

Alok Kumar and Others Vs. the State

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Court : Delhi

Decided On : Feb-17-2012

Judge : S. Ravindra Bhat & S.P. Garg

Appeal No. : CRL.A. No.939 of 2001, 27 of 2002, 953 of 2001

Appellant : Alok Kumar and Others

Respondent : The State

Judgement :

S.P.GARG, J.

1. Appellants Alok Kumar Singh(hereinafter referred A-1), Santosh Kumar(hereinafter referred A-2) and Sanjay Kumar Mishra (to be referred A-3) have preferred appeals against the judgment of the Ld.Additional Sessions Judge dated 19.11.2001 in SC No.84/1998 by which A-1 and A-2 were convicted for committing offences punishable under Sections 302/397/34 IPC. A-3 was convicted for committing offence punishable under Section 411 IPC and under Section 25 Arms Act. All the Appellants were sentenced to undergo various prison terms as mentioned in the order on sentence dated 23.11.2001.

2. The facts emerging from the record of the case are that Ganesh Parshad Singh (hereinafter described as 'deceased') and his wife Ms.Mala Singh used to reside at E-118, Shastri Nagar on rent prior to the incident (i.e. 02.05.1998). He also used to carry on business under the name and style of Parmar Plastic at the said

premises.

3. On 02.05.1998 DD No.34-D was entered at PS Sarai Rohila on the receipt of a wireless message from North District Control Room about a murder at E-118, Indra Park, Shastri Nagar. SI Ram Avtar along with Ct.Jagdish reached the spot for enquiry. Inspector Tilak Raj Mongia, on getting intimation at 3.05 P.M. at Tis Hazari Court, rushed to the spot along with ASI Iqbal Singh and other police personnel where dead body of a male (whose name was ascertained Ganesh Parshad Singh) was found. Vipin Kumar, Manager in the deceased's firm made a statement to the police. He disclosed that he was an employee of the deceased from January, 1998 and had reached the office at about 7.30 A.M. that day. After some time, A-2 also reached there. At about 12.30 P.M., when he returned after getting the goods loaded, he found deceased, A-1 and A-2 in the house. The deceased asked him to bring payment of ` 20,000/- from M/s.Shiv Trading, Vishwas Nagar, Shahdara. He left on a scooter, No. DAM 2032 for Shahdara leaving both A-1 and A-2 with deceased in the house. When he returned after collecting cash from Shiv Partap and reached in the corner of the gali at about 2.15 P.M., he saw a large crowd gathered there. Both the doors of deceased's house were forced open. On entering the room, he saw the deceased lying in a pool of blood. The deceased's new scooter Vespa No.DL-5SH-0303 was missing; Both A-1 and A-2 were also not present there.

4. Inspector Tilak Raj Mongia made an endorsement on the statement and sent the rukka through Ct.Jagdish for lodging the FIR. He conducted necessary formal proceedings at the spot; seized the pieces of blood stained bed-sheet, two pillows and prepared necessary seizure memos; he also conducted inquest proceedings; sent the dead body for post-mortem and recorded statements of witnesses conversant with the facts of the case.

5. During the course of investigation, it transpired that A-1 and A-2 were involved in the murder of the deceased. Therefore they were arrested and interrogated. Pursuant of their disclosure statements, they both led the police to A-3's house at F-100, Baljit Nagar. This led to recovery of one 'desi katta' along with five live cartridges and one used cartridge. They also got recovered one gold chain, one

gold ring and cash to the extent of ` 18050/- from Asha Mishra, (A-3's wife). All these articles were seized. A-3 and his wife were arrested. At the instance of A-1 and A-2, the deceased's scooter No.DL-5SH-0303 which was parked in the street near A-3's house, was also recovered.

6. FIR No.192/1998 PS Anand Parwat was registered under Section 25 Arms Act against A-3. After conclusion of investigations, challan was filed by the police of PS Sarai Rohila against the Appellants for committing various offences described therein.

7. Asha Mishra, A-3's wife was discharged by an order dated 17.02.1999. A-1 and A-2 were charged with commission of offences under Section 302/397/34 IPC and 27 Arms Act. A-3 was ordered to be charged under Section 25 Arms Act as and when the charge-sheet of the case registered under Arms Act was received. A-3 was further charged for committing the offence punishable under Section 411 IPC.

8. In order to bring home the guilt of the Appellants, the prosecution examined thirty six witnesses. Statements of the Appellants were recorded under Section 313 Cr.P.C to afford them an opportunity to explain incriminating circumstances appearing against them. They denied their guilt and pleaded that, they were all falsely implicated in this case. They however, did not examine any defence witness.

9. On appreciation of the evidence adduced by the prosecution on record, and considering rival contentions of the parties, the Trial Court convicted the Appellants for the offences mentioned above. Feeling aggrieved, the Appellants have come in Appeal.

10. Learned counsel for the Appellants A-1 and A-2 urged that they were falsely implicated in this case as there is not an iota of evidence to point out an accusing finger against them. Material prosecution witnesses turned hostile and have testified nothing incriminating against them. Major contradictions and discrepancies in depositions of the prosecution witnesses rule out their presence at the spot. The prosecution did not collect any document to prove ownership of golden chain, golden ring, cash and the scooter allegedly recovered in this case.

Recovery of scooter No.DL-5SH-0303, from an open place accessible to the public at large has no evidentiary value. Appellants had no motive to murder Ganesh Parshad Singh. Statement of deceased's wife was recorded after considerable delay. FSL report doesn't support the prosecution.

11. Learned counsel for A-3 emphatically urged that his conviction on scanty evidence cannot be sustained. According to the prosecution version a gold chain, cash, and ring were handed over to the police by Asha Mishra, who has since been discharged for possession of those articles. Therefore, A-3 cannot be held liable. No charge-sheet for committing any offence under Section 25 Arms Act was filed before the Court and no charge under Section 25 Arms Act was framed by the Trial Court. There was thus, no material before the Trial Court to convict A-3 under the Arms Act.

12. Learned Addl.PP for the State justified findings of the Trial Court convicting all the Appellants for the detailed reasons mentioned in the impugned judgment. It is argued that the crime was worked out on the very day of the incident and both A-1 and A-2 who were relatives of the deceased, were apprehended. On their sustained interrogation, the police discovered that they had concealed the stolen articles and the weapon of offence at the residence of their friend (A-3) and accordingly recovered the articles including the weapon, from there. All these facts were not in the knowledge of the police. A-3's residence at a distance of about 4-5 kms. from the place of incident came to the notice of the police only on interrogation of A-1 and A-2. The recoveries of incriminating articles and discovery of facts hitherto unknown to police are relevant under Section 27 Evidence Act. PW-9 Mala Singh and PW-10 Jai Prakash claimed that the robbed articles recovered pursuant of the disclosure statements of A-1 and A-2 belonged to the deceased. Some prosecution witnesses, for ulterior reasons did not support the prosecution on the last seen circumstance. Even if their testimonies are ignored, the prosecution sufficiently proved the guilt of the Appellants.

13. We have considered the submissions of both the parties. The circumstances relied on by the prosecution and considered by Trial Court to base conviction are discussed as under :

(A) Admitted facts :

14. It is not in dispute that deceased used to reside at E-118, Shastri Nagar and carry on his business from the said premises. It is also not in controversy that A-1 used to reside with the deceased in the premises in question and A-2 was known to the deceased (as he was a resident of his village).

15. The case of the prosecution is solely based on circumstantial evidence. Admittedly, there is no eye witness account of the incident. Homicidal death of the deceased is not under challenge.

(B) Last seen :

16. The Trial Court heavily relied upon the circumstance of last seen when allegedly the deceased was found present with A-1 and A-2 in the premises in question at about 12.30 Noon on 02.05.1998. As per prosecution, PW-23 Vipin Kumar Singh, in his statement (Ex.PW-23/A) disclosed to the police that at about 12.45 P.M. while returning after getting the goods loaded, he saw A-1 and A-2 with deceased at his house. However, on his return from Shahdara, after getting payment of ` 15,000/- from one Shiv Partap, he did not see both A-1 and A-2 in the house of the deceased (where the latter was murdered). On perusal of evidence, we find that the prosecution failed to prove this circumstance. PW-23 Vipin Kumar Singh did not support the prosecution on this aspect. He deposed that on 02.05.1998, he had reported for his duties at 7.30 A.M. At about 11.30 A.M. or 12.00 Noon, he was sent to Shahdara and at that time, he had left only the deceased at home. He did not mention about presence of A-1 and A-2 with the deceased at that time. The witness denied that he had given any statement Ex.PW-23/A to the police. He explained that only some enquiry was made from him by the police and they had got his signatures on some blank papers. Apparently, this witness turned hostile and in the cross-examination by Ld.Addl.PP, he denied that A-1 and A-2 were last seen by him with deceased at about 12.30 P.M. before he went to Shahdara to collect payment from M/s.Shiv Trading, Shahdara.

17. PW-1 Mohd.Ujalo working as an embroiderer in a factory, at first floor, E-118, Shastri Nagar also did not utter a word if he had seen A-1 and A-2 with the deceased that day. He merely testified that on 02.05.1998, while working in the factory, he heard a noise like a tyre burst at about 12.00 Noon but he did not know what happened. PW-2 Mohd.Rasheed, another embroiderer in the factory did not mention about any fact on the circumstance of last seen. In the cross-examination by Ld.Addl.PP, he stated that he did not see A-1 and A-2 going on a scooter from the spot, that day. He also denied if contents as recorded in mark-‘Y’ were stated by him to the police under Section 161 Cr.P.C.

18. PW-1, PW-2 and PW-23, star witnesses on the circumstance of last seen did not support the prosecution at all. No motive was imputed to them by the prosecution for turning hostile. PW-23 Vipin Kumar Singh was Manager in the factory of the deceased and the latter had inducted him in the factory allegedly due to his annoyance with A-1 for not performing his duties well. There was, thus, no occasion for him to scuttle the prosecution case. The prosecution, thus, failed to adduce cogent and reliable evidence to prove the circumstance of last seen.

(C) Motive :

19. Normally, there is a motive behind every criminal act and that is why investigating agency as well as the Court while examining the complicity of an accused try to ascertain as to what was the motive of the accused to commit the crime. In a case, which is based on circumstantial evidence, motive for committing the crime assumes greater importance. Of course, if each of the circumstances proved on behalf of the prosecution is accepted for purpose of recording a finding that it was the accused who committed the crime, even in absence of proof of a motive for commission of such a crime, the accused can be convicted. But the investigating agency as well as the Court should ascertain as far as possible what was the immediate motive on the part of the accused which led him to commit the crime.

20. No doubt in circumstantial evidence, motive assumes greater importance but absence of it does not undermine credibility of the prosecution case. Motive remains hidden/ locked in the heart of the culprit and it is a well known dictum that

even the devil may not know the thoughts of a man. Motive is a fact which no human being but the party himself can divine. Therefore, failure to discover a motive for an offence does not signify its absence and failure to produce evidence does not fatally affect it.

21. In the instant case, prosecution failed to establish motive of the Appellants for committing the gruesome murder during day time at his residence and place of work. No worthwhile evidence has emerged during trial to infer, if there was any hostility between the Appellants and the deceased prior to the incident. A-1 used to reside with the deceased in the premises in question and there is nothing to show, if at any time, he had objected to his conduct and behavior and had asked him to leave the premises. PW-23, in the statement to police (Ex.PW-23/A) allegedly attributed motive to A-1 stating that deceased was not satisfied with the accounts maintained by him (A-1). But in his deposition as PW-23, no such motive was attributed to A-1.

22. PW-9 Mala Singh the deceased's wife merely stated that occasionally they had a little tiff with A-1 and he used to restrain the deceased from complaining to his father. This witness did not elaborate on what account, there used to be tiff between the deceased and A-1 and on what account the deceased used to complain to A-1's father. No specific details about when any serious incident took place forcing A-1 to take the extreme step, were deposed to. The witness was confronted with her statement Ex.DA (under Section 161 Cr.P.C.) where there was no such allegation.

23. PW-10 Jai Prakash, the deceased's brother-in-law (Sala) did not impute any motive to the Appellants. PW-3, Promod, the deceased's brother residing in the village deposed that the deceased used to transport his goods on A-1's Matador vehicle and there were no strained relations between his brother and any of the accused persons.

24. The prosecution, thus, did not bring on record any material to prove motive of the Appellants to murder Ganesh Parshad Singh with whom A-1 was residing for a long time without any objection and on whom he was also dependant for business.

(D) Recovery of scooter :

25. The next circumstance relied on by the prosecution is the alleged recovery of the deceased's scooter No.DL-5SH-0303 Ex.P-12 by A-1 and A-2 pursuant to their disclosure statements. On scrutinizing the testimonies of the witnesses, in our view, the prosecution failed to substantiate this circumstance too. No prosecution witness deposed if any of the Appellants was seen leaving the spot on the said scooter. PW-23 Vipin Kumar Singh did not support his alleged version given to the police in the first instance. In his statement, PW-23 gave a contrary version stating that on his return from Shahdara, he saw scooter No.DL-5SH-0303 parked outside in the gali. PW-2 Mohd.Rasheed in the cross-examination by Ld.Addl.PP denied the suggestion that he had seen A-1 and A-2 going on the said scooter.

26. The scooter Ex.P-12 was allegedly recovered from an open public place accessible to all near the residence of A-3. Why the Appellants would park the scooter at that open place visible to all; Whether the scooter was lying locked and if so, in whose possession the 'key' was to open it; and how and when the scooter was brought to police station; all these unanswered questions cast suspicion on the recovery of the scooter. PW-23 Vipin Kumar Singh, a witness to the seizure memo (Ex.PW-8/E) denied that the scooter in question was recovered pursuant of disclosure statement of A-1 and A-2. PW-25 Yuvraj Singh A-3's landlord denied recovery of scooter Ex.P-12. No finger prints were lifted from the scooter. Recovery of scooter Ex.P-12, in our view, itself is doubtful and is not an incriminating circumstance.

(E) Recovery of golden chain, ring and cash :

27. The prosecution further relied on the circumstance of recovery of golden chain Ex.P-4, ring Ex.P-5 and cash Ex.P-6 robbed from the deceased's house. The Appellants have vehemently denied any such recovery.

28. At the time of lodging report with the police, PW-23 Vipin Kumar Singh did not suspect robbery of any such article from the person/house of the deceased. In his statement (Ex.PW-23/A), there is no mention, if any, whether such article was in possession of the deceased or that these articles were robbed by the assailants at

the time of committing the crime. In Court too he did not depose if he had seen Ganesh Parshad Singh wearing golden chain Ex.P-4 and ring Ex.P-5 at any time. PW-10 Jai Prakash Singh, deceased's brother-in-law, who claimed to be residing in the premises in question also did not inform the police, if such article was missing from the person/house of the deceased. PW-3 Promod Kumar deceased's real brother did not allege whether the assailants had robbed any such article from the deceased.

29. PW-9 Mala Singh the deceased's wife, for the first time, asserted that the deceased used to wear golden chain Ex.P-4 and she had kept golden ring Ex.P-5 with him while leaving Delhi. Currency notes ` 18050/- Ex.P-6 also belonged to the deceased. This version given by her inspires no confidence as neither she nor her relatives informed the police at the earliest about such articles having gone missing. Even after coming to Delhi thirteen days later, she did not make any statement to the police in this regard. She was confronted with statement Ex.DA, (under Section 161 Cr.P.C.) where there was no mention of robbery of these articles. The witness made vital improvements in her statement before the Court and those cannot be believed.

30. The police, for unknown reasons did not have TIP proceedings of the case properly conducted. There was no specific mark of identification or special feature on all these articles. Adverse inference is to be drawn against the prosecution for not moving any application for getting the case property identified from the material witnesses during TIP proceedings. PW-9 Mala Singh failed to explain how and on what basis, she identified currency notes ` 18050/- Ex.P-6. Admittedly, she had gone to her in-laws' house in the village on 24.04.1998 and the occurrence took place on 02.05.1998. Again there was no special mark on the currency notes to enable her to identify them. No proof was submitted how, when and from where the golden chain and ring were purchased.

31. There is substance in the plea of the Appellants' Counsel that A-3 cannot be held liable under Section 411 IPC as all these articles were not recovered from him. Admittedly, these articles were handed over by Asha Mishra (A-3's wife), she was charged by the police with A-3 but was discharged by an order dated

17.02.1999 by the Trial Court. The order of discharge attained finality.

32. Besides, the recovery of these articles at the instance of A-1 and A-2 has not been proved beyond reasonable doubt. PW-23 Vipin Kumar Singh, a witness to recovery denied arrest of the accused persons in his presence and recovery of any article in his presence. PW-25 Yuvraj Singh also denied any recovery affected by the police from A-3's house on 03.05.1998, in his presence. No other independent public witness was joined by the police at that time.

(F) Recovery of country made pistol and cartridges :

33. The prosecution emphasized that recovery of weapon of offence was strong circumstance proving complicity of Appellants. There is denial by the Appellants to this circumstance.

34. PW-23 Vipin Kumar Singh, and PW-25 Yuvraj Singh witnesses to the seizure memo Ex.PW-8/C did not support the prosecution and denied that the katta or cartridge was recovered from the possession of A-3 in their presence. PW-10 claimed that the katta and the cartridges were recovered by A-1 and A-2 from the house of A-3. We find presence of this witness at the time of alleged recovery doubtful. None of the other prosecution witnesses corroborated that PW-10 used to reside with the deceased. PW-9 Mala Singh deceased's wife and sister of this witness; PW-3 Promod Kumar deceased's brother did not depose, if this witness used to reside with the deceased. No evidence whatsoever was collected by the police during investigation to show the residence of this witness in the premises in question. The IO did not utter a word if on the day of incident, he had met PW-10 Jai Prakash and he claimed to be residing with the deceased. PW-10 did not inform the police or any relative of the deceased at his native place about the incident though he reached the spot at 2.45 P.M. This conduct of the witness is inconsistent and unnatural, and makes his presence at the spot doubtful. Recovery of the weapon of offence in his presence, thus, can't be taken on its face value.

35. No other independent public witness was joined from the locality at the time of alleged recoveries. No cogent evidence was collected as to from where and when,

these weapons of offence were arranged by A-1. Allegations that A-1 and A-2 handed over the weapons of offence to A-3 residing at a distance of 4-5 k.m. appear implausible. No charge of conspiracy was framed against A-3 and it is also not the case of the prosecution that A-3 was aware of complicity of A-1 and A-2 in the commission of offence. In the absence of any such prior meeting of mind without any justification, A-3 was not expected to allow A-1 and A-2 to keep the prohibited/illegal weapons with him. A-1 and A-2 were also not expected to divulge the information about the incident to A-3 after committing the crime to expose themselves.

36. Besides these the evidence is scanty to connect the weapon of offence with the crime. FSL report Ex.PW-13/B creates a doubt in the prosecution's case. As per the CFSL report Ex.PW-13/A, Ex.1a (stained cloth material), 1b (stained cloth material) and Ex.3 (stained gauze) had two different blood groups i.e. Group 'A' and Group 'B'. Ld.Addl.PP was specifically asked as to how two blood groups happened to be there on the exhibits collected from the spot. No clarification, however was forthcoming.

37. CFSL report Ex.PW-13/B is silent on opinion sought by the police regarding the pallets recovered from the body of the deceased.

38. While delivering order on charge dated 17.02.1999, the Trial Court had directed to charge A-3 under Section 25 Arms Act as and when the charge-sheet of the case registered under Arms Act was received. Apparently, the case registered under Section 25 Arms Act in FIR No.112/1998, PS Anand Parwat against A-3 was to be tried along with this case. Prosecution examined PW-29 HC Mahavir Singh the initial IO of that case; PW-30 SI Vikram Singh who arrested A-3 in this case in FIR No.192/1998, collected CFSL report and prepared challan for the offence under Section 25 Arms Act; PW-31 Rajvir Singh who prepared the site plan; PW-34 Uday Sahay granted sanction under Section 39 Arms Act and PW-35 HC Subhas Chand who on the receipt of rukka Ex.PW-33/N recorded FIR No.192/1998 under Section 25 Arms Act (Ex.PW-35/A). However, none of the prosecution witnesses revealed that the said case in FIR 112/1998 was committed or transmitted to the Court of Sessions for trial along with this case. The order-

sheet of the Trial Court does not reveal if the connected case under Arms Act was ever received for trial along with this case. A-3 was not charged under Section 25 of Arms Act in these proceedings. Inadvertently, A-3 seems to have been convicted under Section 25 Arms Act, without the connected file being dealt with by the Trial Court. The prosecution has failed to disclose as to what happened to the said case registered under the Arms Act.

(G) Other circumstances :

39. Besides above, we notice inherent defects in the prosecution's case. There is mystery when and from where A-1 and A-2 were apprehended. PW-10 Jai Prakash and PW-23 Vipin Kumar Singh categorically stated that when they reached the spot at about 2.30 P.M. they did not find A-1 and A-2 there. None of these witnesses disclosed at what time A-1 and A-2 were arrested and their disclosure statements were recorded. PW-23 denied that A-1 and A-2 made any disclosure statements Ex.PW-8/A and Ex.PW-8/B in his presence. PW-3 another witness to the disclosure statements did not specify the time when A-1 and A-2 made the disclosure statements. PW-31 Inspector Tilak Raj Mongia, IO, did not clarify in the examination-in-chief when A-1 and A-2 were arrested and if so, from which place and at what time. In the cross-examination only this witness stated that he saw A-1 and A-2 at 7.00 P.M. PW-1 Mohd.Ujalo and PW-2 Mohd.Rasheed came up with the plea that both were not arrested in their presence.

40. The statement of PW-23 Vipin Kumar Singh was recorded at about 4.00 P.M., in which he suspected A-1 and A-2 for committing the offence. It was highly unbelievable that A-1 and A-2 of their own would reach the spot at 7.00 P.M. to get themselves arrested. Apparently, A-1 and A-2 did not abscond after the crime. Nothing incriminating was recovered from the premises in question where A-1 used to reside. PW-33 Inspector Tilak Raj Mongia, IO, admitted that when he reached the spot on getting information of the incident, all the articles in the room were found intact.

41. No call details of telephones were collected during investigation. It is not clear as to who made telephone call to PW-3 Promod about the occurrence. PW-3 Promod disclosed that A-2 called him on telephone at his native place informing

that his brother Ganesh Parshad Singh was shot dead by somebody and that he was chasing the assailants. Again, it is highly improbable that A-2 after committing the crime would personally inform the deceased's brother about the incident. No such statement was recorded under Section 161 Cr.P.C.

(H) Conclusion :

42. In view of the above discussion, we find glaring defects; contradictions and discrepancies in the testimonies of the prosecution witnesses; doubtful recoveries at the instance of the Appellants and 'no evidence' on the circumstance of last seen.

43. In the case titled 'G.Parshwanath vs. State of Karnataka' (2010) 8 Supreme Court Cases 593, Supreme Court observed :

“22. The evidence tendered in a court of law is either direct or circumstantial. Evidence is said to be direct if it consists of an eyewitness account of the facts in issue in a criminal case. On the other hand, circumstantial evidence is evidence of relevant facts from which, one can, by process of intuitive reasoning, infer about the existence of facts in issue or factum probandum. In dealing with circumstantial evidence there is always a danger that conjecture or suspicion lingering on mind may take place of proof. Suspicion, however, strong cannot be allowed to take place of proof and, therefore, the court has to be watchful and ensure that conjectures and suspicions do not take place of legal proof. However, it is not derogation of evidence to say that it is circumstantial. Human agency may be faulty in expressing picturisation of actual incident, but the circumstances cannot fail. Therefore, many a times it is aptly said that “men may tell lies, but circumstances do not”.

23. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the

evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts. 24. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court.”

44. Having noticed the principles governing the case based on the circumstantial evidence, we are of the view that the circumstances on which the Trial Court based its conviction were not sufficiently proved to establish guilt of the Appellants beyond reasonable doubt.

45. For the above reasons, this Court is of the view that the prosecution was unable to discharge the burden imposed upon it, i.e. to establish conclusively each circumstance, alleged against the Appellants and also to prove beyond reasonable

doubt that every link to each circumstance had been established in turn beyond reasonable doubt, so as to point only to the guilt of the Appellants and rule out any hypothesis pointing to their innocence. The benefit of doubt has to be given to the Appellants. The Appeals, therefore, have to succeed. The impugned judgment and order on sentence are hereby set aside; the Appellants are acquitted and shall be set free forthwith, if they are not required in any other case. The bail bonds furnished in this case are hereby discharged; the Appeals are consequently allowed.

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