording the disclosure statement in the version of PWs 17 and 18 as compared to PW-2, the statement and consequent recovery pursuant to it becomes suspect and doubtful. Moreover, the IO did not make any effort to join any public witness though they were available either for the disclosure statement or for the alleged recovery of jewellery belonging to the deceased. There is another circumstance to disbelieve the disclosure statement Ex.PW-17/C and the recovery of the jewellery. Pw-18 Inspector Anil Dureja (IO) is author of disclosure statement Ex.PW-17/C. He, however, could not even tell as to who was the scribe of the said document which undermines the credibility of the recovery of the jewellery, at the instance of the Appellant.

42. It is not disputed that the Appellant on being called was immediately available to the police. According to the prosecution (and as discussed earlier) the servants

and washer men of nearby flats were interrogated in the night on 12-13.01.2008. According to PWs 17 and 18, the Appellant was asked to leave with direction to report on 14.01.2008 at about 12:00 noon. It is not believable that in such a serious case when in the CR DD No.1868 Ex.PW-9/A recorded at 8:39 P.M. where the Appellant was already a suspect, he would not only be allowed to leave in the night of 12.01.2008, but would be asked to report to the police only after 36 hours i.e. on 14.01.2008 at 12:00 noon. We are unaware whether the Appellant was illegally detained in the Police Station on the night of 12.01.2008 and third degree methods were used on him (as is the defence version), but the prosecution version that the Appellant was allowed to leave on the night of 12.01.2008 with a direction to report on the 2nd next day at about 12:00 noon is not believable.

It is argued by the learned counsel for the Appellant that exhibiting the inadmissible part of the confession and deposing about the same by the witnesses was inappropriate as this prejudices the mind of the Court. It is urged that this fact was brought to the notice of the Trial Court but in spite of this inadmissible portion of the confession was admitted in evidence. In support of his contention, the learned counsel for the Appellant relies on *Aloke Nath Dutta v. State of W.B.*, 2007 (12) SCC 230, where it was held as under:-

"53. It is, however, disturbing to note that a confession has not been brought on record in a manner contemplated by law. Law does not envisage taking on record the entire confession b marking it an exhibit incorporating both the admissible and inadmissible part thereof together. We intend to point out that only that part of confession is admissible, which would be leading to the recovery of dead body and/or recovery of articles of Biswanath; the purported confession proceeded to state even the mode and manner in which Biswanath was allegedly killed. It should not have been done. It may influence the mind of the court. (see *State of Maharashtra v. Damu*, (2000) 6 SCC 269)."

We are in agreement with the arguments advanced. There is no gainsaying that many a time an inadmissible portion of the confession when allowed to be

deposed by the witnesses prejudices the mind of the Court. It is, therefore, expected of the Trial Courts to be careful while recording the evidence of the witnesses who depose about the confessional statement and discovery in pursuance thereof.

LAST SEEN EVIDENCE

43. As per Ex.PW-4/A, the postmortem was conducted on 14.01.2008 at 12:00 noon and the time since death was given as **"two days"**. So, according to the postmortem report, the death of Meera Mittal could have taken place any time after 12:00 noon on 12.01.2008.

44. According to PW-5 Ms. Kamlesh Gupta deceased and she had their lunch at McDonald, 3Cs Mall, Lajpat Nagar. They did some shopping and left for home at about 3:00 P.M. The prosecution relies upon the testimony of PW-3 Nand Kishore, who stated that the Appellant took the deceased in the car to her (the deceased's) house at 5:00 P.M. He saw the Appellant going towards Jahapanah forest at about 5:25-5:30 P.M. On his return, he enquired from the Appellant as to why he had gone to the jungle and the Appellant informed PW-3 that since he had stomach ache, he went to relieve himself. The Appellant, in his statement under Section 313 Cr.P.C. admitted to having dropped the deceased at Gangotri Apartment. The time given by the Appellant is 4:00/4:30 P.M.

45. To reach the conclusion that it was only the Appellant who was last in the company of the deceased, the Trial Court referred to the testimony of PW-3 Nand Kishore. PW-3 deposed that the accused dropped the deceased in the car at her house at about 5:00 P.M. He testified that at about 5:25/5:30 P.M. he saw the Appellant going towards Jahapanah forest.

46. According to the prosecution version (testimony of PW-2) when he reached the house of the deceased the number of persons had gathered outside the apartment. On observing the apartment from the rear side it was noticed that the door of back side room was slightly ajar and the electricity was off. The Trial Court relied upon the testimony of PW-1 to hold, that it was only the Appellant who could have committed the murder of the deceased. PW-1 testified that there was no

chance of anyone coming inside through the back door because it used to be shut and key to the door always remained in the lock itself, which could be operated from inside. To say the least, this was only a general statement by PW-1. From this, no conclusion could be drawn that the door (found ajar after the murder of Meera Mittal) was opened by the Appellant from inside to escape to the forest by jumping the wall. Merely because PW-3 in his testimony stated that the Appellant had dropped the deceased at about 5:00 P.M. and that he then noticed the Appellant leaving towards Jahapanah forest at about 5:30 P.M. or due to the explanation given by the Appellant that he dropped the deceased at 4:00 /4:30 P.M. cannot result in the Court inferring that the Appellant committed the murder of the deceased.

47. In a case of circumstantial evidence, the prosecution has to establish every circumstance by clinching and convincing evidence. The prosecution has failed to lead any convincing evidence that nobody could have entered the apartment of the deceased on 12.01.2008 after the deceased was dropped by the Appellant. The circumstance of the Appellant being seen last in the company of the deceased is of no consequence in view of the facts stated above. Rama Reddy Rajesh Khanna Reddy v. State of Andhra Pradesh, AIR 2006 SC 1656 and State of U.P. v. Satish, 2005 (3) SCC 114, are not applicable to the facts of the present case, as the Appellant, as stated earlier has given an explanation how he parted company with the deceased. Moreover, there was a possibility of any other person sneaking inside the apartment after the Appellant dropped the deceased.

48. The Trial Court referred to the testimony of PW-3 that the Appellant (when he returned from the forest) had a sullen face and also looked afraid, which cannot be given any importance about his guilty mind, as PW-3 had sought an explanation from him for going to the forest and the Appellant informed PW-3 that he had stomach ache and had gone to the forest to relieve himself.

RECOVERY OF THE BLOODSTAINED CLOTHES OF THE APPELLANT

49. According to the prosecution, the Appellants got recovered his full sleeves shirt, a blue jeans and a jacket, which were seized by memo Ex.PW-17/D. This recovery was not in pursuance of any disclosure statement. Thus, the recovery

simply shows that certain clothes were found in the house where the Appellant was staying. The prosecution was, therefore, required to prove by independent evidence that these clothes belonged to the Appellant.

50. As per FSL report Ex.C-2, the bloodstains were found only on the jeans Ex.P-15. The origin of the blood on serological examination could not be deciphered. Though, the IO noticed bloodstains on the jacket and the shirt, but no blood was detected thereon as per FSL Report Ex.C-2. The Trial Court relied upon *Sanjay @ Kaka v. State (NCT of Delhi) (2001) 3 SCC 190* where the detection of blood without further classification as to whether it was a human blood belonging to the blood group of the deceased, was taken as a circumstance against the accused. *Sanjay @ Kaka (supra)* is not applicable to the facts of the present case because in that case there was other evidence in the form of recovery of weapon of offence and stolen property to connect the accused with the commission of the crime. In this case, the other circumstances have been found by us to be of doubtful nature. *Sanjay @ Kaka (supra)* is, therefore, not attracted to the facts of the present case.

51. No evidence was produced by the prosecution to show that the Appellant was wearing jeans Ex.P-15 at the time of alleged commission of the offence. PW-3, according to the prosecution, had seen the Appellant dropping the deceased at the flat and then going to Jahapanah forest. The prosecution could have examined PW-3 regarding the clothes worn by the Appellant. It was, however, not done and thus, it cannot be said that the jeans Ex.P-15 was worn by the Appellant at the time of the alleged commission of the offence. Moreover, PW-3 had an opportunity to see and observe the Appellant. If there were any bloodstains on the clothes worn by the Appellant, the same being very fresh at 5:30 P.M. would not have gone unnoticed by PW-3. Under these circumstances, we are not inclined to believe that the clothes of the Appellant were stained with blood or that he got the bloodstained clothes recovered from his house on 14.01.2008. The ratio of the decision in *Chandra Pal & Anr. v. State, 75 (1998) DLT 461* relied upon by the Appellants counsel applies on all fours.

WEIRD BEHAVIOUR OF THE APPELLANT

52. The prosecution examined PW-5 Smt. Kamlesh Gupta regarding the Appellants weird behaviour. She deposed, on 09.1.2008 having returned from Dubai at about 11:30 P.M. The Appellant brought her from the airport but he did not comply with her directions to take her via Dhaula Kuan. Rather, he took another route where the roads were totally clear. The Appellants driving was erratic as he would drive very slow or very fast. Another abnormal behaviour deposed to by PW-5 was that on 11.01.2008 the Appellant dropped her at Alaknanda and returned the car keys. After 40-45 minutes, the Appellant returned and asked for the car keys saying that he forgot his jacket in the car. PW-5 deposed that the Appellant returned and handed over the keys but kept standing beside the iron mesh door.

53. PW-1 also deposed about the weird behaviour and testified that his wife informed him on telephone that the Appellant did not drive the car properly and that **"Anoop jaban larata hai and ulta jawaab deta hai."**

54. The Trial Court found this circumstance to be innocuous but found it relevant to generate suspicion in the minds of the witnesses that he could be behind the crime.

55. We are unable to subscribe to the reasoning of the Trial Court. The driver may be rough in communication with the owner or his driving may be erratic. A driver may also sometime prefer a particular route which may be convenient or faster. This, however, cannot result in suspicion that an erratic driver would commit robbery or murder. This finding of the Trial Court, in our opinion, is perverse.

CONCLUSION

56. In this case the Appellant was suspected for the crime almost from the time of its discovery (as in CR DD No.1868 Ex.PW-9/A recorded at 8:39 P.M) but as held above, the prosecution has failed to prove anything on record which could have led PW-5 or other relatives to raise any suspicion against the Appellant regarding commission of the crime. It is well settled law that suspicion however strong cannot take place of proof.

57. In *Ashish Batham v. State of M.P.*, 2002 (7) SCC 317, it was held as under:-

"11. Realities or Truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by heinous nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however, or probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and grave the charge is greater should be the standard of proof required. Courts dealing with criminal cases at least should constantly remember that there is a long mental distance between may be true and must be true and this basic and golden rule only helps to maintain the vital distinction between conjectures and sure conclusions to be arrived at on the touch stone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record."

58. In *State of U.P. v. Ashok Kumar Srivastava*, 1992 (2) SCC 86, it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of the guilt.

59. In view of foregoing discussion, we are of the view that there are grave and serious doubts in the prosecution version. The learned Additional Sessions Judge fell into error in convicting the Appellant under Section 302/394 IPC. The Appeal

has to succeed. Accordingly, we set aside the judgment and order of the Trial Court and acquit the Appellant of the charge framed against him.

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