

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

**% Reserved on : 16.07.2015
Date of Decision: 25.08.2015**

+ CRL.A. 649/2014

**RAM SAGAR @ SAGAR Appellant
Through: Ms. Saahila Lamba, Adv.**

versus

**STATE Respondent
Through: Mr. Varun Goswami, APP**

**CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R. K. GAUBA**

R. K. GAUBA, J:

1. The appellant has been held guilty, as charged, for offence under Section 302 IPC for the murder of Jiya Lal S/o Kishori Shah, statedly committed some time late in the night of 29.09.2009 at a place near Ganda Nala under metro line Ramji Enclave within the jurisdiction of PS Nazafgarh. The findings of guilty and conviction were recorded by the learned Additional Sessions Judge 03-Dwarka through his judgment dated 30.01.2014 in sessions case 43/2012 arising out of FIR 353/2009 of Police Station Najafgarh. By order dated 06.02.2014, the appellant was sentenced to imprisonment for life with fine of ₹5,000/- and in the case of default with direction to suffer further simple imprisonment for three months. Feeling aggrieved, the convict has come up with the criminal appeal at hand pleading innocence and false implication.

2. It may be mentioned at this stage that the prosecution relied upon circumstantial evidence primarily in the nature of “last seen” coming from the mouthpiece of Sunita (PW6) and Anita Yadav (PW3) coupled with evidence on the issue of motive and conduct.

3. The case for the prosecution before the trial court was that the victim Jiya Lal son of Kishori Shah (hereinafter referred to as “the deceased”), a native of Bohranpur Police Station Shahpur, District Aara (Bihar), aged about 40 years, was working for gain in a plastic factory in the area of Mangolpuri, Delhi. Jiya Lal had been married to PW6 Sunita (the first informant) about 6 months prior to the FIR (Ex.PW14/A), registered on 03.10.2009, and was living with his said wife in a house in locality described as Bhutonwali Gali No.7, Nangloi, Delhi. This was his second marriage. It appears from the record that Jiya Lal had a daughter named Chanda from the first marriage. There is a reference (though no formal evidence has been led on this score) to the effect that the first wife of Jiya Lal had expired. There is clearly a substantial age difference between the husband and the wife inasmuch as PW6 was only 20 years old at the relevant point of time.

4. It emerges from the record, as an undisputed fact, that the appellant Ram Sagar son of Gunjan Yadav, a native of Village Amrit Nagar, Darbhanga, Bihar, known as “Sagar” to PW6, was also living in the same locality close to the house of the deceased. He was working for gain for one Satya Narayan (PW1), another local resident, in his dairy looking after the cattle. It is stated, and the appellant would not deny, that the appellant and Jiya Lal had become close friends over the period and the former would visit the house of the latter in routine.

5. The prosecution alleged that Jiya Lal was in the habit of consuming liquor and was facing financial problems and would take monetary support from the appellant. The appellant statedly became infatuated with PW6 and

started questioning her as to why she, a beautiful woman, had married an old man without ascertaining details. He had an evil-eye on PW6 and had become flirtatious but was given a rebuff.

6. Allegedly on 29.09.2009, at about 7 PM, the appellant came to the house of the deceased offering to take him to show a plot of land, in which context there had been some conversation between them in the past. It is stated that appellant had brought along a motorcycle (No.HR 12F 3552) borrowed from his employer (PW1) on which the three (the appellant, the deceased and PW6) went to the house of Srikant Yadav in Rajaji Enclave, Najafgarh. Anita Yadav (PW3) is the wife of the said Srikant Yadav. The appellant would address her as “*Bhabhi*”.

7. The prosecution alleges that PW6 was made to sit with PW3 in her house while the appellant took the deceased along, on the pretext of taking him out for about 10 minutes. The appellant allegedly returned after one hour on the motorcycle in drenched clothes, sporting only the vest on the top. On being questioned, he laughingly explained that someone had put muddy water on him. He then took PW6 on the motorcycle telling her that her husband (the deceased) had called for her. Allegedly, on the way, the appellant told PW6 that ₹40,000/- had been withdrawn from ATM of PNB by them (appellant and the deceased) noticing which four persons on two motorcycles had started stalking them and had intentionally hit against his motorcycle making him and the deceased fall in a drain. He told PW6 that while he had returned with the motorcycle, her husband (the deceased) had run towards the colony. Allegedly, on the pretext of making a search for the husband of PW6, he took her to Nangloi to reach there around midnight. It is stated that the appellant would evade clear answers on some pretext or the other and eventually assured PW6 that if her husband were not to return he would marry her and take her care as if she were a queen.

8. On 01.10.2009, at about 02.38 P.M information was received in Police Station Najafgrah (hereinafter referred to as “the police station”) from Police Control Room (PCR) that a dead body was lying in the drain near Metro Station Dwarka, Kakrola Mode. The information had been given to PCR telephonically from the mobile number 971659338. There has been no investigation into the source of this intimation. Apparently, the person who saw the dead body in drain would have no further knowledge. The information was logged in the Police Station as DD entry no. 40-B by Constable Meenakshi (Ex. PW4/A), the DD writer on duty. The matter was entrusted for inquiry and necessary action to Sub Inspector Shri Krishan (PW-8) who, accompanied by Constable Anjani Kumar (PW-9), reached the place.

9. The evidence of the two police officials (PW-8 and PW-9) brought out that when they arrived at the scene, 2-3 public persons were already present. Other staff of the police station also arrived and the dead body was taken out from the drain. It was found to be of an adult male. The identity of the deceased could not be immediately ascertained. PW-8 discussed the matter with Inspector Abhay Singh (PW-21) who was the Station House Officer (SHO) in the Police Station at the relevant time and as per his instructions arranged for the dead body to be preserved in the mortuary of Rao Tula Ram Memorial Hospital, Government of NCT Delhi, Jaffarpur, New Delhi (herein after referred to as “the Hospital”) for 72 hours. It is the version of the said police officials that efforts were made from the nearby locality to establish the identity of the deceased but with no positive results in as much as no missing report was also found lodged with the local police.

10. It has been the case of prosecution that Sunita Devi (PW-6) wife of Jia Lal who had been missing since the night of 29.09.2009 had in the meantime called her relatives for help. These relatives would include Jitender Kumar

(PW-2) and Ayodhya Prasad (PW-16), both described as brothers and residents of District Bhojpur and District Aara, Bihar.

11. As per the evidence on record, particularly the testimony of Sub Inspector Shri Krishan (PW-8) who was engaged in the inquiry arising out of the recovery of the dead body on 01.10.2009, PW-2 and PW-16 contacted him in the police station on 02.10.2009 around 10/11 P.M to enquire if any dead body had been found in the area. PW-8 informed them about the dead body recovered from the drain on the previous day and gave the description of the same and clothes thereupon. PW-2 and PW-16 suspected that the dead body might be of their relative Jia Lal. Since the mortuary at such late hours was closed, PW-8 called these witnesses for the purpose of identification on the next date. On 03.10.2009, PW-2, PW-6 and PW-16 identified the dead body recovered from the drain on 01.10.2009 to be that of Jia Lal. The identification memos Ex. PW-2/A and Ex. PW-8/C-4 have been proved in the course of trial.

12. It was against the above-noted backdrop that PW-6 lodged the formal complaint before PW-8 vide her statement (Ex. PW-6/A) narrating the facts, *inter alia*, expressing suspicion against the appellant for involvement in the death of her husband. PW-8, on the basis of endorsement (PW-8/A), got the FIR (Ex. PW-14/A) registered in the police station by Head Constable Hariman (PW-14), working as duty officer at that time. The *rukka* was sent for such purpose at 12.30 P.M on 03.10.2009. The FIR for investigation into offence under Section 302 IPC was registered at 1.16 P.M on the same date.

13. The dead body of Jia Lal was sent for post-mortem examination alongwith inquest papers (PW-8C-1 to PW-8/C-5 and Ex. PW-2/A). The post-mortem examination was conducted by Dr. John Verghese who prepared

his report vide Ex. PW-10/A. The autopsy doctor had since expired. Therefore, the report was proved during trial by Dr. Parvinder Singh (PW-10) who was acquainted with handwriting and signatures of the author.

14. The autopsy report (Ex. PW-10/A) described the condition of the body as highly decomposed with maggots present all over. The tongue was found protruding. There were two external injuries viz. laceration of size 7cm x 2.3cm on mid-line, in occipital region just above hairline with underlying fracture and laceration of size 6.1cm x 2.2cm at nape of neck, at level of C2 vertebra, with underlying fracture. Blood was found under the occipital injury and both sides occipitals with C-2 vertebra had been fractured. There was subdural haemorrhage present in both occipital lobes. The ante-mortem injuries were caused with blunt force impact against hard surface or object. The death had occurred due to cranio-cerebral injury.

15. In the opinion of autopsy doctor, both injuries were capable of causing death in normal course of nature. The autopsy had been conducted from 12.15 P.M onwards on 03.10.2009. In the opinion of autopsy doctor, the death had occurred 3-4 days prior thereto. This would coincide substantially with the time around which Jia Lal went missing.

16. From the evidence adduced, it emerges as an undisputable fact that Jia Lal had suffered homicidal death. The autopsy report reveals the death had occurred as a result of head injuries which were sufficient in ordinary course of nature to cause death. The injuries had been apparently inflicted by use of some hard object inasmuch as the assault had caused fractures on both sides of the skull as also of C-2 vertebra. These findings of the post-mortem examination coupled with the fact that the dead body had been thrown into a

drain lead to the irresistible conclusion that the assailant had intended to bring about the death of Jia Lal.

17. According to the case set out in the report under Section 173 of Cr.P.C. the appellant was arrested by PW-21, the SHO of the police station Nazafgarh on 03.09.2009 at the instance of Sunita Devi (PW-6) from the area of Nazafgarh where he had come to visit. This assertion in the charge-sheet is factually incorrect. The arrest memo (Ex.PW-5/F) and personal search memo (Ex.PW-5/G) indicate the date of arrest to be 04.10.2009 at 9:20AM from Orthoplus hospital, Nazafgarh, in the presence of SI Sanjeev Kumar (PW-17) and Constable Prem Prakash (PW-5). PW-17 has narrated the circumstances leading to the apprehension of the appellant on 03.09.2009 slightly differently to the effect that on the said day the appellant had been brought to the police station by his landlord Satya Narayan (PW-1). Pertinently, PW-1 is not a landlord of the appellant. He was rather his employer. The testimony of PW-1 would not confirm his role in the appellant being brought before the police on 03.09.2009. PW-6 was not even asked to depose about the arrest of the appellant.

18. Be that as it may, the testimony of PW-17 brings out that the appellant was present in the police station Nasafgarh on 03.10.2009 at which stage Sunita Devi (PW-6) also arrived. It is the version of PW-17 that, on seeing Sunita Devi (PW-6), the appellant had become “perplexed” and, on pretext, he had gone to the toilet where he found a shaving blade lying with which he had attempted to commit suicide by cutting his throat. According to PW-17, the cries of appellant in pain had resulted in the staff of the police station rushing to him and taking him to Orthoplus hospital in Nazafgarh for medical aid. He deposed that a case FIR No. 354/2009 was registered in this context

for offence under Section 309 IPC in the police station, Nazafgarh on the same date.

19. Going by the evidence of SI Sanjeev Kumar (PW-17), the appellant had made an attempt to commit suicide on 03.10.2009 within the precincts of the police station Nazafgarh at a time when Sunita Devi (PW-6) was also present there. PW-6 was not questioned by either side in this regard during her testimony. The MLC (Mark-A) of Deen Dayal Upadhyay hospital where the appellant was subsequently had been taken after the attempt to commit suicide reveals the time of arrival at 2:00 PM, he having been brought in by Inspector R.R. Khatana (PW-20). PW-20, in the course of his deposition, spoke about the steps taken by him for investigation of the FIR relating to the homicidal death of Jia Lal. He had taken over the said investigation in his capacity as Inspector (Investigation) of the police station w.e.f. 10.12.2009. He did not depose anything about the circumstances in which FIR No.354/2009 under Section 309 IPC had been registered against the appellant on 03.10.2009. Copy of the MLC (Mark-A) does not reveal much about the nature or extent of injuries suffered, presumably in the course of attempted suicide.

20. Learned counsel for the respondent-State, in the course of hearing on the appeal, placed before us copy of the order dated 26.09.2011 whereby the Metropolitan Magistrate, Dwarka Courts dropped curtain on the proceedings arising out of FIR No.354/2009 under Section 309 IPC of police station, Nazafgarh. The order reveals that the learned Metropolitan Magistrate “discharged” the appellant for the said offence on the ground that no useful purpose would be served by putting him to trial on such accusation since he had “already served a period in jail for more than one year”, inasmuch as he having been remanded to custody in FIR No.353/2009 under Section 302 IPC

for not furnishing bail bond in spite of order for such conditional release. To say the least, the order dated 24.09.2011 of the Metropolitan Magistrate is inappropriate and legally untenable for the criminal prosecution could not have been brought to a close for such reasons as have been cited. Certainly, the said decision would not assist us in drawing any conclusion.

21. The fact remains that the appellant was formally arrested on 04.10.2009 from Orthoplus hospital, Nazafgarh by Inspector Abhay Singh (PW-21) in the presence of Constable Prem Prakash (PW-5) and SI Sanjeev Kumar (PW-17). It is the case of the prosecution that, after his arrest, the appellant was interrogated and his disclosure statement (Ex.PW-5/A) was recorded. The prosecution further claimed that the appellant led the Investigating Officer to the scene of crime and pointed out the place of occurrence, where blood stained (dried up) earth (Ex.P-2) was found and seized vide memo (Ex.PW-5/B), in addition to seizure of earth control (Ex.P-2) vide separate memo (Ex.PW-5/C). It is also claimed that, at the instance of the appellant, a stone (Ex.P-4) with blood stains (on the pointed side) was also seized vide another memo (Ex.PW-5/D). It is further the case that the appellant led the IO to bushes near the said place of occurrence alongside the drain from where his shirt (Ex.P-3) bearing blood-stains was also recovered, having been taken in possession vide memo (Ex.PW-5/E). The motorcycle was seized from the possession of its owner (PW-1) statedly in the presence of the appellant on 04.10.2009 vide memo (Ex.PW-1/A).

22. The various exhibits, including the shirt, trousers, underwear and vest alongwith shoes of the deceased, taken off during the police proceedings or the autopsy, the shirt statedly of the appellant and the piece of stone were sent to Forensic Science Laboratory (FSL) for examination and opinion. No blood was detected on the stone piece. Blood of human origin was detected on the

articles of clothing but the ABO grouping could not be established during serological examination. Thus, the said articles of evidence do not further the case of the prosecution against the appellant.

23. Against the above backdrop, the prosecution rested its case primarily on the testimony of Sunita Devi (PW-6), Anita Yadav (PW-3) and Satya Narayan (PW-1). The deposition of PW-1 and PW3 are not entirely in *sync* with the prosecution case except on some aspects to which we shall refer in due course.

24. Sunita Devi (PW-6) deposed about the background facts on the same lines as were stated by her in the FIR. She testified about the frequent visits of the appellant to her house, his occasional indulgence with her husband in consumption of liquor and he trying to get fresh with her by questioning as to how she, a beautiful woman, had married an old person. She deposed that the appellant had been warned over such conduct by the deceased. No effort was made to impeach her credibility on any of these aspects. Be that as it may, the above narrative only sets the backdrop for the events that would unfold later.

25. PW-6 Sunita deposed about the sequence of events of the evening of 29.09.2009. She has stated that, at about 7 pm, the appellant had come and offered to show a plot to the couple. He had brought the motorcycle (of his employer) and, thus, she along with her husband had moved towards Nazafgarh on the said vehicle. She testified that the appellant had taken her, and her husband, to the house of his *bhabhi* at a place she would call Rana Plot. There, she was dropped, to be entertained by the lady of the house, while the appellant had moved away on the motorcycle with her husband. It was confirmed during her testimony, under cross-examination, that PW-6 is not fully acquainted with the woman at whose house she had been asked to

stay back while the appellant took along her husband on the motorcycle purportedly to show a plot of land.

26. The prosecution had relied on the word of PW-1 Satya Narayan and of PW-3 Anita Yadav for corroboration. While PW-1 was presented as a witness who had seen the appellant going from the area of Nangloi on the motorcycle borrowed from the said witness, along with the deceased and his wife (PW-6), PW-3 was statedly the relative (*bhabhi*) to whose house in Nazafgarh, she (PW-6) was taken and made to wait during the period the appellant had gone away with the deceased. Both these witnesses have not whole heartedly supported the case of the prosecution.

27. PW-1 spoke about the appellant having taken his motorcycle on one occasion. He stated that he had found his motorcycle back in his house on the next morning. The motorcycle was handed over to the police by him on his own. PW-1 would not vouch for the fact of accompaniment of PW-6 and her husband (the deceased). PW-3 similarly would not confirm the identity of the woman brought along by the appellant to her house or the fact that there was another person (the deceased) accompanying them at the time of their visit.

28. Both PW-1 and PW-3 were declared hostile and cross-examined by the learned prosecutor. The defence has argued that this should render the case of the prosecution dependant on the sole testimony of PW-6. To put it simply, the defence urges that the testimony of PW-1 and PW-3 be excluded from consideration in view of the position taken by each of them.

29. We find no merit in the above submissions of the learned counsel for the appellant. It is well settled that the evidence of a witness hostile to the cause of the party calling him does not get effaced simply on such account. Notwithstanding the fact that a witness has been cross-examined by the party

at whose instance he appears, his evidence still requires to be considered for evaluation of its worth and for it to be found whether he stands thoroughly discredited or whether his testimony, as a whole or in part, can still be believed or acted upon. It is trite law that evidence of a hostile witness can be relied upon, to the extent it supports the prosecution version, if it finds corroboration from the other material on record. [*Bhagwan Singh V. State of Haryana* AIR 1976 SC 294; *Dharam Raj V. State of MP* 1989 (1) Crimes 265; and, *KL Chana Bhai V. State of Gujarat* 2000 CrI. J 108 (SC)]

30. PW-1 Satya Narayan may not be inclined to confirm the prosecution case about he having seen the appellant going away on his motorcycle, carrying along PW-6 and her husband, in the evening of 29.09.2009. But, he does confirm that the appellant had taken away his motorcycle. He also confirmed that the motorcycle was seen by him in his house on the next morning. This part of the testimony of PW-1 corroborates the word of PW-6 about the appellant having used the motorcycle for the journey from Nangloi on to Nazafgarh and both having returned, without her husband, after midnight. Given the fact that PW-1 is the owner of the motorcycle and that the appellant was only his employee, looking after his cattle, and the fact that PW-1 had not taken exception in such regard, it can be safely concluded that the latter would have taken out the motorcycle with the consent and within the knowledge of PW-1.

31. Interestingly, PW-1 adds that the appellant had himself told him that he had gone away with Jiya Lal (the deceased) and his wife (PW-6) and further that some anti-social elements had followed Jiya Lal by the time it had become dark. PW-1 also testified about this having aroused his suspicion and, consequently, he making a call to the police. PW-1 was not asked to elaborate as to what was the suspicion entertained by him or as to whether it

concerned some act of commission or omission on the part of the appellant. The call made to the police by PW-1 has not been brought on record.

32. Be that as it may, the fact remains that the factum of the appellant having taken away the deceased, and his wife, on the motorcycle was admitted by the appellant himself to his employer (PW-1) on the morning after the midnight (of 29.09.2009) of the journey out of Nangloi. We may further note here that statement of PW-1 is also on record to state that Chanda, the daughter of the deceased Jiya Lal (from his first marriage) had also told him that her father (the deceased) had gone away with the appellant and had not returned. He has further stated that he had seen the appellant back in his house (i.e. house of PW-1) where the deceased and PW-6 were living as tenants, at about 3 am on the next morning.

33. The deposition to the above effect made by PW-1 Satya Narayan has gone unchallenged. The testimony of this witness lends credence to the narrative in the evidence of PW-6 about the journey on the motorcycle driven by the appellant carrying her along, with the husband, from Nangloi and non-return of Jiya Lal (the deceased) therefrom. It further confirms her evidence about the return from the house of his *bhabhi* late in the night and at a stage Jiya Lal (the deceased) was not locatable.

34. PW-6 testified about the stay at the house of *bhabhi* of the appellant in Nazafgarh. PW-3 Anita Yadav corroborates PW-6's statement by confirming that the appellant had brought a woman to her house and had gone away for about an hour, or a half, on the motorcycle leaving the said woman behind and she having entertained her with tea.

35. Clearly, PW-3 Anita Yadav does not mention the woman visitor by name or description. Undoubtedly, she does not say that someone else (that is

to say the husband of the said woman) had also come along to her house or having gone with the appellant on the motorcycle for the short duration. In our view, these deviations in the testimony of PW-3 do not render the prosecution case in general, or the veracity of PW-3's testimony on the specific aspects a suspect. It is apparent that PW-6 and PW-3 were not acquainted with each other from before. She (PW6) was visiting the house of PW3 for the first time, the latter having been introduced to the former as a relative by the appellant. It is clear from the material on record that PW-3 is not actually a relative of the appellant. He would address her as *bhabhi* because they seem to share the same roots. Seen against the backdrop of further facts and circumstances noted hereinafter, there is no doubt in our mind that PW-3 was referring to PW-6's visit to her house, she having accompanied the appellant on the motorcycle.

36. PW-6 has deposed that, after she had been left by the appellant at the house of his *bhabhi* (PW-3), he had gone away on the motorcycle with her husband to return alone after about one hour. She deposed that, on return, the clothes of the appellant were wet and he was only in his trousers and vest (*baniyan*). She further stated that upon the *bhabhi* (PW-3) enquiring, the appellant had explained that someone had thrown mud on him. PW-3 fully corroborates the testimony of PW-6 about the appellant returning in wet clothes, and she having made enquiries in this regard of him though, according to her, he (the appellant) had given the story of he having fallen (down). Given the facts there is no reason why they would depose falsely as to the presence of the appellant and PW-6 at the residence of PW-3, the appellant then leaving PW-6 behind, driving away on the motorcycle and then the appellant's return with wet clothes and taking PW-6 with him.

37. PW-3, thus, not only confirms the short stay of the woman at her house and she being entertained at the instance of the appellant but also the unusual state in which the appellant had returned later on the motorcycle. The evidence of PW-3 and PW-6, read together, clearly brings out that the appellant having left PW-6 at the house of PW-3 had gone away for about an hour on the motorcycle and had returned in wet condition.

38. PW-6 has affirmed the prosecution case about she having lodged the report with the police vide her statement Ex. PW-6/A. She testified that earlier in spite of repeated requests, the appellant had not assisted her in searching her husband. She would, however, also add that the appellant had gone with her to P.S. Nazafgarh but police did not register any FIR. Her statement about the appellant not having assisted her in tracing her husband has to be understood in the context of the position in which she had been placed. She has indicated, in the statement to the police vide Ex.PW-6/A (on which FIR was registered), and also in the court testimony, that the appellant had taken her around on the motorcycle presumably on the pretext of carrying out search for her husband. But then PW-6, possibly by hind-sight, had understood that he was taking her for a ride; this, in as much as he had come up with several fanciful theories including that of her husband having withdrawn money and some miscreants having followed them (presumably with the objective of looting). She further deposed that the appellant had told her that if her husband were not to return he would marry her. Given the circumstances in which such assurance was offered, PW-6 apparently had a cause for concern and suspect the intentions of the appellant in taking her husband away for he not to be found thereafter. This suspicion found expression when she lodged the report with police on 03.10.2009 vide Ex.PW-6/A.

39. In the examination-in-chief of PW-6 Sunita, however, struck a jarring note when she spoke about having accompanied the appellant in search of her husband to the *naala* (the drain) where the dead body of her husband was being taken out by the police. During cross-examination, she stated that she had seen the dead body. She also stated that she had disclosed to her brothers about her husband having gone missing whereupon they came to Delhi (from Bihar) by train.

40. The learned counsel for the appellant argued that the above part of the deposition of PW-6 creates doubts as to the date on, and the circumstances in, which the dead body had been recovered by the police from the public drain. In our view, PW-6 has made the statement to above effect under some confusion and given the clarity and satiety of the other evidence on record, we cannot permit the defence to take undue advantage therefrom. The said portion of PW-6's version is a pretence and unbelievable.

41. If the dead body had indeed been recovered from the public drain in the presence of PW-6 and the appellant, two days before the lodging of FIR, the FIR would not have taken the shape it did on the basis of statement of PW-6 (Ex. PW-6/A). PW-6 was a young woman, who seems to have virtually no support system in Delhi. She had come to this metropolis from her rural background in Bihar, with her middle-aged husband to whom she had been married only six months ago. She, and her husband, seem to be gullible enough to accompany the appellant on search of a plot of land, unusually so in the late evening hours, to far away Nazafgarh, believing the appellant's word. It is clear from the evidence that there was not a clue available to anyone till 01.10.2009 as to what had happened to Jiya Lal. A dead body had been noticed in the drain on that day by someone. Upon information reaching the local police, it was arranged by PW-8 to be taken out. The identity of the

dead body could not be immediately established. Thus, on the request of the local police, it was preserved for 72 hours in the mortuary of the government hospital. PW-2 and PW-16, brothers of PW-6, having learnt about Jiya Lal being missing came to Delhi from their native place in Bihar on 02.10.2009. There is no contest to the evidence of these witnesses, as indeed of PW-8, that the dead body recovered from drain in the area of Kakrola Mod, Dwarka came to be confirmed (initially from the photographs and clothes) as that of Jiya Lal only late in the evening of 02.10.2009 when PW-2 and PW-16 visited the police station in the company of PW-6. In these circumstances, there was no occasion for PW-6 to be around when the dead body was actually taken out from the drain by the police.

42. Clearly, the prosecution rests its case on circumstantial evidence. It is trite that in a criminal case founded of circumstantial evidence, it is the onus of the prosecution to prove, cogently and firmly, all such circumstances from which inference of guilt may be drawn. The circumstances should be of a definite tendency unerringly pointing towards guilt of the accused and, taken cumulatively, form a chain so complete that there is no escape from the conclusion that, within all human probabilities the crime was committed by the accused and none else. The chain of circumstances must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and not only be consistent with the guilt of the accused but also be inconsistent with his innocence (*Padala Veera Reddy Vs. State of Andhra Pradesh AIR 1990 SC 79*) .

43. In our considered view, the contradictions and discrepancies noted above are inconsequential, when we take on record the proved facts and cumulatively examine the said facts. The evidence of the prosecution, in general, and that of PW6, corroborated to a large extent by the testimonies of

PW1 and PW3, in particular, inspires confidence. The following facts and circumstances stand established beyond pale of all doubts :-

- (i) The deceased Jiya Lal was a middle aged man whose first wife had died leaving behind a young daughter;
- (ii) The deceased Jiya Lal had married PW-6 Sunita, aged 20 years, a native of rural background in Bihar about six months prior to the incident in question and had brought her to Delhi setting up residence as a tenant in the house of Satya Narayan (PW1) in Nangloi;
- (iii) The appellant was also a resident of Nangloi area and was employed as manual labourer by PW1 in his dairy;
- (iv) The appellant befriended deceased Jiya Lal and would visit his house, occasionally taking liquor in his company;
- (v) The appellant tried to seduce PW6 Sunita by raising questions as to why she, a beautiful woman, had married a person much older in age; to which she and her husband took exception;
- (vi) The deceased Jiya Lal appears to have been on the look out for purchasing a plot of land and the appellant, being aware of this interest, offered to show some plot to him and on that pretext took the deceased and PW6 on the motorcycle, borrowed from PW1, to the area of Nazafgarh in the evening hours of 29.09.2009;
- (vii) The appellant took PW6 to the house of his acquaintance, PW3, and leaving her there went alone with the deceased on the motorcycle for some undisclosed place;
- (viii) The appellant having left the house of PW3 with deceased Jiya Lal returned alone after about an hour, in wet clothes, and on being questioned by PW3, gave story of he having fallen in muddy water and then took PW6 away from the said place telling her that her husband (deceased Jiya Lal) had called for her;
- (ix) On the way away from the house of PW3, when questioned, the appellant first told PW6 that her husband had withdrawn money from the bank and that four persons had pursued him, presumably to imply something untoward to have happened;
- (x) The appellant took PW6 around making a show of searching for her missing husband and returned with her to the tenanted house in Nangloi after midnight;

- (xi) Jia Lal not having returned, his wife PW6 was disturbed and asked the appellant to assist and help but he told her that if her husband were not to return, he would marry her;
- (xii) In the evening of 01.10.2009, a dead body had been noticed by some public person in drain near Metro Station Kakrola Mode in the area of P.S. Nazafgarh. On information in this regard reaching the local police, the dead body was taken out from the drain. It could not be immediately identified and, thus, was preserved in the mortuary of the government hospital for 72 hours;
- (xiii) PW6 informed her brothers, PW2 and PW16, who came to Delhi from their native place in Bihar on 02.10.2009 to help her in tracing out her missing husband;
- (xiv) When PW2 and PW16 accompanied by PW6 came to the police station Nazafgarh making inquiries about the missing person (Jiya Lal) on the night of 02.10.2009. Thereupon the dead body that had been taken out from the drain in the afternoon of 01.10.2009, came to be identified as that of Jiya Lal, the missing husband of PW6;
- (xv) The post-mortem examination conducted on the dead body in the afternoon of 03.10.2009 revealed that Jiya Lal had died as a result of cranio-cerebral injuries, which, in facts and circumstances, had apparently been inflicted intentionally.

44. Generally speaking, in a criminal trial, positive facts must always be proved by the prosecution. But the same rule may not apply to negative facts. Where it is impossible for the prosecution to give unyielding and incontrovertible evidence on certain issues which are within the exclusive knowledge of the accused, it is for the accused to give evidence on them to explain his position, once certain facts are proved. The provision contained in Section 106 of the Evidence Act unambiguously and categorically lays down the principle that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. It is invoked in the cases of culpable homicide when certain facts are established but in the absence of any explanation, inferences follow and safe conclusions are drawn. These

conclusions must be rational and connect the accused with the offence, even when no direct evidence is available.

45. The “last seen” theory comes into play in a fact-situation where the time-gap between the point of time when the accused and the victim (deceased) were last seen alive together, in the company of each other, and the time when the victim suffered the homicidal death is so small that possibility of any person other than the accused being responsible for the same becomes impossible. The proximity in time of the two events is the key factor since a long gap gives rise to the possibility of other persons having come in. The burden of proving that the accused and the deceased were last seen alive, in the company of each other, closely proximate to the probable time of death, rests squarely on the prosecution. Once these facts are proved, failure or absence of any explanation, by the accused, is a relevant fact. Thus, if the deceased had been last seen alive in his company, then the accused should satisfy the Court by offering an explanation as to how, where and when he had parted company. The explanation which the accused furnishes must appear to the Court to be probable and not a delusion. If he does give a plausible explanation, no adverse inference is drawn. Conversely, if he fails to offer an explanation, on the basis of facts within his special knowledge, the court may legitimately consider such failure as an additional link completing the chain of circumstantial evidence proving his guilt. The permitted reasoning process enables the court to draw an inference, in the light of preceding and succeeding circumstances, that the accused, who was last seen alive in the company of the deceased, had committed the acts leading to his homicidal death. Explanation as to the circumstances can take various forms, e.g. facts put to witnesses in cross-examination, facts stated in the statement u/s 313 Cr.P.C. or even facts emerging from the statements or the documents on record etc.. [*State vs. Mir Mohd. Omar* 2000 VII A.D. (SC) 37; *Sucha*

Singh vs. State of Punjab JT 2001 (4) SC 107; *Ram Gulam Chaudhary and Ors. vs. State of Bihar* JT (2001) 8 SCC 311; *Sahadevem vs. State* (2003) 1 SCC 534; *State of U.P. vs. Satish* (2005) 3 SCC 114; *State of Rajasthan vs. Kashi Ram* 2006 (12) SCC 254]

46. We must add that circumstance of “last seen together” by itself may not invariably or necessarily lead to the inference that the accused had committed the acts constituting the crime. To put it simply, the last seen evidence, when proved and not explained by the accused may, in given facts, give rise to a very strong presumption of his involvement but may in some other cases, in itself, not be the clinching or conclusive proof of his complicity. In a case of culpable homicide founded on circumstantial evidence, the prosecution must prove something more than “last seen” evidence to establish the connectivity between the accused and the crime thereby completing the chain of circumstances. The “something more”, illustratively, could be the proof of motive or other material evidence. [*Rohtash Kumar v. State of Haryana* (2013) 14 SCC 434; *Kanhaiya Lal v. State of Rajasthan* (2014) 4 SCC 715].

47. On careful appraisal of the facts and circumstances brought home, we are satisfied that the prosecution has been successful in proving that Jiya Lal suffered a homicidal death amounting to murder and that it was committed by the appellant and none one else. The chain of circumstances is complete and is incapable of explanation of any hypothesis except the one consistent with the guilt of the appellant.

48. PW-6 Sunita had married a widower more than twice her age. The appellant developed infatuation towards her and would occasionally throw hints in his endeavour to placate and win over PW-6. This apparently had had no impact in as much as PW-6 took exception and reported the matter to her husband. The appellant would not let go and kept on pursuing. He resorted to guile by befriending Jiya Lal, and playing on his weaknesses including by

occasional visits to his house, indulgence in alcohol and offering to show him plots of land in which he was interested. It is under that pretext that he took the deceased, and PW-6, on the motorcycle to the area of Nazafgarh in the evening of 29.09.2009. Neither the deceased Jiya Lal nor PW-6 Sunita could immediately see through the designs of appellant. Since presence of PW-6 Sunita would have come in the way, she was left by the appellant at the house of an acquaintance (PW3). The fact that the appellant had taken Jiya Lal alone on the motorcycle from the house of PW3 whereafter Jiya Lal did not return makes it obligatory on the part of the appellant to give account as to where and when he parted company. Nothing plausible is forthcoming. The appellant did offer some explanation to PW-6 Sunita, but they were contradictory and at variance from one another. Even otherwise, the explanations given were neither plausible nor palatable. There is nothing to show that the deceased had actually drawn money which would have attracted criminal elements so as to be in the pursuit. The fact that the clothes of the appellant were wet when he had returned alone to the house of PW3 confirms that he had ventured into an area of slush or muddy water. The fact that the dead body was later found in a nearby drain reinforces the case of the prosecution about the appellant being responsible for dumping of the dead body at that place. The autopsy report assesses the date of death in close proximity to the time when Jiya Lal was last seen alive in the company of the appellant. The fact that the appellant was trying to establish amorous relationship with PW-6 Sunita even in such grave circumstance wherein she was distraught about her missing husband nails the lie in the denial theory with which the appellant has resisted the charge.

49. In the foregoing facts and circumstances, we find that the learned trial court has correctly appreciated the evidence on record to return finding of guilty. We uphold the impugned judgment and order on sentence.

50. The appeal against the conviction and order on sentence is, thus, devoid of substance. It is consequently dismissed.

51. The appellant be informed of the result through a copy of this judgment to be served on him by the Superintendent of the Central Jail.

(R. K. GAUBA)
Judge

(SANJIV KHANNA)
Judge

AUGUST 25, 2015

vld/p/mr/ss