

Narender Singh Vs. State

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Court : Delhi

Decided On : Apr-23-2013

Judge : Sanjiv Khanna

Appellant : Narender Singh

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRIMINAL APPEAL No. 560/1999 Date of decision:

23. d April, 2013 NARENDER SINGH Through: Appellant Mr.J.S. Kushwaha, Adv. versus STATE Through: Respondent Ms.Richa Kapoor, APP. S.I. R.S. Ahlawat. CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE VED PRAKASH VAISH SANJIV KHANNA, J.: (ORAL) Narender Singh, by the impugned judgment dated 13.9.1999 has been convicted under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as IPC) for having committed murder of Sangeeta on 7th August, 1997. The appellant is also being convicted, under Section 354 and 201 IPC, but has been acquitted from the charge under Section 376 IPC. State has not preferred a leave to appeal against acquittal of the appellant under Section 376 IPC. By order of sentence dated 18.9.1999 for the offence under Section 302 IPC, the appellant has been sentenced to life imprisonment with fine of Rs.500/- , in default of which, the appellant has to suffer 30 days rigorous imprisonment. For the offences under Sections 354 and 201 IPC, the appellant has to undergo two years rigorous

imprisonment, on each count.

2. The fact that Sangeeta has died homicidal death and her dead body was recovered from a well in the agricultural fields, at Yamuna Khadar on 8th August, 1997 at about 11.30 12.00 p.m. is undisputed and also proved beyond doubt. The said factum has been proved by Sarjit Singh (PW-1), brother of Sangeeta and Maharaj Singh, (PW-2). PW1 has deposed that Sangeeta was missing since 7th August, 1997 and did not return home after she had gone to the fields to cut fodder. PW-2, along with the villagers, were searching for Sangeeta in the fields and on 8th August, 1997 at about 11.30 a.m., a dead body was found lying in a well by Maharaj Singh (PW-2). Thereafter, he informed Sarjit Singh (PW-1) and Chander Pal (PW-7).

3. The post mortem of Sangeeta was conducted by Dr.K.L. Sharma (PW-10), who had received the inquest papers on 9th August, 1997 at 11.20 a.m. On post mortem examination, it was noticed that Sangeeta had suffered three external injuries detailed below: Injury No.1- There were multiple incised punctured wounds, four in number, one below the other over front of the neck slightly on antro lateral part. All wounds were transverse in disposition. Both angles of the wound had abraided lines, upper wounds measured 2.5 cm x 1 cm below the level of apple of adam, margins were inverted, second wound was placed below it 1.5 x 1.5 cm in measurement, lateral below the first wound. The third wound on the body of the deceased was located over front outer part of the neck, left side 1 x 0.5 cm its angles continued with abraded lines, both sides transversely, the blood was seen oozing from all these wounds. Injury No.2 On the body of the deceased was incised punctured wound 4 x 2 cm over left side upper part of neck, disposition was vertically oblique, margins were overted, upper angle being 2 cm below the left ear lobule, blood was oozing with fresh blood clots present. Injury No.3 On the body of the deceased was transverse semi circular non continuous multiple linear abrasions over back side of neck. No defence was seen.

4. On internal examination, it was found that the Injury No.1 upper wound had resulted in cutting of the skin under the platysma muscle. Trachea, oesophagus were obliquely cut through with the cut measured 2.5 x 2.5 cm. It had further

penetrated and hacked the intervertebral disc between 3rd and 4th vertebra of cervical region and partially cut the spinal cord. The other lower wounds were muscle deep. Dr.K.L. Sharma (PW-10) opined that the cause of death of Sangeeta was asphyxia and haemorrhagic shock, consequent to injury No.1, on the upper wounds. The post-mortem report was marked Ex.PW10/A. We shall subsequently also refer to the testimony of PW-10 on certain other aspects.

5. The principal issue raised in present appeal is whether the appellant is the perpetrator who had committed the said crime and has the prosecution been able to prove the case against him beyond reasonable doubt. There are no eye-witnesses in the present case. Prosecution relies upon circumstantial evidence consisting of evidence of last seen, disclosure statement (Ex.PW7/B) pursuant to which blood stained pant and shirt of the appellant and sickle (darati) were allegedly recovered, FSL Report dated 28th January, 1998 (Ex.PW18/A), which opines that the human blood of AB group, found on the appellants shirt and the pant and the weapon of offence, tallied with the blood group found on the clothes of the deceased.

6. On the question of last seen, the prosecution relies upon statement of of Maharaj Singh (PW-2) and Suresh Pal (PW-8). Suresh Pal (PW-8) has deposed that on 7th August, 1997, he was going to fields for cutting fodder when he saw Sangeeta going towards the fields of Rattan Singh, in the bullock cart (buggi) of Narender with Kamlesh, sister-in-law and Munni, sister of Narender. The buggy stopped near the fields of Rattan Singh. Kamlesh and Munni stepped down from the buggy and went towards the fields for cutting fodder. Sangeeta also got down and went to the fields of Rattan Singh. The appellant Narender, who was sitting in the buggy, got down and thereafter went into the fields of Rattan Singh. We may, at this stage, note and record that PW8 has not specifically averred that Narender had gone behind Sangeeta. Neither did PW-8 specifically indicate where Kamlesh and Munni went for cutting fodder. He has simply stated that they had went towards the fields for cutting fodder, near the fields of Rattan Singh. PW-8 has further deposed that he went to his own fields for cutting fodder and came back after about 30/45 minutes. At that time he had seen the appellant looking around while being engaged in harnessing the buffaloes who had to be attached with the

buggi. The appellant was looking around and had come out from the fields of Rattan Singh. The sister-in-law and sister of the appellant had come there, after cutting the fodder, and the same was loaded into the buggi. Thereafter, the appellant along with his sister-in-law and sister went towards the pontoon bridge. However, PW-8 did not see Sangeeta thereafter. In the cross-examination, PW-8 has stated that he had seen Sangeeta with the appellant, his sister-in-law and sister near the fields of Rattan Singh and then on the way back, he had seen the appellant, his sister and sister-in-law in the buggi towards pontoon bridge. He was confronted with the statement of PW-8 recorded under Section 161 Cr.PC where the word pontoon bridge was not mentioned. He has stated that he came to know about the murder of Sangeeta on 8th August, 1997, as he had gone to his sisters house on 7th August, 1997, after cutting the fodder and had returned the next day. However, in his statement recorded by the police, dated 9th August, 1997, he did not tell the police that he had gone to his sisters house. He has further deposed that he returned from his sisters place at about 2/2.30 p.m. on 8th August, 1997 and had told his chacha (fathers elder brother) Chander Pal (PW-7) that he had seen Sangeeta in the buggi of Narender. He met police on 9th August, 1997 and his statement was recorded. He has further deposed that his chacha Chander Pal (PW-7) had gone to the house of Narender on 8.8.1997 but PW8 had not met Narender on the said day.

7. Maharaj Singh (PW-2) has stated that on 7th August, 1997, he had seen Sangeeta with Narender, his sister and sister-in-law in the buggi and when they reached the fields of Rattan Singh, sister and and sister-in-law of Narender alighted from the buggi. Appellant Narender and Sangeeta also got down from the buggi and started talking to each other. After some time, Sangeeta went into the fields of Rattan Singh to cut fodder and Narender followed her. Thereafter PW-2 returned to his house. The next day he came to the fields of Yamuna Khadar at about 9.30/10.00 a.m., and saw a crowd had collected there. He came to know that Sangeeta, who had come to the fields on 7th August, 1997, had not returned home. He joined the search for Sangeeta with others. During the search, dead body of Sangeeta was found lying in the well, in the fields of Rattan Singh. With the help of fire brigade and police, her body was taken out. He had informed Sarjit and Chander Pal, PW1 and PW-7, CrI.A.Nos.560/1999 respectively. He identified

appellant Narender in Court. At this stage, it is relevant to record that PW-2 had deposed that he had gone to his relatives house, after he came back from the fields on 7th August, 1997, and then had come back to Yamuna Khadar on 8th August, 1997 at 9.30/10.00 a.m.

8. Statements of PW-2, under Section 161 of the Code of Criminal Procedure, 1973 (hereinafter referred to as r.P.C.), was recorded by the police on 9th August, 1997. In the cross-examination of PW-2, he has stated that his statement was recorded on 9th August, 1997 at 11.00/12.00 noon at his house. Chander Pal (PW-7) in his crossexamination has accepted that Maharaj Singh (PW-2) is his nephew and lived adjacent to his house.

9. We have grave doubts about truthfulness and credibility of depositions made by PW-2 and PW-8 and there are various reasons for the same. PW-2 is the nephew of Chander Pal (PW-7) and Sangeeta was the niece of Chander Pal. PW-2 and PW-7 were neighbours. In case PW-2 had seen appellant and Sangeeta together in the buggy and the appellant going behind Sangeeta, when she had gone to the fields of Rattan Singh, he would have been concerned and so warned Chander Pal and Sarjit Singh, PW-7 and PW-1, respectively. PW-2 apparently kept quiet and did not make any statement to the police till 9th August, 1997. Similarly, PW-8 Suresh Pal had first informed the police and his statement under Section 161 Cr.P.C. was recorded on 9 th August, 1997. PW-8 and 2, have not deposed that they had informed their family members about presence of appellant and Sangeeta in the fields either on 7th August, 1997 or 8th August, 1997. PW-8 was closely related to Sangeeta, being his cousin brother. PW-2 is equally closely related as PW-7 is his chacha. It is obvious, they would have known that Sangeeta was missing and had not returned home from the fields on 7th August, 1997. PW-2 has stated that it takes about 30-45 minutes to cut fodder. In that case, Sangeeta should have returned home on 7th August, 1997 by about 11.00 a.m. and any considerable delay should have raised concerns. Sangeeta was a young girl and the fact she was missing would have been a matter of grave concern and anxiety for the entire family.

10. There is ample evidence to show that a police complaint was made and report was filed with the fire brigade on 7th August, 1997 itself. On the said date, cycle and slippers of Sangeeta were found on a Thokar near the fields of Rattan Singh. (Thokar is a village path passing through the fields). We have DD entry No.35 (Ex.PW17/A) recorded on 7th August, 1997 which was proved by SI Vijay Kumar (PW-17). PW-17 has deposed that he was Incharge, Police Post Mayur Vihar Phase-I and on 7th August, 1997 at 8.00 p.m., he had received information about drowning of a girl. He went to the fields of Yamuna Khadar. The fields were flooded with water as it was rainy season. The villagers had gathered there and were trying to find Sangeeta. Fire brigade personnels were there with boats and everyone was searching for Sangeeta as they suspected Sangeeta had drowned. Inquiries were made from the persons present. Despite thorough search Sangeeta could not be traced. He went back to the police station and accordingly recorded DD entry No.35 (Ex.PW17/A). The next day about 12.30 p.m., he received DD entry No.15 that dead body of Sangeeta had been found.

11. In DD entry No.35 (Ex.PW17/A), PW-17 has recorded that on inquiries from persons, it came to his knowledge that one Narender @ Ninder had seen Sangeeta in the fields of Rattan Singh. In the police diary dated 08th August, 1997, it is recorded that investigations on 8 th August, 1997 started at 12.15 p.m. and continued till 11.45 p.m. During the course of inquiries/investigation, Sarjit (PW-1) had stated that on 7th August, 1997, he had contacted the appellant who had informed him that he had seen Sangeeta in the fields of Rattan Singh. The daily diary entry records that Sarjit suspected the appellant. Sarjit,(PW1), in his statement under Section 161 Cr.P.C. recorded on 8th August, 1997, has not stated that Maharaj Singh (PW-2) or Suresh Pal (PW-8) had informed him that they had seen appellant Narender with his sister-in-law and sister on the buggy with Sangeeta or thereafter the appellant had followed Sangeeta in the fields of Rattan Singh. Sarjit, in his statement under Section 161 Cr.P.C., has referred to statement made by his chachi Ramvati that the appellant, his sisterin-law and sister had also gone for cutting fodder and had seen Sangeeta in the fields of Rattan Singh. Ramvati thereafter had made inquiries from the sister-in-law of Narender namely, Kamlesh who had confirmed that they had gone for cutting fodder and had returned. At that time, Sangeeta was cutting fodder in the fields of

Rattan Singh. Sarjit had spoken to the appellant Narender, who had made a similar statement. Sarjit (PW-1), in his deposition in the court, has stated that his Chachi Ramvati had stated that, Narender, his bhabhi and the appellant sister had gone to their field to fetch fodder. Bhabhi Kamlesh had stated that she had seen Sangeeta in the fields. PW-1 therefore has not deposed or stated that PW-2 and PW-8 had informed him that they had gone to the fields on 7 th August, 1997 and had seen the appellant, Sangeeta and others in a buggy or the appellant had followed Sangeeta into the fields. This creates a grave doubt regarding presence of PW-2 and PW-8, at the place in question at the relevant time. Their depositions have to be accordingly disbelieved.

12. The factual information recorded in Ex.PW17/A by SI Vijay Kumar (PW-17) indicates that it was the appellant Narender who had informed that he had seen Sangeeta in the fields of Rattan Singh, in the morning of 7th August, 1997. Neither PW-2 nor PW-8 had made any such statement either on 7th or on 8th August, 1997. In fact, PW2 had located the dead body of Sangeeta in the well on 8th August, 1997 at 11/11.30 a.m but even at that time had not stated that he had seen the appellant Narender going after Sangeeta, in the fields of Rattan Singh, supports our conclusion.

13. At the same time, it cannot be doubted and it has to be accepted that Narender Singh, along with his sister and sister-in-law, had gone in a buggy to cut fodder on the morning of 7th August, 1997. Appellant Narender, in his statement under Section 313 Cr.P.C., has accepted that he, along with sister-in-law and sister had gone in a buggy for cutting fodder. Thereafter they returned. However, he has not accepted that he had seen Sangeeta in the fields on 7th August, 1997. He has stated that he came to know later, on 8th August, 1997 that dead body of Sangeeta has been taken out from the well but he could not see, as police was there. A big crowd had gathered and nobody including him, was allowed to see the dead body.

14. Appellant Narender, in his statement under Section 313 Cr.P.C, has stated that he along with the other villagers were searching for Sangeeta on 7th August, 1997 and 8th August, 1997.

15. The prosecution has placed on record two site plans Ex.PW17/C, which is the unscaled site plan and Ex.PW19/A, which is the scaled site plan. Ex.PW17/C was prepared on 8th August, 1997 and as per the deposition of Inspector Devender Singh (PW-19), site plan Ex.PW19/A was prepared on 17th October, 1997 in his office, after PW-19 had visited the spot on 15th October, 1997. In the site plan Ex.PW17/C, the field from where dead body of Sangeeta was recovered along with pant hooks etc. is mentioned. The location where the cycle and slippers of Sangeeta were found is mentioned. The location of place where PW-2 and PW-8 had seen the buggy, where the appellant Narender had stopped his buggy or the place where sister-in-law and sister of Narender had gone for cutting fodder etc. is not indicated. Similarly, in the site plan Ex.PW19A the place from where PW-2 and PW-8 had allegedly seen the appellant and deceased Sangeeta and others in the buggy has not been stated. The place where sister-in-law and sister of the appellant had got down for cutting fodder is not indicated either.

16. In the deposition of PW-2 and PW-8, it has come on record that jawar was grown on these fields and it had grown to the height varying between 4 to 7 feet. The deceased Sangeeta was aged about 14-16 years. It would have been virtually impossible for anyone to see when Sangeeta was moving in the said fields for cutting fodder. Appellant Narender, along with his sister and sister-in-law, had gone to the fields to cut fodder but there is no evidence or material to establish that Narender was seen with Sangeeta in the fields or they were together when Sangeeta was cutting fodder in the fields. It is highly improbable and unbelievable that the appellant Narender would have gone behind or followed Sangeeta, when his sister and sister-in-law were present in the vicinity. Moreover, we notice that Sangeeta had gone on a bicycle. She had not gone with Narender. It is therefore difficult to accept that Sangeeta would have taken lift from Narender in his buggy. We have already disbelieved the statement of PW-2 and 8 on the said aspect. The cycle and slippers of Sangeeta were found near the fields of Rattan Singh and near the place from where her dead body was recovered i.e. the well. The fields were flooded. Sangeeta would have removed her slippers, in order to enter the fields for cutting fodder.

17. In view of the aforesaid discussion, we have reached the following factual conclusions: (i) Testimonies of Maharaj Singh (PW-2) and Suresh Pal (PW-8) to the effect that they were present near the fields of Ratan Singh in the morning of 7th August, 1997 are not reliable, trustworthy and credible. PW-2 and PW-8 had belatedly made the said statements to the police on 9th August, 1997, two days after Sangeeta had gone missing on 7th August, 1997 and nearly one day after the dead body of Sangeeta was found on 8th August, 1997 at about 11.30 A.M. (ii) PW-1 and PW-8 had not made any such statement to the family members on 7th August, 1997 and 8th August, 1997 though they are closely related to Sangeeta and her family. (iii) Maharaj Singh (PW-2) had searched for Sangeeta on 7th and 8th August, 1997 but he had not at that time implicated or suspected the appellant Narender. If he had seen Narender with Sangeeta or had seen Narender going behind Sangeeta in the fields on 7th August, 1997, he would have informed others. PW-2's statement that he had gone to a third place, after coming back from the fields on 7th August, 1997 is untrue and incorrect. The said averment appears to be a statement of convenience as PW-2 wanted to explain the delay. (iv) Exhibit PW-17/A, i.e., DD entry No. 35 recorded by SI Vijay Kumar (PW-17) on 7th August, 1997, indicates that the appellant, i.e., Narender had himself stated that he had seen Sangeeta in the fields of Ratan Singh. As per the recording made in Exhibit PW-17/A by SI Vijay Kumar, Narender had informed the family members of Sangeeta that he had seen her in the fields of Ratan Singh. (v) Somewhat similar statement has been made by Sarjit (PW-1), brother of the deceased, who has stated that on 7th August, 1997 his Chachi Ramwati had stated that Narender, his bhabhi and sister had gone to the fields to fetch fodder and bhabhi Kamlesh had told her that they had seen Sangeeta in the fields. (vi) Narender had accepted and admitted that he, along with his sister-in-law and sister, had gone in the buggy to collect fodder on 7th August, 1997 at about 8 to 8.30 A.M. Sangeeta, as per the testimony of PW-1, had also gone to collect fodder in the fields of Yamuna Khadar on 7th August, 1997 in the morning. (vii) In case Sangeeta had gone with Narender, his sister and sister-in-law in the buggy, it was likely and probable that she would have returned with them. (viii) Cycle and slippers of Sangeeta were found near the field of Ratan Singh. Her dead body was recovered from a nearby spot. This belies and does not support the statement of PW-2 and PW-8 that they

had seen Sangeeta in the buggy. (ix) Dr. K.L. Sharma (PW-10) had conducted post-mortem on 9th August, 1997 vide report Exhibit PW-10/A. Time of death as recorded was 48 hours. The time of death is approximate and not precise. In *Ramreddy Rajeshkhanna Reddy and Another versus State of Andhra Pradesh*, AIR 200.SC 1656, after referring to earlier judgments and text books on medical jurisprudence, it has been observed that medical science is not so perfect as to determine the exact time of death nor can the same be determined in a computerized or mathematical fashion so as to be absolutely accurate. (x) We are not inclined to accept and apply the principle of last seen in the present case as there is no evidence that the appellant and Sangeeta were together. Appellant had gone with his sister and sister-in-law and returned with them after collecting fodder within 35 to 40 minutes. Narender could not have possibly physically assaulted Sangeeta in their presence or when his sister and sister-in-law were in the vicinity. There is no evidence or material to show that Narender was not present and had gone out of the visibility range of his sister and sister-in-law. Sangeeta too would have shouted and attracted attention of the sister and sister-in-law. (xi) The fields had fully grown crop of jawar upto height of seven feet. Possibility of a third person being present in the jawar field cannot be ruled out.

18. In *Rishipal versus State of Uttrakhand*, (Criminal Appeal No. 928/2009 decided on 8th January, 2013), the Supreme Court has examined the law of last seen and observed that it comes into operation when there is close proximity of the place and time between the event when the accused was last seen with the deceased and the time of death. Rational mind should be persuaded to reach an irresistible conclusion that once proximity is established, it is for the accused to explain how and under what circumstances the victim died the homicidal death. As a matter of abundant caution, in most cases, this solitary circumstance is not treated as completing the chain and to sustain conviction. In many circumstances, courts insist on support by other links. It is accordingly observed as under:

16. In *Mohibur Rahman and Anr. v. State of Assam* (2002) 6 SCC 715, this Court held that the circumstance of last seen does not by itself necessarily lead to the inference that it was the accused who committed the crime. It depends upon the facts of each case. There may however be cases where, on account of close

proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide. Similarly in *Arjun Marik and Ors. V. State of Bihar* 1994 Supp (2) SCC 372. this Court reiterated that the solitary circumstance of the accused and victim being last seen will not complete the chain of circumstances for the Court to record a finding that it is consistent only with the hypothesis of the guilt of the accused. No conviction on that basis alone can, therefore, be founded. So also in *Godabarish Mishra v. Kuntala Mishra and Another* (1996) 11 SCC 264. this Court declared that the theory of last seen together is not of universal application and may not always be sufficient to sustain a conviction unless supported by other links in the chain of circumstances. In *Bharat v. State of M.P* (2003) 3 SCC 106. two circumstances on the basis whereof the appellant had been convicted were (i) the appellant having been last seen with the deceased and (ii) Recovery of ornaments made at his instance. This Court held : Mere non-explanation cannot lead to the proof of guilt against the appellant. The prosecution has to prove its case against the appellant beyond reasonable doubt. The chain of circumstances, in our opinion, is not complete so as to sustain the conviction of the appellant.....

17. We may also refer to *State of Goa v. Sanjay Thakran and Anr.* (2007) 3 SCC 75. where this Court held that in the absence of any other corroborative piece of evidence to complete the chain of circumstances it is not possible to fasten the guilt on the accused on the solitary circumstance of the two being seen together. Reference may also be made to *Bodh Raj alias Bodha and Ors. v. State of Jammu and Kashmir* (2002) 8 SCC 4. where this Court held : The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen

together, it would be hazardous to come to a conclusion of guilt in those cases....

18. Finally in *Jaswant Gir v. State of Punjab* (2005) 12 SCC 438, this Court held that it is not possible to convict Appellant solely on basis of 'last seen' evidence in the absence of any other links in the chain of circumstantial evidence, the Court gave benefit of doubt to accused persons.

19. Earlier Supreme Court in *Ramreddy Rajeshkhanna Reddy and Another* (supra) had similarly observed that last seen theory comes into operation when the time gap between the death and when the two, i.e., accused and the deceased, were last seen is so small that it rules out possibility of any person other than the accused being the perpetrator or author of the crime. When possibility of a third person involvement is there, then relying upon the last seen theory may be hazardous and has its drawbacks. In such cases, it would be perilous and speculative to rely upon the same without any substantive material or evidence to otherwise implicate the accused.

20. In view of the legal position, principle of last seen cannot be and should not be applied in the present case. Even if it is applicable, it cannot be made substantive basis for conviction.

21. Recovery of clothes i.e. the shirt and the pant of the appellant with blood stains on 10th August, 1997, nearly three days after the occurrence is debatable and doubtful. The prosecution version is that there were blood stains on the shirt and the pyjama and the FSL report Ex.PW19/A confirms the blood group which matches with the blood group of the deceased. As per the prosecution case, the appellant had come back to his own house in the buggy with his sister and sister-in-law. In case there were fresh blood stains on the clothes worn by the appellant, it would have been noticed and the appellant would have been questioned. The clothes would also have been washed as nobody would like to keep dirty blood stained clothes in their house. The appellant, as per the police case was arrested on 10th August, 1998 and had made disclosure statement Ex.PW7/B on the same day. The said disclosure statement does not mention the place where the clothes were concealed and hidden. As per the seizure memo, Ex.PW7/C, clothes were recovered from the house of the appellant on 10.8.1997. On the same day itself

i.e. 10th August, 1997, the appellant was taken to the fields of Rattan Singh where he purportedly identify the place of occurrence. The pointing out memo (Ex.PW7/D) is not admissible and would not be covered under Section 27 of the Evidence Act. The place of occurrence was already known to the police and as per the investigations made by them on 8.8.1997, the dead body of Sangeeta was recovered from the same place. Surprisingly, the police could not recover the sickle as per their case on 10th August, 1997. On 11th August, 1997, one day police remand was obtained from the Metropolitan Magistrate and the sickle was recovered as per seizure memo/pointing out memo Ex.PW7/E on 12th August, 1997. It is not indicated in the seizure memo/pointing out memo or in the sketch (Ex.PW7/F) that any blood stains were found on the sickle.

22. The sickle, as per the prosecution version, was recovered five days after the occurrence. As noted above, there is evidence to show that there was considerable rain in the said area and the fields were water logged. The sickle, as per the seizure memo Ex.PW7/E, was lying in the water. Surprisingly, however, as per FSL report (Ex.PW18/A), human blood of AB group was found on the sickle i.e. the weapon of offence. There is, therefore distinct possibility that the blood stains were planted on the sickle. Their presence on the sickle ex-facie creates grave doubts about investigation and the FSL report. In these circumstances, we are not inclined to accept the prosecution version with regard to the blood stains on the clothes of the appellant and the sickle.

23. At this stage, we would like to reiterate the established principle that to base conviction on circumstantial evidence, the prosecution must establish all pieces of incriminating circumstances by reliable and clinching evidence. The circumstances so proved must form a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances should not lead to any other hypothesis [See Ramreddy Rajeshkhanna Reddy and Another (supra)].

24. In view of the aforesaid, we allow the present appeal and conviction of the appellant is set aside. The appellant is already on bail and his sentence has been suspended. The bail bonds will be treated as cancelled. The appeal is disposed of.

SANJIV KHANNA, J.

VED PRAKASH VAISH, J.

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