

2. Before going to the grounds of appeal, it will be in fitness to narrate the prosecution case as it emerges from the record.

3. On 9th August, 2002, on receipt of call of murder of a lady at House No. 1566/A, Wazir Nagar, Kotla, SI Dinesh along with Ct. Ashok went to the spot where they came to know that a lady was stabbed with a knife and a man had jumped from the roof. By that time, both of them had been removed to AIIMS hospital. He went to the hospital where the doctor declared the lady viz. Smt. Amarjeet Kaur brought dead. Dinesh Kumar was found admitted in injured condition. SI Dinesh recorded the statement of Satnam Singh, husband of the deceased who, *inter alia*, stated that he had been living with his wife in House No.1566/A, Wazir Nagar, Kotla for the last three years. As per the family settlement, shop No. 1&2 came in his possession. Shop No. 3&4 went to his deceased brother Surjeet Singh and Arjun Singh. He was running a STD/PCO booth at Shop No. 1. Shop No. 2 was given on rent to Ganga Prashad Verma for the last 6½ to 7 years. Ganga Prashad purchased the shop No. 3 from his sister-in-law about 2 ½ years ago. Since then, he has been asking Ganga Prashad to vacate his shop where he has been doing the work

of repair of sofa and curtains with his sons, Dinesh, Ramesh and Umesh. Ganga Prashad did not listen to him and stopped paying rent. On this, on many occasions, they had heated arguments resulting in strained relations. However, he kept on reminding him from time to time to vacate the shop. Dinesh used to speak in a loud voice and used to pick up quarrels but he avoided. On becoming fed up at the conduct of the accused and his father, about two months ago he got electricity of shop No. 2 disconnected. Thereafter, they became inimical to him. On 3rd August, 2002, at about 2:30 pm Dinesh came at his STD booth and at that time one Balvinder Singh was also present. Dinesh threatened him that he would teach him a lesson for disconnecting the electricity in the scorching summer and he would remember it for his whole life, but he did not take it seriously. On 9th August, 2002 at about 5:30 pm, Dinesh came at his booth and started talking to him with respect to the shop. He did not discuss the matter with him by saying that he would talk to Ganga Prashad. Dinesh purchased a Pepsi bottle from his shop. After about 10 minutes, he left the shop. He, in routine, gave call bell to his wife who lifted a parallel phone. He told her about the visit of Dinesh. On

this, his wife told him that Dinesh was sitting with her and talking about the shop. Ten minutes later, he again gave call bell to his wife but his wife did not pick up the phone. After 5-7 minutes, he heard a noise that someone had fallen from the roof. He went there and saw Dinesh in unconscious condition in front of shop No. 2 on the road. He called his brother Ramesh. It occurred to his mind that Dinesh had been sitting with his wife, he looked at the window and found it open. He went upstairs and found his wife on the stair case. The blood was oozing out from her chest, abdomen and shoulder. He also noticed blood on the stairs and lobby. He also noticed a broken knife with its blade and handle lying separately. He came down and raised alarm that his wife had been injured by causing stab wounds. On hearing the noise, some people went with him to the first floor, brought his wife down and made her sit on the rear seat of the car brought by Ramesh. Dinesh was already on the front seat of the car. He did not object to taking of his wife in the same car since she was pregnant for five months after 12 years of marriage and he wanted immediate treatment. He sat with his wife on the rear seat and they all went to the Casualty, AIIMS where doctor declared her dead and

admitted Dinesh. He alleged that Dinesh had killed his wife with pre-planning.

4. On the statement of Satnam and the MLC, a case under Section 302 IPC was registered. Further investigation was conducted by Inspector Ashok Kumar who prepared the inquest papers, inspected the spot, called the crime team, got the spot photographed, collected the blood from the staircase/lobby, Hawaii chappal, a green colour chunni, a blood stained towel, handle of the knife and the blade stained with blood. Dinesh was referred from AIIMS to Safdarjung Hospital but he fled away from there. Later on, he was arrested from Safdarjung Terminal on the identification of Satnam Singh. He got recovered his blood stained shoes from the place near Sewa Nagar railway crossing. Post Mortem of the deceased was conducted and the doctor opined injuries caused by sharp edged weapon, which were sufficient in ordinary circumstances to cause death. The exhibits were sent to FSL from where report was collected. After completing investigation, charge sheet was submitted.

5. After hearing learned counsel for the parties, vide order dated 17.03.2003 charge for offence under Section 302 IPC was framed against the accused to which he pleaded not guilty and claimed trial.

6. In order to substantiate its case prosecution examined 15 witnesses. The accused in his statement recorded under Section 313, Cr.P.C. denied the case of the prosecution and pleaded his innocence. He examined his brother-Ramesh Kumar as DW1 and Dr.Virat as DW2. Vide order dated 29.04.2004, the appellant was held guilty of the offence punishable under Section 302 IPC and was sentenced separately. An appeal was preferred by him in this court. Vide order dated 19.03.2010, the impugned order was set aside and trial court was directed to re-examine the accused and record his defence witnesses. Thereafter, his statement under Section 313 Cr.P.C. was recorded afresh. The same witnesses were examined by him in defence. Vide impugned order dated 17.08.2010, he was held guilty of offence under Section 302 IPC and sentenced separately. The impugned order has been assailed by filing the present appeal.

7. We have heard Mr. Anurag Jain, learned counsel for the appellant and Ms. Ritu Gauba, learned APP for the State. It was

submitted by the learned counsel for the appellant that there is no direct evidence and the case is based on circumstantial evidence. In a case based on circumstantial evidence motive plays a vital role, which is required to be proved by cogent evidence. In the instant case as per prosecution case, the complainant had let out shop No.2 to the father of the appellant, however, factum of creating tenancy is not proved, in as much as neither there is any rent agreement nor any rent receipt to prove this fact. The appellant has disputed that he or his father was a tenant in respect of shop No.2. No litigation is pending between the parties. Under the circumstances, prosecution has failed to prove the motive to commit the crime. No credence can be given to the testimony of PW2-Balwinder Singh in as much as he has tried to improve the case of prosecution regarding facts which were not even deposed by PW1-Satnam Singh. It was further submitted that as per testimony of PW1, when he made a call to his wife on intercom, she informed him that accused was sitting with her and talking about the shop. What is the evidentiary value of this information given by the deceased to the complainant? It was submitted that there is no last seen evidence because nobody saw the accused in the company of the

deceased. The appellant fell down from the platform, which was at a height of 5 feet and received injuries. He was also taken to the hospital and statement of complainant was recorded by the investigating officer of the case, wherein he had implicated the accused but despite availability he was neither arrested nor was put under surveillance. Thereafter, he was shifted to Safdarjung hospital and then left the hospital. Thus there was no occasion for prosecution to allege that he was absconding. Prosecution has tried to connect him with the recovery of shoes, however, no reliance can be placed on the same, as it was shown to be lying in open near railway track. Moreover, when the accused was taken to hospital, he was wearing shoes, if there was any blood why they were not seized then and there, more particularly, when his clothes were also seized. Knife is alleged to have been recovered from the spot, however, no finger prints were lifted nor there is any evidence to show that injuries could have been caused by this knife. Prosecution is relying upon the shoe impression alleging that the same came on the sofa when the appellant tried to jump from the window, however, sofa seat was sent to FSL but no shoe impression could be found. Hence, these do not

connect the appellant with the crime. Even as regards the seizure of bloodstained clothes of accused, the FSL report only gave 'positive for blood test', but there is no serological report. Hence, it is not proved whether it was 'human blood' or matched with the 'blood of the deceased'. The blood might have come on the clothes of the deceased when he was taken in the same car and was sitting next to the deceased. As such, the same does not connect him with the crime. It was further submitted that appellant was not mentally fit. Two days prior to the incident, he cut his wrist as such even otherwise it was not possible for him to hold knife. Moreover, handle and blade of the knife were found separately. Had injuries been inflicted by the blade, without its handle, accused must have sustained injuries on his hand which are missing. The impugned order was also challenged on the ground that the judgment is beyond evidence and the judgment of the trial court is based on inferences against irrelevant facts. As such, it was submitted that the impugned order be set aside.

8. Rebutting the submission of learned counsel for the appellant, it was submitted by learned APP for the State that at the very first available opportunity, name of the accused was given to the police as

the person who inflicted injuries on the person of the deceased with a sharp edged weapon, as reflected from PCR call. The complainant had informed the brother of the deceased about his jumping from the roof; thereupon his brother had reached the spot and in his car the accused, complainant and his wife went to AIIMS. Although, the brother of the accused has deposed that he was given intimation that accused has fallen from the platform, however, the MLC speaks otherwise, which reflects that the accused was brought to hospital by his brother and 'history of fall from height/jump one hour ago' was given.

9. As regards the relationship of landlord and tenant between the parties, it was submitted that his brother appearing as DW1 admitted in his cross-examination that they are tenant under the complainant in respect of shop No.1. PW2 Balwinder Singh is an independent witness and in his presence threat was given earlier by the accused to PW1 Satnam Singh. It has further been proved that on the fateful day, the accused firstly went to the shop of the complainant and started talking about the shop, but when the complainant refused to talk to him about the shop, then he took a Pepsi from his shop and then went

to his house. When the complainant talked to his wife on intercom, she informed him that accused was present there and was talking to her about the shop. This part of his testimony also goes unchallenged as he was not cross-examined in this regard. As such, motive to commit the crime is duly proved.

10. It was further submitted that the incriminating articles were recovered from the spot and later on shoes were also recovered. As per the seizure memo, there was imprint of shoes on sofa set, however, when the sofa seat was sent to FSL, no reaction was given in as much as sofa was spongy. The knife was recovered from the spot. As regards the submission that handle and blade of knife were lying separately and therefore had the accused stabbed the deceased from that knife, he must have sustained injuries, it was submitted that injuries were inflicted indiscriminately causing as many as fourteen injuries and the accused did not leave the knife till its handle was separated from the blade. The doctor has clearly opined that injuries were possible by a sharp edged weapon and knife is a sharp edged weapon. Even if no subsequent opinion was obtained from the doctor that is of no consequence as it would have been only an opinion of the

doctor. As such, it was submitted that prosecution has been able to establish its case beyond reasonable doubt. The trial court has already taken a lenient view by not framing the charge under Section 316 IPC. The impugned order does not suffer from any infirmity which calls for interference. As such, the appeal deserves to be dismissed.

11. There can be no doubt that the present case is one of circumstantial evidence. There is no witness to the commission of crime. Thus, there is a definite requirement of law that a heavy onus lies upon the prosecution to prove the complete chain of events and circumstances which will establish the offence and would undoubtedly only point towards the guilt of the accused. A case of circumstantial evidence is primarily dependent upon the prosecution story being established by cogent, reliable and admissible evidence. Each circumstance must be proved like any other fact which will, upon their composite reading, completely demonstrate how and by whom the offence had been committed. Hon'ble Supreme Court and this Court have clearly stated the principles and the factors that would govern judicial determination of such cases.

12. Reference can be made to the case of *Sanatan Naskar and Anr. v. State of West Bengal*, (2010) 8 SCC 249, where the Court held as follows:-

“27. There cannot be any dispute to the fact that it is a case of circumstantial evidence as there was no eyewitness to the occurrence. It is a settled principle of law that an accused can be punished if he is found guilty even in cases of circumstantial evidence provided, the prosecution is able to prove beyond reasonable doubt complete chain of events and circumstances which definitely points towards the involvement and guilt of the suspect or accused, as the case may be. The accused will not be entitled to acquittal merely because there is no eyewitness in the case. It is also equally true that an accused can be convicted on the basis of circumstantial evidence subject to satisfaction of the accepted principles in that regard.”

28. A three-Judge Bench of Hon’ble Apex Court in *Sharad Birdhichand Sarda v. State of Maharashtra*, 1984 (4) SCC 116 held as under:-

‘152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant Govind Nargundkar v. State of M.P. AIR 1952 SC 343. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail v. State of U.P 1969 (3) SCC 198 and Ram Gopal v. State of Maharashtra 1972 (4) SCC 625. It may be useful to extract what Mahajan, J. has laid down in Hanumant case(supra)

“10.... 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.”

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* (1973) 2 SCC 793, where the observations were made:-

“19.... Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.(emphasis in original)

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) 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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

13. In the light of these principles, we have to analyse the evidence coming on record.

14. Police machinery swung into action on receipt of an information by PCR at 18:47 on 09.08.2002 that a person had fallen from roof of house No.1566/A, Wazir Nagar, Kotla Mubarakpur, New Mother Dairy. Immediately after one minute i.e. 18:48 another information was received that a boy has stabbed a lady and himself has jumped from the roof. Both the injured were being taken to AIIMS Hospital. Lady Amarjeet, wife of Satnam Singh aged 40

years, resident of 1566/A, Wazir Nagar, Kotla Mubarakpur has been stabbed by Dinesh, son of Ganga Prasad, resident of C-281, Kotla Mubarakpur by a sharp edged weapon. Both are in unconscious condition. Reason is unknown. The incident has taken place at the house. Both have been admitted in AIIMS. As such, at the very first available opportunity the name of accused was given to the police as the assailant of the crime when there was no chance of manipulation or fabrication.

15. On receipt of DD No.16, SI Dinesh Kumar went to the spot, where he came to know that the injured lady and the person, who had fallen from the roof, had been taken to hospital by their relatives. After leaving constable Ashok at the spot to safeguard the site, he went to AIIMS hospital, met complainant Satnam Singh and recorded his statement, Exhibit PW1/A. This statement was duly signed by the complainant. The FIR was registered on the basis of this statement and duly forms part of the record of the police station which was maintained in normal course of its proceedings. In this statement the complainant has given a detailed version under what circumstances the incident had taken place. Besides the details given by the

complainant in his statement made to the police, which formed the basis of the FIR, complainant substantiated his version while deposing before the Court.

16. It has come in his testimony that on the fateful day his wife was present at the house and he was present at the shop. Accused came to his shop and on his asking he gave him cold drink. This fact stands admitted by the accused in his statement under Section 313 Cr.P.C. As such his presence at the shop of the complainant stands proved. The complainant has further deposed that after the accused left, he talked to his wife on intercom, who informed him that Dinesh was present at the house and was talking to her regarding the shop. This part of his testimony goes unchallenged, unrebutted and unshattered as the same has not been assailed by way of cross-examination. Further there is no evidence that someone else had entered the house or was seen anywhere near the body of the deceased. The statement made by the deceased to PW1 immediately before she was killed that the accused was sitting with her and was discussing the issue of shop with her is a very strong incriminating piece of evidence against the accused to establish that he was present with the deceased

immediately before the incident.

17. Moreover, after about 10-15 minutes of leaving the spot PW1 - Satnam Singh heard the noise of falling of somebody from the house. He came out of the shop and found the accused lying in the gali. He informed his brother on telephone, himself went to his house and saw his wife lying in a pool of blood. He bolted the door of the house and came down crying "*loot gaya loot gaya*", which finds corroboration from DW1 – Rajesh. Thereafter, he removed his wife in the car of Ramesh in which accused was also removed to AIIMS Hospital. The fact that accused was brought to the hospital by his brother Ramesh finds corroboration from his MLC, Ex.PW8/A, where in the column "*brought by brother Rajesh Kumar*" is mentioned, whereas on the MLC Ex.PW14/A of Amarjeet Kaur she was shown as "*brought by her husband*". Though, the MLC of the accused does not record any time of examination, but it can safely be presumed that it was simultaneous to that of the deceased as they travelled to the hospital together in the same car. The probable time of injuries to the accused is, thus, the same as that of injuries caused on the deceased. This is another clinching piece of evidence against the accused.

18. The clothes of the accused were taken into possession which were blood-stained. According to the accused, the blood might have come on his clothes when he was sitting on the rear seat of the car along with the deceased. This plea is belied by the record inasmuch as it has come in evidence that accused was made to sit in the car on the front seat whereas deceased along with her husband was sitting on the back seat while being removed to hospital. Therefore, there was no occasion for blood stains to have come on the clothes of the accused at that time. This also reflects that the blood came on the clothes of the accused when he was stabbing the deceased.

19. Motive to commit the crime stands established in as much as according to the prosecution the father of the accused failed to vacate the tenanted shop, thereupon the complainant had disconnected the electricity of the shop. On 03.08.2002, the appellant had threatened him with dire consequences and on the fateful day the threat was executed by committing murder of his wife.

20. Learned counsel for the appellant, however, submitted that there is no material on record to prove that there existed relationship

of landlord and tenant between the complainant and father of the appellant, inasmuch as, there is neither any rent agreement nor any rent receipt. Moreover, no such threat as alleged was given. Both the submissions are belied by the record, inasmuch as, it has come in the testimony of the complainant that father of accused was tenant in respect of shop No. 2 for the last about six years. To the same effect is the testimony of PW-2 Balwinder Singh. PW-1 denied the suggestion that there was no relationship of landlord and tenant between the parties whereas testimony of PW-2 Balwinder Singh in this regard, went un-rebutted in the absence of even giving any suggestion to this effect. The mere fact that there was no written agreement or rent receipt does not *ipso facto* prove that there does not exist any relationship between the parties inasmuch as there is no statutory requirement that for creation of tenancy, any written agreement is pre-requisite. Even oral tenancy can be created. Furthermore, record reveals that after the remand of the case, statement of accused was again recorded under Section 313 Cr. P.C. and various incriminating questions were put to him. The relevant question in this regard is Question No. 1 which is to the following

effect:-

“Q1. It is evidence against you that your father was tenant of PW1 Satnam Singh in respect of shop No.2 in the house of PW1 at 1566/A, Wazir Nagar, Kotla Mubarakpur for about six years from 2003. PW1 had asked him to vacate the shop. A dispute was going on over the non-payment of rent and electricity and it resulted into a tussle between you and PW1 with dire consequences when you visited his shop. What you have to say?

The answer given by the appellant is to the following effect:-

A. I being the youngest child of my parents and due to my head injury and the regular fits I was not allowed to participate in day to day activities and it was due to this reason that I could not complete my studies. As far as I can remember my elder brother Sh. Ramesh Kumar had purchased a shop from Smt. Balwinder Kaur who was sister-in-law (bhabhi) of the complainant PW1 Satnam Singh. As such there was no dispute between me and PW1 in regard to non-payment of rent and electricity. It is wrong to suggest that I ever threatened PW1.”

21. Thus, despite the fact that a question was specifically put to the accused that his father was tenant under Satnam Singh in respect of shop No.2 at 1566/A, Wazir Nagar, Kotla Mubarakpur, the accused has not chosen to deny this fact. The object of recording the statement of accused under Section 313 of the Code is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in

the evidence of prosecution. As held in *Pudhuraja & Ors. Vs. State*, (2013) 1 SCC (Cri.) 430, it is obligatory on the part of accused while being examined under Section 313 Cr. P.C. to furnish some explanation with respect to incriminating circumstances, associated with him and the court must take note of such explanation even in a case of circumstantial evidence, in order to decide as to whether or not, the chain of circumstance is complete. When the attention of accused is drawn to circumstances that inculcate him in relation to commission of crime and he fails to offer an appropriate explanation or gives a false answer with respect to same, same act may be counted as provided a missing link to complete the chain of circumstances. Similar view was taken in *Sunil Clifford Daniel Vs. State of Punjab*, (2013) 1 SCC (Cri.) 438.

22. In the instant case, the question referred above goes to show that besides other incriminating circumstances, a specific question was put to the accused that his father was a tenant in respect of shop No. 2 under the complainant. Although, a detailed answer was given by the accused but he omitted to give specific answer in regard to this question which tantamounts to an admission on his part that his father

was a tenant in respect of Shop No. 2 under the complainant. Furthermore, he examined his brother Ramesh Kumar as DW-1 Sh. Ramesh. In cross-examination, the witness has admitted that shop No.2 was taken on rent by him at the rate of Rs.3,000/- per month from Satnam Singh. That being so, it was established beyond reasonable doubt that there existed relationship of landlord and tenant between the complainant and family members of accused and that shop No. 2 was let out by the complainant to them.

23. It has further come on record that shop No. 3 was purchased by father of the appellant from the sister-in-law of the complainant and since then, the complainant had been asking him to vacate the premises. However, the father of the appellant did not accede to his request and in fact stopped paying rent. Thereupon the complainant disconnected the electricity of shop No. 2. On 3rd August, 2002, accused visited the shop of Satnam Singh and threatened him with dire consequences. At that time, PW-2 Balwinder Singh was also present and in his presence, a complaint was made by accused and his brother that Satnam Singh had not done something right in disconnecting electricity in hot season and the accused at that time

threatened that consequences of that act would not be good. It is pertinent to note the testimony of PW-1 and PW-2 in regard to this deposition goes un-rebutted inasmuch as same has not been assailed in cross-examination. There is no reason either to dis-believe the testimony of the complainant or PW-2 Balwinder Singh in this regard as no animosity or ill will has been alleged against him for which reason, he would falsely depose against the accused. Thus the motive to commit the crime stands proved.

24. After registration of FIR, SI Dinesh Kumar along with Inspector Ashok Kumar came back to the spot. From the spot, blood sample, chunni, blood stained towel, chappal and broken knife were seized and sealed in separate pullandas. During the course of investigation, all these exhibits were sent to CFSL, Calcutta from where report Ex. PW-15/G was received. All these articles gave “positive for blood test”. After the MLC of accused was prepared, his clothes comprising of shirt, baniyan, pant, underwear were also seized which were also sent to CFSL, Calcutta and the same also gave “positive for blood test”. The clothes of the deceased were also taken into possession, which were also sent to CFSL and gave “positive for

blood test”. As per the report Ex.-PW-15/G regarding the origin and grouping of blood, a separate report from the serological unit was to follow. However, it seems that the same was not collected by the IO which at the most can be said to be a defect in the investigation and at the most it may be taken that serologist failed to detect the origin of blood. But that itself is not fatal. In *Sunil Clifford Daniel vs. State of Punjab*, (2013) 1 SCC (Cri) 438, by relying upon *Gura Singh vs. State of Rajasthan*, (2001) 2 SCC 205, *Prabhu Babaji Navle vs. State of Bombay*, AIR 1956 SC 51, *Raghav Prapanna Tripathi vs. State of U.P.*, AIR 1963 SC 74, it was observed that a failure by the serologist to detect the origin of blood due to disintegration of the serum does not mean that the blood stuck on the axe would not have been human blood at all. Sometimes it is possible, either because the stain is too insufficient or due to haematological changes and plasmatic coagulation, that a serologist may fail to detect the origin of blood. However, in such a case, unless the doubt is of a reasonable dimension, no benefit can be claimed by the accused, in this regard.

25. It is further the case of prosecution that when the accused was trying to jump from the window, the shoe prints came over the sofa

seat, which was sent to CFSL. However, as per the report Ex. PW-15/H no shoe impression could be observed, and therefore, it was not possible to opine whether any shoe impression was present on the sofa seat. That may be due to the reason that as per report, the sofa seat was spongy. However, that itself is not sufficient to cast any doubt on the prosecution version.

26. The other incriminating piece of evidence against the accused is the recovery of shoes at his instance. PW1 Satnam Singh, PW12 SI Sunil Jain, PW15 Inspector Ashok Kumar deposed that accused was apprehended at SJ Bus Terminal. He made a disclosure statement Ex. PW1/H and in pursuance thereof he led the police party and the complainant to Sewa Nagar Railway Crossing from where he got recovered the shoe, which was worn by him at the time of commission of offence. The same was seized vide seizure memo Ex. PW1/J. However, this recovery has been challenged by the learned counsel for the appellant on the ground that firstly it does not appeal to reason that clothes of the accused were seized in the hospital while at the same time shoes were also not seized. Moreover, the recovery is alleged to be effected from an open space near railway

track and as such same becomes doubtful. Even if that is so, the prosecution case does not solely rest upon the recovery of shoes but the circumstances narrated above prove the case of the prosecution to the hilt.

27. Much emphasis has been laid for submitting that the learned Additional Sessions Judge himself has noted the flaws in the investigation viz. non-seeking subsequent opinion from the doctor regarding the weapon of offence, collecting the serological report from the Forensic Expert Department, non-seizure of shoes from AIIMS, where the clothes of the accused were seized, non-examination of neighbours. However, the learned Additional Sessions Judge rightly observed that all this at the most can be termed to be defects in the investigation. However, there are a catena of decisions to the effect that defects in investigation by itself cannot be a ground for acquittal. In ***Ram Bihari Yadav Vs. State of Bihar***, AIR 1998 SC 1850, it was held by Hon'ble Supreme Court that if primacy is given to the omissions or lapses by perfunctory investigation by the investigating agency, the faith and confidence of people would be shaken not only in law enforcing agency, but also in the

administration of justice. It is true if on account of any lapse doubts are created in prosecution case, the accused would be entitled to the benefit of that doubt. But, if the prosecution is able to establish its case beyond reasonable doubt against the accused, in spite of lapses, the accused cannot be acquitted because of the lapse on the part of investigating officer. Substantially similar view was taken in **C. Muniappan and others vs. State of Tamilnadu**, 2010 IX AD (SC) 317 where it was held that the defect in investigation by itself cannot be a ground for acquittal. If primacy is given to such design or negligent investigation or to the omissions or lapses by perfunctory investigation, the faith and confidence of people in criminal justice administration would be eroded. Where there has been negligence on the part of investigating agency or omissions etc which resulted in defective investigation, there is a legal obligation on the part of the Court to examine the prosecution evidence de hors such lapses carefully to find out whether said evidence is reliable or not or to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of

trial in the case cannot be allowed to depend solely on the probity of investigation.

28. The submission of learned counsel for the appellant that the appellant was mentally imbalanced, moreover, before the incident he slit his wrist in an attempt to commit suicide and therefore had tendons on his wrist and with that injury the stabbing on the person of the deceased could not have been done, with the broken knife he could not have stabbed the deceased and in case he had done so he would have received injuries on his palm and finger and the accused had fallen from a height of 5 feet from the platform are devoid of merit in as much as:

- (i) the accused himself has examined DW2 – Dr. Virat, who brought his medical record and deposed that he was a known case of right orbital hemangioma and proptosis and under the regular treatment from AIIMS. He had symptoms of protrusion of eye balls from his childhood. He was suffering from eye tumour but that did not have effect on his mental condition. He could perform his normal course with this disease. No treatment was required

from psychiatric illness to the accused. There was no complaint of abnormal behavior by the accused.

- (ii) As regards the submission that due to tendons on his wrist, the stabbing on the person of the deceased was not possible is without substance, in as much as PW3 – Dr. Salini Giridhar, PW5 – Dr. Sunil Kumar Sharma and PW8 – Dr. Jayant M.G. were extensively cross-examined and all of them have deposed that a man after cut of tendons could hold a cup of tea. Dr. Sunil Kumar Sharma further deposed that there are more than 10 tendons on the wrist, so if all the tendons are not cut it may be possible to hold a cup of tea. It was not suggested to either of these doctors that due to cut tendons on the wrist stabbing on the person of deceased could not have been done by the accused.
- (iii) As regards the plea that the accused had fallen from a platform at the height of 5 feet, same is again devoid of merit, in as much as it is not in dispute that after the complainant saw the accused lying on the spot, he informed his brother, who reached the spot and removed the accused

to hospital. His MLC, Ex. PW8/A records “history of fall/jump about one hour ago”. The accused was got admitted in the hospital by none else, but his own brother and this history was also given by him. Had the accused fallen from the platform, there was no occasion for the brother to have given the history of “fall/jump about one hour ago”.

(iv) The further submission that in case the injuries had been caused by the accused by the blade only he would have sustained injuries on his hand, same again is devoid of merit in as much as per post mortem report, Ex.PW3/A, the deceased has as many as 14 injuries on her person. This rather goes to show that the accused stabbed the victim in a most callous manner and gave indiscriminate blows till he broke the knife and could stab no further.

29. From the aforesaid analysis, we are of the considered opinion that all the circumstances, which have been established by the prosecution, complete the chain. There can be no place of doubt that the circumstances have been proved beyond reasonable doubt. In this

regard, it will be help to reproduce the observation made in *Sucha Singh Vs. State of Punjab* (2003) 7 SCC 643, where it was stated that:-

“20. The prosecution is not required to meet any and every hypothesis put forward by the accused. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect.”

30. The present case is one where there is no trace of doubt that all circumstances complete the chain and singularly lead to the guilt of the accused. The fact that fourteen injuries were caused in quick succession out of which injuries No.1,4,5 & 8 were opined to be individually and collectively sufficient to cause death in ordinary course of nature coupled with the fact that ‘the deceased was unarmed and in a helpless situation’ is sufficient to indicate that Section 300 ‘thirdly’ is attracted in this case.

31. In view of the aforesaid reasons, we do not find any infirmity in the judgment of conviction and order of sentence recorded by

learned Additional Sessions Judge. Accordingly, the appeal, being devoid of substance, stands dismissed.

SUNITA GUPTA, J

REVA KHETRAPAL, J

May 21, 2013
rs/aks