

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: November 8, 2011

+ **CRL.A. 757/2009**

CHAND MOHAMMED @ ANISH AHMED & ORS

..... Appellants

Versus

STATE

..... Respondent

Advocates who appeared in this case:-

For the Appellant : Mr K.B. Andley, Sr. Advocate with Mr M. Shamikh,
Advocate
For the Respondent : Ms Richa Kapoor, APP.

CORAM:-

**HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MS JUSTICE VEENA BIRBAL**

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

VEENA BIRBAL, J

1. The present appeal is filed against judgment dated 11.09.2007 passed in Sessions Case No. 16/2006 by the learned Addl Sessions Judge-I, North-East/Karkardooma Courts, Delhi arising out of FIR No. 129/2004 P.S. Welcome under Section 302/34 IPC whereby all

the three appellants have been convicted under Section 302/34 IPC. The appeal is also directed against the order of sentence dated 15.09.2009 whereby all the three appellants have been sentenced to rigorous imprisonment for life and to pay a fine of ₹ 500/- each and in default of payment of fine, to further undergo RI for one week each.

2. The case of the prosecution is that on 19.04.2004 at 4.05 a.m. DD No. 28A Ex. PW15/A was got recorded at Police Station Welcome on receiving information from Wireless Operator of P.S. Welcome to the effect that a quarrel had taken place at WP-17, Baghwali Masjid. The same was marked to ASI Lal Chand PW-9. PW20 Inspector Anand Sagar along with PW9 ASI Lal Chand and PW12 Constable Dharmender reached Baghwali Masjid where PW14 Constable Bhagat Singh and Constable Jagat Singh were already present. From there they came to House No. H-232, Janta Colony, where the dead body of a young boy was lying on the floor. The same was identified as that of Feroz s/o Babu R/o House No. A-72, Janta Colony. The deceased was wearing white baniyan and blue underwear. His pant and shirt were lying near the dead body. On investigation, injuries were found on nose, neck, left shoulder, back of the neck and both the hands. Ligature mark was also found on the neck. The mother of deceased, Tabassum @ Kaalo (PW2), was also present there. She made a statement Ex.PW2/A to the police wherein she had stated that Feroz was her son. He had taken a loan of ₹ 1,000/- (*udhaar*) from appellant Chand Mohammed who was living in the same locality. As her son could not return the money, appellant Chand Mohammad, his brother Taj and their cousin Akil had been

coming to her house 2-3 days prior to the date of incident and were demanding money from Feroz and were also threatening to kill him in case ₹ 1,000/- was not returned. She told them that she would be returning their money very soon and they should not extend threats of killing him.

3. On 18.04.2004 at about 7.30 p.m., all the three appellants had come to her house and took Feroz with them on the pretext that they had to talk about something with him. She requested them not to beat her son as she would be returning the money. Appellant Chand Mohammad assured that after talking to Feroz they would send him back. At about 12.30 a.m. on the night intervening 18/19.04.2004, appellants Chand Mohammad and Akil came to her house. Appellant Akil told her that they had beaten Feroz and had also removed his clothes and Feroz was not getting up. They told her to take her son from their house. On hearing the same, she went to the house of Chand Mohammad which was also in the same Colony where she resides. There she saw that her son was lying on the floor and blood was oozing out from his nose and there was some mark on his neck. His pant and shirt were also lying nearby. At that time, appellant Taj and his *Bua* Naseem were also there. With the help of the *Mohalla* people, she took her son to Welcome Medical Centre where the doctor declared that he was no more. Thereupon, she telephoned her relations and again brought the dead body to the house of appellant Chand with the help of the *Mohalla* people. At that time, appellants were not there in the house.

4. After sometime, police reached there and she narrated the incident to the police vide her aforesaid statement. On the basis of said statement Ex. PW2/A, *ruqqa* was prepared and FIR Ex. PW 15/B was got registered against the appellants under Section 302/34 IPC. The site plan was prepared by the police. The crime team was also called at the spot. The scene of crime was got photographed. During investigation, Tabassum PW2 also told the police that shoes and wrist watch of her son were also missing. Inquest papers were prepared by the IO PW 20 and the body was sent to G.B. Pant Hospital for post-mortem through Constable Dharmender Kumar PW 16. The clothes of the deceased lying at the spot were seized by preparing necessary memo in this regard. After post-mortem, the body was handed over to the family members of the deceased. During investigation, maternal uncle of deceased, i.e., PW6 Mohd Shafiq @ Rajesh also told the police that he had seen the deceased along with the appellants in Janta Colony on 18.04.2006 in the evening.

5. On the identification of Mohd Shafiq @ Rajesh, appellant Chand Mohammad was arrested vide memo Ex.PW13/A by the IO on 28.04.2004 at about 5 p.m. when he was coming from the 66 ft. road side near Welcome *pulia*. Before his arrest, his personal search was conducted vide memo Ex.PW16/C. Appellant Chand Mohammad has also made disclosure statement Ex. PW6/A and disclosed that he could get recovered the weapon of offence, i.e., wire Ex.P-7. He also disclosed that other two appellants would be coming to meet him in the park opposite Gagan Cinema, Nand Nagri. Thereafter, IO PW 20 along with his staff and appellant Chand Mohammad went to the said

park and on the pointing out of appellant Chand Mohammad, the other two appellants were apprehended. They were arrested vide memos Ex. PW13/B and Ex. PW13/C respectively. Before arrest their personal search was conducted vide memos Ex. PW6/L and PW 6/M respectively. They made disclosure statements Ex. PW 6/F and Ex. PW6/H respectively. Both were also got identified by Mohd. Shafiq @ Rajesh PW-6. A wrist watch make 'T Time Quartz' Ex. P2 which was alleged to be of deceased was recovered from the left hand of appellant Taj. Pursuant to disclosure statement Ex. PW6/B, Akil also got recovered shoes Ex. P1 which were alleged to be of Feroz from the bushes of Jheel Park. The same were seized by preparing necessary memos in this regard by completing necessary formalities. From there, they had returned to the house of Chand Mohammed where appellants pointed out place of occurrence vide memos Ex. PW 6/F and PW6/H. Thereafter, appellant Chand Mohammed pointed out the room of his house no. H-232, Janta Colony, on first floor and took out a black wire Ex. P7 lying under the television. The television was kept on a stool. The said wire was seized vide seizure memo Ex. PW 6/J. Before seizing, necessary formalities were done. After completion of necessary investigation, a report under Section 173 Cr.P.C. was prepared and was filed before learned MM, Delhi who committed the case to Sessions Court. The learned Addl. Sessions Judge, Delhi charged the appellants for having committed offence punishable under Section 302/34 IPC. Appellants pleaded not guilty to the same and claimed trial and were tried before the learned Additional Sessions Judge, Delhi.

6. Prosecution, in all, had examined 22 witnesses. Out of which Jamil Ahmed, PW-1 is a close relative of the deceased who had identified the dead body of the deceased. Tabassum, PW-2 is the mother of the deceased. As per the prosecution case, she had seen deceased last alive in the company of appellants. As per her, the appellants had come to her house on 18.04.2004 at 7.30 pm and thereafter on the same night at about 12.30 mid night, appellants had come to her house and informed that they had given a beating to Feroz due to which he was not getting up and had told her to go and bring him back. Thereafter, she had gone to the house of appellant Chand Mohammed where she had seen his dead body. Iftaqar Quresh, PW3, Jalaluddin, PW4 and Hazir Nasir, PW5 are public witnesses. Mohd Shafiq, PW6 is the brother of Tabassum who had allegedly seen deceased alive in the company of appellants on 18th April, 2004 at about 7.40 pm outside the house of Smt. Tabussum, PW-2. Ms. Ruby Alka Gupta, PW-21 Principal Magistrate had conducted the TIP of case property. Remaining witnesses relate to police and medical evidence.

7. Incriminating evidence was put to the appellants by the learned Additional Sessions Judge, in their statement under Section 313 Cr.P.C. They had denied the same and stated that they were innocent persons and were falsely implicated. No evidence in defence was led by them.

8. Relying on the evidence of Smt. Tabussum, PW-2 and that of her brother Mohd. Shafiq, PW-6 of having last seen deceased alive in the company of the appellants on 18th April, 2004 at about 7.30 pm at

her house and at 7.40 pm outside her house respectively and further evidence of Smt. Tabussum, PW-2 of having seen the dead body of deceased Feroz in the house of appellant Chand Mohammed in the midnight of 18th – 19th April, 2004 and opinion of Dr. S. Lal, PW-8, who had conducted the post mortem on the body of deceased and his report Ex.PW8/B about the cause of death and the recovery of wire Ex.P7 at the instance of Chand Mohammed, wrist watch Ex.P2 and shoes Ex.P1 of the deceased at the instance of appellants Taj and Akil and appellants furnishing no explanation as to how dead body was found in the house of appellant Chand Mohammed, the learned Addl. Sessions Judge convicted the appellants under Section 302/34 IPC.

9. Mr. K.B. Andley, learned senior counsel appearing on behalf of the appellants has contended that there is no positive evidence of taking of any loan by the deceased from the appellant Chand Mohammed as such there is also no motive for committing the alleged offence. Learned senior counsel has contended, reading the evidence of Dr. Upender Kumar, PW-7 who as per prosecution case had first examined the deceased, that it can't be said with certainty that he had examined the deceased. It is further contended that even if his evidence is taken into consideration, Tabassum PW-2 had not followed his instructions and did not take her son to GTB hospital. It is contended that deceased had died due to lack of treatment. It is contended that as per the case of prosecution, deceased Feroz had taken a loan of ₹ 1000/- from appellant Chand Mohammed. Appellant Taj Mohammed is the brother of appellant Chand Mohammed and appellant Akil is their cousin. It is contended that Smt. Tabussum,

PW-2 has deposed that 2-3 days prior to the alleged incident, all the appellants had come to her house and extended threats to the deceased that in case the amount of ₹ 1000/- was not returned, they would kill him. It is contended that despite the above mentioned alleged threats, Tabassum PW-2 had sent deceased with the appellants on 18th April, 2004 at about 7.30 pm and thereafter, did not bother till 12.30 am, i.e., midnight about the whereabouts of her son. It is contended that her conduct is quite unnatural and in these circumstances her evidence of having sent her son with the appellants is not believable. Her evidence that appellants had come to her house again at 12.30 a.m. and had informed that they had given a beating to the deceased and thereafter she had gone to their house is also not believable. It is contended that aforesaid deposition is contrary to her statement recorded in Ex.PW2/A on the basis of which FIR Ex.PW15/B was registered. Further, it is not believable that appellants would first give a beating and thereafter would come to inform her about the same. It is further contended that even the evidence of Mohammed Shafiq, PW-6 of having seen the deceased in the company of appellants on 18th April, 2004 at 7.40 pm near the house of deceased is also not believable. It is contended that Mohammed Shafiq PW-6 is the brother of Tabassum PW-2 and lives at Indra Puri Laxmi Garden Jama Masjid in front of PP Loni, Ghaziabad, UP which is far away from the house of Tabassum, PW-2. Learned senior counsel has further contended that it has come in the evidence of Mohd. Shafiq, PW-6 that Smt. Tabussum, PW-2 had told him that appellants had come to her house and threatened to kill Feroz if the loan amount was not returned. It is contended that despite having been informed so by his

sister PW-2, Mohammed Shafiq, PW-6 who was the maternal uncle of deceased, did not bother to look for Feroz and rather went back to his house. It is contended that his conduct is also very unnatural. It is contended that even Mohammed Shafiq's evidence of having last seen the deceased with the appellants does not inspire confidence. Learned senior counsel has further submitted that evidence of recovery of wrist watch, Ex P2 from the appellant Taj Mohammed and the recovery of shoes Ex P1 at the instance of appellant Akil in the bushes of Jheel Park is also not believable. It is further contended that circumstantial evidence relied upon by the prosecution is not believable as such appellants cannot be held guilty for the alleged occurrence.

10. On the other hand, Ms. Richa Kapoor, learned APP has contended that circumstantial evidence on record clearly establishes that deceased Feroz had taken a loan of ₹ 1000/- from the appellant Chand Mohammed and the said amount was not returned by him and the appellants extended threats to deceased Feroz that if the said amount was not returned, they would kill him. It is contended that evidence of Tabussum, PW-2 and Mohammed Shafiq, PW-6 clearly establishes that deceased was last seen alive in the company of appellants on 18th April, 2004 at about 7.30 pm. and 7.40 pm. respectively. It is further contended that dead body of Feroz was recovered from the house of appellant Chand Mohammed in the night intervening 18-19th April, 2004. The evidence on record of Tabussum, PW-2, police witnesses PWs 12 & 14 clearly establish that the dead body of deceased Feroz was recovered from the house of appellant Chand Mohammed. The evidence on record also proves that the

clothes of deceased were lying near the dead body. As per postmortem report Ex.PW-8/A, the time since death was 18 hours. The weapon of offence i.e., wire Ex.P7 was recovered from the house of appellant Chand Mohammed pursuant to his disclosure statement Ex.PW6/A at his instance which was concealed by him underneath the television in his house. It is contended that there is recovery of wrist watch Ex. P2 of deceased Feroz from accused Taj Mohammed. It is further contended that the shoes Ex.P1 of the deceased were also recovered at the instance of appellant Akil. It is contended that wrist watch Ex. P2 and shoes Ex. P1 have been identified in TIP proceedings as that of Feroz by her mother Tabassum PW-2. It is contended that the circumstantial evidence relied upon by prosecution clearly proves the case against the appellants beyond reasonable doubt. The burden was on appellants to give an explanation as to how the dead body of Feroz was found in the house of appellant-Chand Mohammed which they have failed to discharge. It is contended that in view of circumstantial evidence relied upon by prosecution the trial court has rightly convicted the appellants u/s 302/34 IPC.

11. The entire case is based on circumstantial evidence. The approach to be adopted and the test to be applied by the court in cases based on circumstantial evidence, was examined by the Supreme Court in **Hanumant Govind Nargundkar and Anr. v. State of Madhya Pradesh**; MANU/SC/0037/1952 : 1953 Cri.L.J. 129. The court in that case observed:-

“It is well to remember that in cases where the 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, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

The above statement of law has stood the test of time and has been reiterated in numerous subsequent decisions of the Supreme Court. Reference in this regard is made to the decisions in *Sharad Birdhichand Sarda v. State of Maharashtra*; MANU/SC/0111/1984 : 1984 Crl.L.J. 1738 and *State of Haryana v. Ved Prakash*; MANU/SC/0081/1994: 1994 Crl.L.J. 140.

12. The Supreme Court in *Md. Mannan @ Abdul Mannan v. State of Bihar*; (2011) 5 SCC 317 has held as under:-

“In our opinion to bring home the guilt on the basis of the circumstantial evidence the prosecution has to establish that the circumstances proved lead to one and the only conclusion towards the guilt of the accused. In a case based on circumstantial evidence the circumstances from which an inference of guilt is sought to be drawn are to be cogently and firmly established. The circumstances so proved must unerringly point towards the guilt of the accused. It should form a chain so complete that there is no escape from the conclusion that the crime was committed by the accused and none else. It has to be considered within all human probability and not in fanciful manner. In order to sustain conviction

circumstantial evidence must be complete and must point towards the guilt of the accused. Such evidence should not only be consistent with the guilt of the accused but inconsistent with his innocence. No hard and fast rule can be laid to say that particular circumstances are conclusive to establish guilt. It is basically a question of appreciation of evidence which exercise is to be done in the facts and circumstances of each case.”

13. In the present case, the material witnesses are Tabassum, PW-2, mother of deceased and her brother Mohd. Shafiq, PW-6 as having last seen the deceased alive in the company of appellants on 18th April, 2004 at 7.30 pm & 7.40 pm respectively. Smt.Tabassum, PW-2 has deposed that deceased Feroz was her son. He was 18 years of age at the time of occurrence. Fifteen days prior to the incident, deceased had taken a loan of ₹1000/- from the appellant-Chand Mohammed. However, deceased Firoz could not return the said amount. Due to that reason, appellant Chand Mohammed, his brother Taj Mohammed and cousin Akil had extended threats to her son that in case the said amount was not returned, they would kill him. She had told them not to harm her son and that she would arrange the said amount and return the same. On 18th April, 2004 at about 7.30 pm, appellants had come to her house and had taken Feroz on the assurance that he would be sent back. She told them not to cause any harm to him and that she would return the amount due from deceased Feroz. Thereafter, at about 12.30 am in the mid night, all the appellants had come to her house and told her that they had beaten her son Feroz and had also taken off his clothes and that

Feroz was not getting up and that she should go and bring him back. She went to the house of appellant Chand Mohammed at Janta Colony and found her son lying inside the house on the floor in baniyan and underwear. Blood was coming out from his nose as also from his mouth and his entire body had turned blue. There was ligature mark on his neck. His pant and shirt were lying separately near his body on the floor. Bua Naseem of appellant Chand Mohammed was present. On her crying, people from neighbourhood had gathered. Appellants were also present there. With the help of neighbours, she had taken her son to a nearby nursing home where the doctor declared him as having been brought dead. Thereafter, she had taken the dead body of Feroz to the house of appellant Chand Mohammed with the help of neighbourhood people gathered there and at that time, appellants were not present and they had run away. Police was called and her statement Ex.PW2/A was recorded. In her evidence she has identified the shoes Ex.P-1, wrist watch Ex.P-2 of her son and has also identified shirt Ex.P-3 and pant Ex.P-4 which the deceased was wearing at the time of incident. She has also identified the baniyan Ex. P5 and underwear Ex. P6 of the deceased. She has also proved her signature on Ex.PW2/C by which police had seized the pant and shirt of the deceased from the spot. She has also proved her signature on Ex.PW2/D by which she has identified the dead body of her son.

14. As regards her evidence of having last seen deceased alive with appellants, it may be seen that as per evidence of Tabassum, PW-2,

appellants had come to her house on 18th April, 2004 at 7.30 pm. and had taken her son with them. It has also come in her evidence that prior to that appellants had been extending threats to her son Feroz. She has also deposed that on the day of occurrence, she had told the appellants not to kill him and she would return the amount. In these circumstances, it is not believable that Tabassum PW-2 who is the mother of Feroz would send him in the company of appellants. Her conduct in this regard is quite unnatural. Further, in her evidence, she has deposed that the appellants had again come to her house at 12.30 a.m. on night intervening 18th-19th April, 2004 and told her that they had beaten Feroz who was not getting up whereas in the statement Ex.PW-2/A to police on the basis of which FIR Ex. PW15/B is registered, she has stated that appellants Chand Mohammed and Akil had come to her house and informed that her son was in their house and he was not getting up. There is a serious contradiction in the evidence before the court as well as statement Ex.PW 2/A as to who all had come on 18th April, 2004 at 12.30 am. Further, it is also not believable that appellants would first give a beating to the deceased in their house and thereafter would come to his house and inform his mother that they had given a beating and that Feroz was not getting up. Her evidence that she had removed her son with the help of neighbourhood people and had taken him to nearby Nursing Home also does not inspire confidence. To support her version, the prosecution has examined Dr. Upender Kumar PW-7. The said doctor has not given the name of the person who he had examined. He has also not given the date and month of examination nor has he produced any notings which he had made when he examined the deceased.

Reading his evidence, it cannot be said with certainty that he has examined the deceased.

15. Mohd. Shafiq, PW-6 is the brother of Tabassum PW-2. He has deposed that at the relevant time, he was living in Indra Puri, Laxmi Garden, Jama Masjid in front of PP Loni Distt Ghaziabad, U.P. As per his evidence, on 24th April, 2004 in the evening, he had gone to meet his sister Tabassum, PW-2 at her house in Janta Colony Welcome and outside the house, he saw deceased Feroz going with appellants at 7.40 pm and he asked where they were going, to which appellant Chand Mohammed replied that they were going for some urgent work. He further deposed that he has known the appellants as they were his relatives. Thereafter, he went to meet his sister and his sister had told him that appellants had taken Feroz with them and she was also apprehensive that they might harm Feroz as he had taken a loan of ₹1000/- from appellant Chand Mohammed.

16. The conduct of Mohammed Shafiq, PW-6 is also very unnatural. He is the maternal uncle of deceased Feroz. Despite being told by his sister Tabassum PW-2 that she was apprehensive that appellant would cause harm to deceased Feroz, he was not bothered and instead of looking for Feroz, he left for his house. His deposition of having last seen the deceased alive in the company of appellants also does not inspire confidence.

17. It is not disputed that appellants Chand Mohammed and Taj Mohammed are resident of H-232, Janta Colony and Tabussum, PW-2 is a resident of A-72, Janta Colony. Appellant Akil is a resident of K-

335, Sunder Nagri, Nand Nagri, Delhi. The evidence of Tabassum PW-2 establishes that deceased Feroz had taken a loan of ₹1000/- from appellant Chand Mohammed and he could not return the same and thereafter appellants Chand Mohammed along with two other appellants had been demanding the said amount from him. Her evidence in this regard is not demolished in cross-examination. It has also come in the evidence of Tabassum PW-2 that deceased used to visit house of appellant Chand Mohammed and she also used to visit there to call her son as and when he used to visit there. The evidence of Tabassum, PW-2 also establishes that she had seen the dead body of her son Feroz in the house of appellant Chand Mohammed in the night intervening 18th and 19th April, 2004 lying inside the house on the floor in underwear and banyan and blood was coming from his mouth and nose and there was ligature mark on his neck. Her evidence in this regard stands corroborated from the evidence of Constable Bhagat Singh, PW-14 who has deposed that on 18th April, 2004, he was on night patrolling duty in the area of Janta Colony. At 4 am, he saw a large crowd gathered in front of house no.H-232, Janta Colony i.e the house of appellant Chand Mohammed. He saw a dead body lying in the room. On enquiry, he came to know that deceased's name was Feroz. Thereafter, he gave information to the police station. Thereupon, ASI Lal Chand, PW-9, Constable Dharamender, PW-12 and Inspector Anand Sagar, PW-20 reached the spot. The evidence of ASI Lal Chand, PW-9 and Constable Dharamender, PW-12 established that on receipt of DD No.28A, they reached the spot and found a dead body lying on the floor in house no.H-232, Janta Colony, Delhi. He was only wearing a blue underwear and a white vest

(*banian*) and the body had an injury mark on the neck. Inspector Anand Sagar, PW-20 has also deposed that on getting the information, he had reached H-232, Janta Colony, Delhi at about 4/5 am where a dead body of a boy was found which later on was identified as Feroz. In his deposition, he has described the injuries on the dead body. His evidence also has clearly established that there were injuries on nose, forehead, left shoulder, behind the neck and on both the knees. He has deposed that dead body was found in the house of appellant-Chand Mohammed. The evidence of aforesaid witnesses of having seen dead body of Feroz in the house of Chand Mohammed was not demolished in the cross-examination.

18. The postmortem report Ex.PW 8/A shows the following ante-mortem injuries:-

“Ante-mortem Injuries.

1. Ligature Mark- No ligature material present on the neck. Neck circumference is about 32 cm. A dry, reddish, parchment type ligature mark present around the neck, place above the thyroid cartilage, horizontally placed and complete in front, the ligature mark is 0.5 cm broad and placed 11 cm above the sternal notch and extent horizontally extent both sides of neck. In left side, it is 0.5 cm broad and placed 2 cm below the angle of mandible. Back of neck, it is 0.5 cm broad and placed 10 cm below the occipital protuberance. In right side, it is faint and 0.5 cm broad and placed 3 cm. below the angle of mandible. On fine dissection of neck, extensive extravasation of blood seen in soft tissue of neck under the ligature mark. Upper horn of thyroid cartilage on left side is fractured and hyoid bones is intact. Trachea is congested.

2. A reddish abrasion dark parchment type 8x0.5 cm obliquely placed from front of neck extent to upward and backward direction to right side ramus of mandible. In mid line it is join the ligature mark and the other end is present over ramus mandible placed just front of angle of mandible.
3. Reddish abrasion 2x0.5 cm present over left angle of mandible.
4. Reddish abrasion 1.5x0.5 cm present over bridge of nose.
5. Multiple reddish abrasion present on left side of forehead in area of 5x4 cm.
6. Reddish abrasion 2x1 cm present on left side of face placed 0.5 cm left to angle of mouth.
7. Lacerated wound 0.5x0.3 cm present inner aspect of lower lip on left side.
8. Lacerated wound 0.7x0.3 cm present inner aspect of lower lip on right side.
9. Reddish abrasion 2x1 cm present on left side of tip of shoulder.
10. Reddish abrasion 1x0.5 cm present over left scapular ridge.
11. Reddish abrasion 2.5 cm X 1.5 cm present on left knee placed just below the patela.”

19. The cause of death as per aforesaid report Ex.PW 8/A which is proved on record by Dr. S. Lal, PW-8 is ‘Asphyxia’ as a result of antemortem strangulation by means of ligature and sufficient to cause death in ordinary course of nature. Time since death was about 18 hours. Postmortem was conducted on 19th April, 2004 at 2.40 pm.

The opinion of Dr. S. Lal, PW-8 who had conducted the postmortem of deceased about the weapon of offence i.e. electric wire Ex. P7 was taken. As per opinion Ex.PW 8/B, ligature mark present on the neck of deceased was possible with wire Ex.P7 which led to the death of deceased due to asphyxia as a result of strangulation.

The recovery of electric wire Ex.P7 from appellant Chand Mohammed stands proved from the evidence of Mohd. Shafiq PW-6 which ASI Raj Bir Singh PW13 and IO PW-20 which clearly establishes that pursuant to disclosure statement Ex.PW6/A, appellant Chand Mohammed led them to his house i.e. House No.232, Janta Colony and got recovered wire Ex.P7 by taking out the same lying underneath the TV kept on a stool on the first floor of his house. Their deposition about recovery of electric wire Ex. P7 was not demolished in cross-examination.

20. As regards recovery of wrist watch Ex.P2 alleged to be of deceased from appellant Taj Mohammed is concerned, it has come in the evidence of the witnesses to the recovery i.e., PW-13 ASI Rajbir and PW-6 Mohd. Shafiq that the watch was recovered from the left hand of appellant Taj Mohammed. It has also come in the evidence of aforesaid witnesses and PW-20 IO Anand Sagar, that first personal search of appellant Taj Mohammed was conducted vide memo Ex.PW6/L. The said memo shows recovery of purse/few papers/visiting cards and Rs.70/-. Nothing is stated in the personal search memo of Taj Mohammed about watch Ex. P2. Under these circumstances, recovery of watch Ex. P2 from left hand of appellant Taj Mohammed is not believable.

21. The alleged recovery of a pair of black shoes Ex. P1 was on pointing out of appellant Akil from the bushes of Jheel Park after about 3/4 days of incident. The said park is accessible to all. The evidence of witnesses about recovery of black shoes Ex. P1 does not inspire confidence and is not taken into consideration.

22. In view of above discussion, the evidence of Tabassum PW-2 establishes that appellant Chand Mohammed, had given a loan of ₹1000/- to deceased Feroz few days prior to the incident. It stands established from her evidence that appellant Chand Mohammed along with other two appellants had been going to her house and demanding the said money and threats were being extended to him. The motive is established only against appellant Chand Mohammed. It is also the admitted position that appellant Chand Mohammed and deceased Feroz were living in the same locality. The evidence of Tabassum, PW-2 also establishes that on the night intervening 18th and 19th April, 2011, she had found her son lying dead on the floor having injuries on various parts of his body. The recovery of dead body from the house of appellant Chand Mohammed stands proved from the evidence of Tabassum, PW-2 as well as evidence of police witnesses i.e., Constable Bhagat Singh PW-10, ASI Lal Chand PW9, Constable Dharmender -PW-12 and IO Anand Sagar PW-20 as is discussed in preceding paras. The endorsement of IO PW-20 on the statement Ex.PW2/A of Tabassum PW-2, which is recorded at the spot, also mentions that dead body of Feroz was lying in House No.232, Janta Colony. It also mentions the details of injuries on the dead body. Appellant Chand Mohammed was arrested on 22nd April, 2004 and at

his instance the wire, Ex.P7 was recovered which was concealed beneath a television set on the first floor of his house. As discussed above, the cause of death was ‘asphyxia’ as a result of antemortem strangulation by means of ligature and was sufficient to cause death in ordinary course of nature as is evident from postmortem report Ex.PW8/A. Dr. S.Lal, PW-8 who has conducted postmortem on the dead body of deceased Feroz, has also proved on record his report Ex.PW8/A by which it has been proved that ligature mark on the neck of deceased was possible with wire Ex.P7. The appellant Chand Mohammed has not given any explanation in his statement under Section 313 Cr.P.C. as to how Feroz’s dead body was found in the house. He has also not explained as to how the injuries were there on his body.

The Supreme Court in *Trimukh Maroti Kirkan v. State of Maharashtra*; (2006) 10 SCC 681 has observed as under:-

“15. In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court. [See *State of T.N. v. Rajendran* (SCC para 6); *State of U.P. v. Dr. Ravindra Prakash Mittal* (SCC para 39 : AIR para 40); *State of Maharashtra v. Suresh* (SCC para 27); *Ganesh Lal v. State of Rajasthan* (SCC para 15) and *Gulab Chand v. State of M.P.* (SCC para 4).]”

As held above, the non-explanation by appellant Chand Mohammed provides an additional link in the chain of circumstances to make it complete.

The circumstantial evidence discussed above, forms a complete chain and unerringly points towards guilt of appellant Chand Mohammed.

23. The prosecution has proved all the circumstances discussed above beyond reasonable doubt and a conclusion can be drawn that appellant Chand Mohammed is responsible for the occurrence. Considering the overall circumstances, the other two appellants are given benefit of doubt.

24. In view of the above discussion, the conviction and sentence of appellant Chand Mohammed is upheld whereas that of appellant Taj Mohammed and Akil are set aside. The appellants Taj Mohammed and Akil be released forthwith if not required in any other case.

The appeal stands disposed of accordingly.

VEENA BIRBAL, J

BADAR DURREZ AHMED, J

November 8, 2011
ssb