

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 13th May, 2014

+CRL.A. 495/2000

OLIVER KUJUR & ANR.

..... Appellants

Through: None

versus

STATE OF DELHI

..... Respondent

Through: Ms. Richa Kapoor, Additional
Public Prosecutor for State with
Inspector Pankaj Malik, SHO,
Police Station Subhash Place,
Delhi

+CRL.A.515/2000

KULJEET SINGH @ PRINCE

..... Appellants

Through: Mr. Rajeev Gaur 'Naseem',
Advocate

versus

STATE OF DELHI

..... Respondent

Through: Ms. Richa Kapoor, Additional
Public Prosecutor for State with
Inspector Pankaj Malik, SHO,
Police Station Subhash Place,
Delhi

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CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J. (Oral)

1. Appellants Oliver Kujur and Kuljeet Singh @ Prince have filed separate appeals bearing No.Crl.A.495/2000 and Crl.A.515/2000 challenging the judgment and order on sentence

dated 10th August, 2000 and 12th August, 2000 respectively passed by the learned Additional District and Sessions Judge, Delhi in Sessions Case No.57/97 arising out of FIR No.803/95 u/s 302/394/34 IPC, PS Saraswati Vihar, whereby the appellants were convicted u/s 302/34 IPC and were sentenced to undergo imprisonment for life and a fine of Rs.50,000/- each, in default of payment, further to undergo Simple Imprisonment for 5 years each.

2. Prosecution case, as revealed from the charge sheet, succinctly stated, is as follows:

3. On 19th December, 1995, Inspector H.S. Bhardwaj along with Inspector Rohtas Singh, Head Constable Padmesh, Const. Manoj Kumar was on patrolling duty at Lok Vihar. At about 2:10 PM, a wireless message was received that a lady had been murdered at B-11, Rang Mahal Society, Pitampura, Delhi. So Inspector H.S. Bhardwaj along with the staff reached the place of occurrence where he met Kumari Kashmira and her younger sister Trupti. Smt. Swati, mother of Kashmira was found murdered in the bathroom. Inspector H.S. Bhardwaj recorded the statement of Kumari Kashmira, Ex.PW11/A wherein she stated *inter alia* that she along with her mother Swati and sister Trupti aged 9 years had been residing as tenants in house No.B-11, Rang Mahal

Apartments, Pitampura, Saraswati Vihar for the last six months. She was studying in 10th standard while her sister was studying in 3rd standard. Her father had expired in the year 1993. Sh.T.S. Gandhi, R/o BG-11, Shalimar Bagh, East was her father's friend and was on visiting terms to her house. He also used to financially assist them. There was a servant, namely, Ramu @ Bhim Singh Thapa aged about 17-18 years who was working as a domestic servant for the last about 1½ years. Earlier he was working at the house of Mr.T.S. Gandhi. On that day, she as well as her sister had gone to school at about 8:00 AM. Her mother and servant Ramu were in the house. At about 1:30 PM, when she was returning back from school to her house along with her friends, she noticed one white Maruti Van bearing No.DL-4CD-6598 on the back side of her house belonging to Sh.T.S. Gandhi which was normally used by Kuljeet Singh @ Prince, s/o Mr. T.S. Gandhi. She got astonished on seeing the Maruti Van parked over there and peeped inside the vehicle but nobody was available in the van. Normally whenever this vehicle used to come, it used to be parked inside the society. When she along with her sister reached the house, she found the door of the house on the first floor locked. As such, she and her sister came downstairs after keeping the school bag on the

stairs and thought that their mother must have gone somewhere nearby. After some time, when they returned back, the van was still lying there and they found the main gate of 2nd floor of the house opened. When they entered the second floor, they found the house ransacked. Clothes were lying scattered here and there. They came to the drawing room of the first floor where purse of her mother was found lying on the bed. Some money and articles were lying scattered. Almirah and the locker were also lying opened. On checking the room, she found her mother lying in the bathroom with injuries on her head. One bat was lying near the wall of the bathroom. She and her sister raised alarm. Persons from the neighbourhood collected and somebody informed the police. On the basis of this statement, rukka Ex.PW18/A was prepared and was sent to the police station on the basis of which FIR Ex.PW12/A under Section 302/394/34 IPC was registered. During the course of investigation, one Maruti Van bearing No.DL 4 CD 6598 was seized from Gurdwara Nanak Pyau, Rana Pratap Bagh. On the same day, statements of Bhim Singh Thapa and Ram Bahadur, who were working as domestic servants at the house of deceased, were recorded. On pointing out of Bhim Singh Thapa, accused Oliver Kujur was arrested. He made a disclosure statement

and led the police party to his house from where he got recovered a packet containing certain jewellery articles, currency and other items. He also got recovered his blood stained clothes. Post-Mortem on the dead body of Swati was got conducted. Accused Kuljeet could not be arrested. As such, he was kept in column No.2. After completing investigation, charge sheet was submitted against Oliver Kujur. Thereafter, on 20th December, 1995, accused Kuljeet @ Prince was arrested and supplementary charge sheet was submitted against him.

4. After hearing arguments on charge, charge for offence under Section 302/34 and 392/34 r/w Section 397 IPC was framed against both the accused to which they pleaded not guilty and claimed trial.

5. Prosecution in all examined 18 witnesses to substantiate its case. All the incriminating evidence was put to the accused persons while recording their statements under Section 313 Cr. P.C. wherein they denied the case of prosecution and alleged their false implication in this case.

6. Accused Oliver Kujur examined DW1 Sh. John Kujur who deposed that his son Oliver Kujur was residing with him on the 3rd floor of house No. 22D, BB (E) Shalimar Bagh, Delhi.

7. After hearing learned counsel for the parties, vide impugned judgment dated 10th August, 2010, both the accused were convicted of offence under Section 302/34 IPC. However, as far as charge under Section 392/397 IPC is concerned, they were acquitted of the offence. Vide Order dated 12th August, 2000, they were sentenced as mentioned above. Feeling aggrieved by the same, separate appeals have been filed by both the accused.

8. It was submitted by learned counsel for the appellant Shri Rajiv Gaur Naseem that the present case is based on circumstantial evidence. There is no eye-witness to the occurrence. Complainant Kashmira has not supported the case of prosecution at all and has gone to the extent of deposing that the complaint Ex.PW11/A although bears her signature but she has signed the same without going through the contents of the same. As far as the two servants, namely Bhim Singh Thapa and Ram Bahadur are concerned, both these witnesses have also not supported the case of prosecution and, as such, were declared hostile. In cross-examination also, nothing could be elicited to support the case of prosecution. It was further submitted that as far as appellant Kuljeet Singh is concerned, there is absolutely no incriminating evidence against him to connect him with the crime and in this regard, he has placed

reliance on a bail order passed by this Court whereby the learned Additional Public Prosecutor at that stage, had admitted that no incriminating evidence has come against him to connect with the crime and it was only thereafter, he was released on bail. As regards, Oliver Kujur, it was submitted that the only piece of evidence relied upon by the prosecution is the blood stained clothes. However, that itself is not sufficient to connect him with the crime. Although recovery of certain ornaments and certain other articles were also alleged to have been effected at his instance but no test-identification was got conducted. As such, it was submitted that the impugned order is based on conjectures and surmises and deserves to be set aside. Reliance was placed on *State of Punjab v. Madan Mohan Lal Verma*, 2013 (10) Scale 2; *Mustkeem @ Sirajudeen v. State of Rajasthan*, 2011 (11) SCC 724; *Subhash Chand v. State of Rajasthan*, 2002(1) SCC 702; *Shankar Lal Gyarasilal Dixit v. State of Maharashtra*, 1981 (2) SCC 35

9. Ms. Richa Kapoor, learned Public Prosecutor for the State, on the other hand, submitted that Kashmira, daughter of the deceased had given an elaborate version of the entire incident immediately after the occurrence as to how her mother was

murdered. She has also given the motive for commission of crime, inasmuch as, Mr.T.S. Gandhi, father of accused Kuljeet was having illicit relations with her mother which was objected to by Kuljeet Singh and his mother. Kuljeet Singh had even earlier tried to hire their servant by paying Rs.25000/- for getting the door of the bathroom opened so that he may be able to do away with his mother. On the fateful day, her mother was murdered and entire house was ransacked in order to give it a colour of robbery. She also referred to the statement of Bhim Singh Thapa, PW8 and Ram Bahadur, PW9 and the statement of both these witnesses recorded under Section 161 Cr.P.C. as well as under Section 164 Cr.P.C. by the learned Metropolitan Magistrate. However, both these witnesses for reasons best known to them did not support the case of prosecution when they appeared in the witness box. However, from Oliver Kujur, ornaments and various articles, belonging to the deceased, were recovered. His blood stained clothes were also recovered, which as per the report of FSL, bear the same blood group as that of the deceased. However, no incriminating evidence could be pointed out against accused Kuljeet.

10. We have given our considerable thoughts to the respective submissions of learned counsel for the parties and have perused the record.

11. There is no dispute that Smt. Swati met a homicidal death, inasmuch as, post-mortem on her body was conducted by Dr.L.T. Ramani (PW1) who found following injuries on her person:-

External injuries:-

1. Forehead was depressed and there was wide abrasion $3\frac{1}{2}$ x $1\frac{1}{2}$ over eyebrows and forehead with bruising involving $5''$ x $2\frac{1}{2}$ "areas.
2. Laceration $1\frac{1}{2}''$ x $\frac{1}{2}''$ X Cranial cavity deep placed antero-posteriorly on the left frontal area.
3. Laceration $2\frac{1}{2}''$ x $1''$ X cranial cavity deep in left occipital area.
4. Laceration $1''$ x $\frac{1}{2}''$ on the left temporal region.
5. Laceration $\frac{3}{4}''$ x $\frac{1}{2}''$ born deep on the left frontal/temporal area.
6. Laceration $\frac{1}{2}''$ X bone deep on the left anterior hair margin.
7. Laceration $\frac{3}{4}''$ x $\frac{1}{2}$ x bone deep on the right side of forehead.
8. Bruise $3''$ x $3''$ with abrasion on the back of left hand.
9. Bruise $5''$ x $3''$ with abrasion on the back of left wrist and forearm.

10. Bruise 3"x 1 ½" on the lower part back of chest left side.

11. Fracture of head of 3rd to 5th meta carpels bones massive clot beneath injury no.8.

Internal Examination:

Scalp tissues showed massive blood clot all over. There were multiple depressed and gapping fracture involving frontal both partial and occipital bone. Brain was badly lacerated. Base of the scalp was fractured. Neck tissues, chest and abdominal organs were normal.

It was opined that all injuries were ante-mortem caused with blunt weapon. Injuries to the skull were sufficient in the ordinary course of nature to cause death. The death was due to cranio-cerebral injury.

12. The crucial question for consideration, however, is, who is responsible for causing this homicidal death. Admittedly, there is no eye-witness to the incident and the case is based on circumstantial evidence. The tests applicable to cases based on circumstantial evidence are fairly well-known. The decisions of Hon'ble Supreme Court recognising and applying those tests to varied fact situation are a legion. Reference to only some of the said decisions should, however, suffice.

13. In *Sanatan Naskar and Anr. v. State of West Bengal*, (2010)

8 SCC 249, it was observed 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.”

16. 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.

(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."

17. What, therefore, needs to be seen is whether the prosecution has established the incriminating circumstances upon which it places reliance and whether those circumstances constitute a chain so complete as not to leave any reasonable ground for the

appellants to be found innocent.

18. The star witness of prosecution was PW11 Kashmira, author of the FIR. A detailed version was given by her immediately after the incident to the police in the form of her statement Ex.PW11/A which became the bedrock of investigation, however, while appearing as a witness, she has chosen not to support the case of prosecution. Although she admitted her signatures on statement Ex.PW11/A and the recovery memos Ex.PW11/B to PW 11/E, however, she went on stating that the statement was signed by her without going through the contents of the same. Neither it was read over to her nor did she know the text of these papers. She also denied that pink colour cloth (*dupatta*) having blood stains or cricket bat having blood stains or blood stained earth, blood mixed water or tube and keys were seized in her presence. She admitted that accused Kuljeet was known to her from before as he was son of her father's friend Sh. T.S. Gandhi and sometimes used to visit her house but denied rest of the case of prosecution regarding his visit to her house on 19th December, 1995 or his Maruti Van No. DL-4CD-6598 lying parked near her house or that she suspected involvement of Kuljeet Singh and his mother Jagjeet Kaur in the murder of her mother or that Kuljeet even threatened her mother to

leave Delhi or that her mother ever told Kuljeet that his father Mr. T.S. Gandhi had been coming to her house of his own sweet will and Kuljeet may ask his father to stop visiting their house. She also denied that Kuljeet even offered Rs.25,000/- to her servant Ramu to keep the door opened when she and her sister had gone to school. She was confronted with material portions of her statement Ex.PW11/A which she denied having made to police.

19. Another blow came to the prosecution when both the domestic servants PW8 Bhim Singh Thapa and PW9 Ram Bahadur also turned hostile. Statement of PW8 Bhim Singh Thapa was recorded by the police. He was also produced before the learned Metropolitan Magistrate and his statement Ex.PW8/A was recorded by Sh.Narender Kumar, the then Metropolitan Magistrate wherein he had stated that he was working as a cook with Mr.T.S. Gandhi. Mr.T.S. Gandhi was living with Swati at B-11, Rangmahal Apartments for the last about 1½ months which was objected to by the family members of Trilok Singh. Kuljeet Singh, s/o T.S. Gandhi and his wife Jagjit Kaur used to quarrel with T.S. Gandhi and Swati on this account. On 19th December, 1995, on the asking of Kuljeet, he brought Ram Bahadur, who was working as domestic servant at the house of Swati, to the house of T.S. Gandhi

where they prepared breakfast and served the same to Kuljeet and his friend Oliver Kujur. They returned back at 2:30 PM. Kuljeet changed his clothes and sent the family members along with Ram Bahadur outside the house on the ground that there was going to be a raid by the Customs Department. Thereafter, he took him and Ram Bahadur along with him in a Maruti Van and left them at Model Town. He gave him Rs.400/- and told him to go somewhere else and to enquire after 4-5 days. A sum of Rs.2000/- was given to Ram Bahadur for going to Nepal. Kuljeet, however, on seeing the police men, managed to escape. He returned back to BG-11, Shalimar Bagh where police was standing. He narrated the entire incident to the police and handed over Rs.400/- to them. However, in his deposition before the Court, he totally turned hostile and went on stating that police took him to police station where he was detained for 5-6 days and was asked to make statement as desired by them. He was produced before the Magistrate and he gave the statement Ex.PW8/A before the Magistrate as per the directions of the police. Even then, he was detained for 2 more days and was released thereafter only. He pleaded his ignorance about this case and went on stating that nothing happened in his presence.

20. PW9 Ram Bahadur deposed on the same lines and while admitting his statement Ex.PW9/A recorded under Section 164 Cr.P.C. by the Metropolitan Magistrate, he stated that the statement was made under the pressure of the police as he was also detained in police station for 5-6 days and was released two days thereafter. Under the circumstances, keeping in view the fact that both these witnesses also chose not to support the case of the prosecution, the factum of illicit relation between T.S. Gandhi and Swati could not be proved which was according to the prosecution a strong motive for Kuljeet to commit murder of Swati along with his associate Oliver Kujur.

21. It is settled principle of law that a statement recorded under Section 164 Cr. P.C. by the Metropolitan Magistrate cannot be used as a substantive piece of evidence as held in *Utpal Das & Ors. v.State of West Bengal*, (2010) 6 SCC 493 and *Baij Nath Sah v. State of Bihar*, (2010) 6 SCC 736. It can be utilized only to corroborate or contradict the witness *viz-a-viz* statement made in Court. It can only be utilized as a previous statement and nothing more.

22. That being the legal proposition, since according to both the witnesses, the statements were made by them before the learned

Metropolitan Magistrate under duress and pressure of the police, prosecution cannot get any benefit from those statements made before the Metropolitan Magistrate.

23. Besides that, so far as the accused Kuljeet is concerned, absolutely no incriminating evidence has come on record to connect him with the crime.

24. As far as accused Oliver Kujur is concerned, it is the case of the prosecution that on 20th December, 1995, this accused was arrested on the pointing out of PW8 Bhim Bahadur. He made a disclosure statement Ex.PW7/D and in pursuance to the same, he led the police to his house and from a trunk lying in the room, he got various ornaments, wrist watch, portable radio, cordless telephone etc. recovered which were seized vide memo Ex.PW7/E. He also got recovered one jacket and pant stained with blood which was seized vide memo Ex.PW7/F.

25. At the outset, it may be observed that there is no independent witness either to the disclosure statement or subsequent recovery at the instance of this accused. There was no dearth of independent witnesses, inasmuch as accused was arrested from a residential area. Admittedly, no effort was made to join any independent witness either at the time of apprehension of the accused or at the

time of recovery. No effort was made to call any neighbour or residents of the society to join the investigation as contemplated under Section 100 of Cr. P.C. Even Bhim Singh Thapa at whose pointing out, accused was alleged to have been apprehended has not been joined in any proceedings.

26. Even if it is taken that there is no ground to disbelieve the testimony of police officials, it is required to be seen as to whether the same connects the accused with crime.

27. As per the case of prosecution, in pursuance to the disclosure statement accused got recovered certain ornaments and other articles which were robbed from the house of Swati while leaving the spot and his blood stained clothes which he was wearing at the time of incident.

28. So far as the ornaments, wrist watch etc. are concerned, although PW 11 Kashmira in her statement had given the details of the articles which were found missing from the house, however, there is nothing on record to prove that the articles recovered from this accused belonged to the deceased. No Test Identification Parade of these articles was got conducted by the Investigating Officer for reasons best known to him. So much so, even to PW11 Kashmira, these articles were shown in order to identify whether

the same belonged to her mother or were lying in her house. Under the circumstances, there is no material to show that these articles were taken by the accused from the house of the deceased after committing her murder.

29. The only other piece of evidence relied upon by the prosecution is the recovery of blood stained clothes of accused. These clothes along with clothes of deceased and other articles were sent to FSL and as per report Ex.PW17/B given by Dr. Rajendra Kumar, human blood of 'A' Group was found on the same which matched with the blood group of deceased.

30. The recoveries of blood-stained clothes and weapon of offence at the instance of the appellant, however, has to be viewed in light of various decisions of the Supreme Court where such kind of recoveries have been held to be very weak evidence.

31. In the decision reported as AIR 1963 SC 1113, ***Prabhoo v. State of U.P.*** recovery of a blood-stained shirt and a dhoti as also an axe on which human blood was detected was held to be extremely weak evidence. Similarly, in the decision reported as (1977) 4 SCC 600 (1) ***Narsinbhai Prajapati v. Chhatrasinh Kanji***, the recovery of a blood-stained shirt and a dhoti as also the weapon of offence a dhariya were held to be weak evidence. In the decision

reported as AIR 1994 SC 110 *Surjit Singh v. State of Punjab* the recovery of a watch stated to be that of deceased and a dagger stained with blood of the same group as that of the deceased were held to be weak evidence. As late as in the decision reported as (2009) 17 SCC 273 *Mani v. State of T.N.* recoveries of blood stained clothes and weapon of offence stained with blood were held to be weak recoveries.

32. Following these judgments in *Mohd Shahid v. State* in Crl.A.433/1999 dated 01.04.2014 decided by this Bench *and Jaffar @ Raju v. State* in Crl.A.1057/2010 decided by a Bench [in which one of us, Sunita Gupta, J., was a member], such recovery of blood stained clothes on its own was held to be a circumstance too fragile to bear the burden of appellant's conviction for murder. Similar view was taken in *Parmeshwari v. State*, 2010 (4) Crimes 599 Delhi; *Amar Pal v. State*, 2010 (170) DLT 788, *Shekhar & Anr v. State of NCT of Delhi* (Delhi); 2008 Cri L.J 3258; *Vijay Kumar v. State of Rajasthan*, 2014(2) JCC 888.

33. Besides these circumstances, there is no other incriminating piece of evidence coming on record to connect the appellants with the crime.

34. It is true that circumstances alleged by the prosecution give rise to a suspicion against the appellants but suspicion howsoever strong it may be, is not enough to justify conviction of the appellants for murder. The trial court has, in our opinion, proceeded more on the basis that the appellants may have murdered the deceased Swati. In doing so, the trial court overlooked the fact that there is a long distance between ‘may have’ and ‘must have’ which distance must be traversed by the prosecution by producing cogent and reliable evidence. No such evidence is unfortunately forthcoming in the instant case. The legal position on the subject is well settled.

35. In ***Ramreddy Rajesh Khanna Reddy v. State of A.P.***, (2006) 10 JCC 172, it was observed:

“It is now well-settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well-settled that suspicion, however grave may be, cannot be a substitute for a proof and the Courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence.”

36. As far back as in the year 1957, Hon’ble Supreme Court in ***Sarwan Singh Rattan Singh v. State of Punjab***, AIR 1957 SC 637 observed that there may be an element of truth in the version of

prosecution against accused and considering as a whole, the prosecution story may be true; but between 'may be true' and 'must be true' there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence before the accused can be convicted. It was further observed that degree of agony and frustration may be caused to the families of the victim by the fact that heinous crime may go unpunished but then the law does not permit the Courts to punish the accused on the basis of moral conviction or on suspicion alone. The burden of proof in criminal trial never shifts and it is always the burden of the prosecution to prove its case beyond reasonable doubts on the basis of acceptable evidence and in case of doubt, accused is entitled to get benefit of the same.

37. Even if we take the most charitable liberal view in favour of the prosecution, all that we get is only a suspicion against the appellants which cannot take the place of proof, therefore, appellants are entitled to get benefit of the same.

38. The findings of the learned Trial Court which does not find any support from the material available on record cannot be sustained. Accordingly, both the appeals are allowed. The impugned judgment dated 10th August, 2000 and order on sentence

dated 12th August, 2000 are set aside.

39. Sentence of appellant Oliver was suspended vide order dated 30th January, 2002. His bail bonds are cancelled and sureties are discharged.

40. Sentence of Kuljeet Singh was also suspended vide order dated 27th November, 2000. However, when the appeal came up for hearing, this appellant did not appear despite issuance of non-bailable warrants and, thereafter, when he appeared, he was taken into custody. Since the appellant has been acquitted of the offence alleged against him, Superintendent, Jail is directed to set him at liberty, forthwith, if not wanted in any other case.

Copy of the judgment along with Trial Court Record be sent back forthwith.

(SUNITA GUPTA)
JUDGE

(KAILASH GAMBHIR)
JUDGE

MAY 13, 2014

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