

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

+ **CRL.A. 1377/2011**

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Judgment reserved on 12th January, 2015

Judgment pronounced on 5th February, 2015

SANDEEP

...Appellant

Through: Mr. Rajesh Kumar, Advocate

STATE (NCT OF DELHI)

...Respondent

Through: Mr. Sunil Sharma, APP for the State.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J

1. Present appeal filed by the appellant under Section 374 (2) of the Code of Criminal Procedure is directed against the judgment of the trial court dated 28.07.2011 and order of sentence dated 30.07.2011 whereby the appellant had been sentenced to undergo imprisonment for life and a fine of Rs. 20,000/- for the offence under Section 302 of the Indian Penal Code and in default of payment of fine to further undergo simple imprisonment for two months.
2. Brief facts of the case, as noted by the Learned Trial Court are:

“1) According to the prosecution case accused Sandeep was married to Sumitra (deceased), sister of the complainant Sukhdev about four years before the incident and couple was blessed with a daughter aged about 2 years; for the last 6 months couple was having temperamental

disputes (ann-ban) and complainant and his family tried to make the accused understand; on 22/09/2009 in the morning the accused made a telephonic call to the complainant stating that he alongwith his wife Sumitra (deceased) would be going to Aman Vihar police station where he would divorce her; accordingly complainant went to Aman Vihar police station but the accused did not reach there and after waiting sometime he called the accused on telephone but the same was switched off then at about 11.30am while searching them complainant reached near railway crossing in front of Nangloi Railway quarter and saw the accused and deceased Sumitra who were going on the unmattled way (Kacha rasta) and the complainant also started proceeding towards them and in the meantime he saw that his sister (deceased) had sat beneath the tree and accused Sandeep gave a blow on her neck with a daiv (sharp weapon meant for cutting wood). The complainant went towards them to save his sister but in the meantime the accused had already given several blows with the said weapon to her; complainant caught hold the accused and in the meantime many public persons were gathered there and someone informed the police and the police reached there and statement of the complainant was recorded in which he has stated that his brother-in-law Sandeep had murdered his sister Sumitra. After completing the investigation chargesheet was filed against the accused for the offence u/s 302 IPC.

3. The prosecution examined twenty three witnesses. Statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure wherein he pleaded that he was falsely implicated in the case and was not present at the place of occurrence.
4. (i) Mr. Rajesh Kumar, learned counsel for the appellant while

attacking the impugned judgment has contended that the impugned judgment of conviction and order on sentence is contrary to the material available on the record and the same is based on the surmises and conjectures and is in gross ignorance of settled proposition of law laid down by the Hon'ble Supreme Court of India as well as by this Hon'ble Court in various cases and is liable to be set aside.

- (ii) He has further contended that the prosecution failed to establish a complete chain of incidents and circumstantial evidence on the basis of statement of PW-14 (SI Shishupal) posted at PCR vehicle which is in contradiction to the statements of PW4 (mother), PW-5 (Sukhdev Singh), PW-12 (Basantlal) and despite glaring contradictions regarding the last seen evidence as alleged by PW-14 (SI Shishupal).
- (iii) It has further been submitted that the learned Trial Court while convicting the appellant heavily relied on the circumstantial evidence i.e. recovery of alleged weapon of offence and the blood stained clothes of the appellant lying near the dead body and erroneously came to the conclusion that blood on the blood stained clothes was of the deceased though the clothes could not be connected to the appellant.
- (iv) It has further been submitted that the impugned judgment of learned trial court was heavily based on unproved circumstances of

last seen evidence and while passing the impugned judgment, the learned Trial court has failed to keep in mind the mandate of Hon'ble the Supreme Court passed in catena of judgments and relied upon ***Sattaitya @ Satish Rajanna Kartalla Vs. State of Maharashtra***, AIR2008SC1184 wherein it has been held that:

*"It is settled law that an offence can be proved not only by direct evidence but also by circumstantial evidence where there is no direct evidence. The Court can draw an inference of guilt when all the incriminating facts and circumstances are found to be totally incompatible with the innocence of the accused. Of course, the circumstances from which an inference as to the guilt is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In **Hanumant Govind Nargundkar v. State of M.P.** [AIR 1952 SC 343], which is one of the earliest decisions on the subject, this court observed as under:*

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 be 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. In **Padala Veera Reddy v. State of A.P.** [(1989) Supp (2) SCC 706], this court held that when a case rests upon circumstantial evidence, the following tests must be satisfied:*

- (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;*
- (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;*
- (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.*

In Ramreddy Rajesh Khanna Reddy and Another vs. State of A.P. [(2006) 10 SCC 172], this Court while reiterating the settled legal position, 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 it 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. At this stage, we also deem it proper to observe that in exercise

of power under Article 136 of the Constitution, this Court will be extremely loath to upset the judgment of conviction which is confirmed in appeal. However, if it is found that the appreciation of evidence in a case, which is entirely based on circumstantial evidence, is vitiated by serious errors and on that account miscarriage of justice has been occasioned, then the Court will certainly interfere even with the concurrent findings recorded by the trial court and the High Court Bharat vs. State of M.P. [(2003) 3 SCC 106]. "

- (v) Learned counsel for the appellant further submits that from the evidence and the documents on record which has emerged that there is a possibility that some other person may have killed the deceased and it is settled law that where on evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits the accused, the accused is undoubtedly entitled to the benefit of doubt.
5. On the other hand, counsel for the State submits that the prosecution has proved its case beyond reasonable doubt. The appellant and the deceased were last seen by PW-5 Sukhdev Singh walking towards the Railway Quarters Nangloi. The appellant was apprehended at the spot of incident and his blood stained clothes were also seized from the spot near the dead body of the deceased. It is argued by the counsel for the state that the blood found on the clothes matched the blood of the deceased and the weapon of offence was recovered at the instance of the appellant. It is further argued that the testimony of the witnesses so examined and the

circumstantial evidence go to prove the guilt of the appellant. He has added that the material witnesses who are the family members of the deceased turned hostile with an intent to save the appellant to enable the younger sister of the deceased to marry the appellant. Moreso the mother of the appellant had taken on the responsibility of looking after the daughter of the appellant.

6. We have heard learned counsel for the parties, considered their rival submissions and also carefully perused the trial court record.
7. The prosecution examined PW-3 Smt. Kamla Devi (mother), PW-5 Sukhdev Singh (brother) and PW-12 Basant Lal, (father) of the deceased as material witnesses. The prosecution also examined PW-9 Ramesh Kumar, (neighbour of the father of the deceased) and PW-10 Pradeep Kumar (owner of an STD/PCO booth). All these witnesses turned hostile.
8. The prosecution relied upon the testimony of PW-5 Sukhdev Singh that the appellant had informed him that he was going with the deceased to the Police Station Nangloi to divorce her and asked him to reach the police station but not finding them there, he tried to locate them and saw that the appellant and the deceased were walking towards the Railway Station Nangloi but soon thereafter saw that the appellant gave blows to the deceased (his sister) with a daiv (knife).
9. The prosecution further relied upon the testimony of PW-14 SI Shishupal who deposed that :

“On 22.09.2009 I was posted in PCR Vehicle No. DLICJ 3394 as ASI from 8 a.m. to 8 p.m. on Power-73. On that day on receiving a call we reached near Railway Quarters Nangloi. On reaching there we found a dead body of a lady near the patri at that place. One boy who told his name Sandeep S/o Ram Kumar, Village Kaloi, Haryana was found near the dead body. After sometime one Sukhdev Singh also came there and told us that he was brother-in-law (Saala) of Sandeep.

I have brought the original call book register..... as per detail one lady was stabbed with knife near Railway Flats Nangloi, near Kali Masjid and telephone no. from which information was received is mentioned as 9211034957 and the copy of the call details is Ex.PW14/A.”

10. The prosecution further relied upon the testimony of PW-21 SI Prem Dutt who deposed that :

“ On 22.09.2009 I was posted at Police Station Nangloi on emergency duty.....On receiving DD No. 26A Ex. PW2/AI along with Ct. Anil Kumar reached in front of Railway Quarter Kacha Rasta Nangloi. On reaching there we found a female dead body lying in pool of blood. The husband of that lady namely Sandeep present in court was caught hold by his brother-in-law Sukhdev. On reaching there the accused was produced before me and I handed him over in the custody of Ct. Anil.”

11. In DD No. 26A Ex. PW2/A, PW-21 SI Prem Dutt while on emergency duty recorded the DD which reads as :

" Samay 12:02 Baje din darj hai ki is waqt w/o thana haza ne bahazir DO Room aakar tehrir karaya ki

Nangloi Railway Phatak Near Kali Mandir ek lady ko chaku maar diya hai. 9210034957 from L/ct. Pooja No. 8072/PCR hasb aamad itla PCR Call darz roznamcha ki jakar bajeriye telephone SI from Dutt Sahab ko bulaya gaya nakal rapat alag karke baad me di jayegi baklam HC/DO."

12. PW-14 SI Shishupal went to the spot after the information was received in the police station Nangloi. The information has been proved as Ex.PW-14/A which records :

"Nangloi Railway Flat najdik Kali Mandir ek aurat ko chaku mar diya. T. No. 9210034957. Call noted base se aa rahe hain."

13. It is evident from the reading of Ex.PW2/A and Ex.PW14/A that the only information received in the police station was that one lady was found dead near Railway Quarters Nangloi. The presence of the appellant does not find any mention in the information so received.
14. The absence of PW-5 Sukhdev Singh, brother of the deceased is also evident from the material on record. Had PW-5 Sukhdev Singh been present, PW-14 SI Shishupal would have mentioned about him in his call to the PCR. Had PW-5 Sukhdev Singh been present at the spot the memos i.e. Personal search memo of the deceased Ex.PW-21/B, Arrest memo of appellant Ex.PW-21/C, Personal search memo of appellant Ex.PW-21/D, Seizure memo of earth control Ex.PW-21/E, Seizure memo blood stained soil Ex.PW-21/F, Seizure memo of blood stained shirt Ex.PW-21/G, Seizure memo of piece of bangles Ex.PW-21/H, Seizure memo of hair Ex.PW-21/I, Disclosure statement of appellant Ex.PW-

21/J, Sketch of weapon of offence Ex.PW-21/K, Seizure memo of cloths of appellant Ex.PW-21/L, Memo regarding pointing out by appellant Ex.PW-21/M, Memo regarding pointing out and Seizure memo of weapon of offence Ex.PW-21/N; would have been signed by PW-5 Sukhdev Singh.

15. It is worthy to note that PW-14 SI Shishupal deposed in the cross-examination that PW-21 SI Prem Dutt had reached the spot where he remained for about 30 minutes but PW-21 SI Prem Dutt did not record any statement in his presence at the spot. The testimony of SI Shishupal further fortifies that PW-5 Sukhdev Singh was not present at the spot but at the same time memos i.e. Personal search memo of the deceased Ex.PW-21/B, Arrest memo of appellant Ex.PW-21/C, Personal search memo of appellant Ex.PW-21/D, Seizure memo of earth control Ex.PW-21/E, Seizure memo blood stained soil Ex.PW-21/F, Seizure memo of blood stained shirt Ex.PW-21/G, Seizure memo of piece of bangles Ex.PW-21/H, Seizure memo of hair Ex.PW-21/I, Disclosure statement of appellant Ex.PW-21/J, Sketch of weapon of offence Ex.PW-21/K, Seizure memo of cloths of appellant Ex.PW-21/L, Memo regarding pointing out by appellant Ex.PW-21/M, Memo regarding pointing out and Seizure memo of weapon of offence Ex.PW-21/N were signed by SI Prem Dutt and not signed by PW-14 SI Shishupal.
16. In the case of *Girja Prasad (Dead) by Lrs vs. State of Madhya Pradesh, 2007 SCC*, Apex Court held that:

“In our judgment, the above proposition does not lay down correct law on the point. It is well-settled that credibility of witness has to be tested on the touchstone of truthfulness and trustworthiness. It is quite possible that in a given case, a Court of Law may not base conviction solely on the evidence of Complainant or a Police Official but it is not the law that police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption that every person acts honestly applies as much in favour of a Police Official as any other person. No infirmity attaches to the testimony of Police Officials merely because they belong to Police Force. There is no rule of law which lays down that no conviction can be recorded on the testimony of Police Officials even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. But, if the Court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence.”

17. As per the telephonic information on the basis of which Ex.PW2/A was recorded the time of incident was between 11:30 a.m. to 12:00 p.m. The appellant was arrested vide memo Ex.PW21/C at 7:00 p.m. For this delay no explanation has been tendered by the prosecution.
18. The learned trial court while convicting the accused relied upon the circumstances that the appellant was apprehended at the spot of incident and he made a disclosure statement Ex.PW21/J and the alleged weapon

of offence measuring 8 inches with a wooden handle of 6 inches as per memo Ex.PW21/N was recovered from under the bushes at his instance and his blood stained clothes were found lying near the dead body which were also seized. Mere recovery of the weapon of offence does not lead to the inference that the appellant was responsible for committing the crime or was only one circumstance which pointed towards the guilt of the accused. Infact the onus was on the prosecution to prove that the chain is complete.

19. PW-21 SI Prem Dutt deposed that a check shirt was found near the dead body of the deceased and the same was seized vide memo Ex.PW21/G. The pant (jeans) and baniyan of the appellant were seized vide memo Ex.PW21/L. The blood stains on the shirt were got analyzed from the Forensic Science Laboratory and human blood of A Group was found on the shirt whereas the pant (jeans) and baniyan showed nil reaction as per FSL Report Ex.PW23/G. No normal human being will keep his stained shirt near the dead body to create proof against himself or take off his shirt and place it near the dead body. No DNA test of the blood stained clothes was conducted to connect the same with the deceased.
20. In ***Sharad Birdhichand Sarda v. State of Maharashtra, 1984(4) SCC 116***, the Hon'ble Supreme Court has laid down the following conditions which must be fulfilled before a case against the 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 Sahebrao Bobade v. State of Maharashtra 1973 Cri.L.J. 1783**, where the following observations were made:*

- (1) 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."*

21. In **Savita alias Babbal Vs. State of Delhi, 2011 [3] JCC 1687**, it has been held that :

79. The earlier discussion of prosecution evidence has shown that apart from the disclosure statement of the swami, and the alleged recovery of articles, there is nothing to connect these two accused appellants, with the crime. For them to be involved on account of statements made by the swami, they are to be admissible. What is admissible here is only those portions of the statement,

which led to the recoveries, and nothing more. That by itself, in the absence of any other connecting evidence, admissible in law, cannot be the sole basis for holding that they too were involved in the commission of the crime, in this case. In **Sunwat Khan (supra)** the Supreme Court held as follows:

*"Beaumont, C.J. and Sen, J. in **Bhikha Gober v. Emperor 2** rightly held that the mere fact that an accused produced shortly after the murder ornaments which were on the murdered person is not enough to justify the inference that the accused must have committed the murder. There must be some further material to connect the accused with the murder in order to hold him guilty of that offence. Our attention was drawn to a number of decisions which have been summed up in a Bench decision of the Allahabad High Court in **State v. Shankar Prasad 3** in some of which a presumption was drawn of guilt from the circumstance of possession of stolen articles soon after a murder. We have examined these cases and it appears to us that each one of these decisions was given on the evidence and circumstances established in that particular case, and no general proposition of law can be deduced from them. In our judgment, no hard and fast rule can be laid down as to what inference should be drawn from a certain circumstance. Where, however, the only evidence against an accused person is the recovery of stolen property and although the circumstances may indicate that the theft and the murder must have been committed at the same time, it is not safe to draw the inference that the person in possession of the stolen property was the murderer. Suspicion cannot take the place of proof."*

9. In the present case too, there is no material on record to link these two accused with the swami, or Savita; apart from the recoveries, no witness has spoken about their presence near about the scene of crime, or its vicinity, at the relevant time. Therefore, it would be hazardous for the Court to hold that they were linked with the other co accused, and were part of a conspiracy to commit it."

22. From the material on record, it therefore falls that the material witness PW-5 Sukhdev Singh who allegedly saw the appellant and the deceased together failed to support the case of the prosecution. Even otherwise the fact that the deceased was last seen in the company of the appellant is not sufficient to convict the appellant. Reliance is laid on ***Inderjit Singh & Anr. Vs. State of Punjab AIR 1991 Supreme Court 1674***, wherein it has been held :

"It is well settled that in a case pending on circumstantial evidence, the prosecution must establish all the circumstances by independent evidence and the circumstances so established must form a complete chain in proof of guilt of the accused beyond all reasonable doubts. The circumstances so proved must also be consistent only with the guilt of the accused. Among the circumstances relied upon by the prosecution, in the light of these principles we find that except the circumstance No. 1, the other circumstances are not incriminating. In number of cases it has been held that the only circumstance namely that the deceased was last seen in the

company of the accused by itself is not sufficient to establish the guilt of the accused.”

23. In **Hasmuddin vs State of Delhi** (2008) ILR 2 Delhi 701, it has been held by the Delhi High Court that :

*“20. As per settled law it is not as if the conviction can only be based on the sole ground of last seen as last seen together may not by itself necessarily lead to the inference that it was the accused who committed the crime. We consider it necessary at this stage to refer to a decision of the Supreme Court of India reported in **State of Rajasthan v. Kashi Ram** AIR 2007 SC 145, where the law on this subject has been discussed in detail. Relevant portion of the same reads as under:*

“18. Learned counsel for the State strenuously urged before us that the High Court committed an apparent error in ignoring the evidence on record which disclosed that the respondent was last seen with deceased Kalawati in his house on February 3, 1998 late in the afternoon. Thereafter, he was not seen by anyone and his house was found locked in the morning. The evidence of PW-5, mother of the deceased Kalawati, and her brother Manraj, PW-2, clearly prove the fact that the house was found locked on February 4, 1998. The evidence also establishes beyond doubt that the doors were removed and dead bodies of the deceased Kalawati and her daughters were found inside the house on February 6, 1998. In these circumstances, the disappearance of the respondent was rather suspicious because if at all only he could explain what happened thereafter. He, therefore, submitted that in the

facts of the case, in the absence of any explanation offered by the respondent, an inference must be drawn against the respondent which itself is a serious incriminating circumstance against him. He has supported his argument relying upon several decisions of this Court.

19. *Before adverting to the decisions relied upon by the counsel for the State, we may observe that whether an inference ought to be drawn under Section 106 IPC is a question which must be determined by reference to proved. It is ultimately a matter of appreciation of evidence and, therefore, each case must rest on its own facts.*

20. *In **Joseph s/o Kooveli Poulo v. State of Kerala** (2000) 5 SCC 197; the facts were that the deceased was an employee of a school. The appellant representing himself to be the husband of one of the sisters of Gracy, the deceased, went to the St. Mary's convent where she was employed and on a false pretext that her mother was ill and had been admitted to a hospital took her away with the permission of the Sister in charge of the Convent, PW-5. The case of the prosecution was that later the appellant not only raped her and robbed her of her ornaments, but also laid her on the rail track to be run over by a passing train. It was also found as a fact that the deceased was last seen alive only in his company, and that on information furnished by the appellant in the course of investigation, the jewels of the deceased, which were sold to PW-11 by the appellant, were seized. There was clear evidence to prove that those jewels were worn*

by the deceased at the time when she left the Convent with the appellant. When question under Section 313Cr.P.C, the appellant did not even attempt to explain or clarify the incriminating circumstances inculpatory and connecting him with the crime by his adamant attitude of total denial of everything. In the background of such facts, the Court held:

*Such incriminating links of facts could, if at all, have been only explained by the appellant, and by nobody else, they being personally and exclusively within his knowledge. Of late, courts have, from the falsity of the defence plea and false answers given to court, when questioned, found the missing links to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the person concerned with the crime committed (see **State of Maharashtra v. Suresh**, (2000) 1, SCC 471). That missing link to connect the accused-appellant, we find in this case provided by the blunt and outright denial of every one and all the incriminating circumstances pointed out which, in our view, with sufficient and reasonable certainty on the facts proved, connect the accused with the death and cause for the death of Gracy.*

21. In Ram Gulam Chaudhary and Ors. v. State of Bihar, (2001) 8 SCC 311; the facts proved at the trial were that the deceased boy was brutally assaulted by the appellants. When one of them declared that the boy was still alive and he should be killed, a chhura blow was inflicted on his chest. Thereafter, the appellants carried away the boy who was not seen alive thereafter. The appellants gave no explanation

as to what they did after they took away the boy. The question arose whether in such facts Section 106 of the Evidence Act applied. This Court held: In the absence of an explanation, considering the fact that the appellants were suspecting the boy to have kidnapped and killed the child of the family of the appellants, it was for the appellants to have explained what they did with him after they took him away. When the abductors withheld that information from the court, there is every justification for drawing the inference that they had murdered the boy. Even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The appellants by virtue of their special knowledge must offer an explanation which might lead the Court to draw a different inference.

22. *In Sahadevan alias Sagadevan v. State, represented by Inspector of Police, Chennai (2003) Vol. 1 SCC 534, the prosecution established the fact that the deceased was seen in the company of the appellants from the morning of March 5, 1985 till at least 5 p.m. on that day when he was brought to his house, and thereafter his dead body was found in the morning of March 6, 1985. In the background of such facts the Court observed:*

Therefore, it has become obligatory on the appellants to satisfy the court as to how, where

and in what manner Vadivelu parted company with them. This is on the principle that a person who is last found in the company of another, if later found missing, then the person with whom he was last found has to explain the circumstances in which they parted company. In the instant case the appellants have failed to discharge this onus. In their statement under Section 313Cr.P.C. they have not taken any specific stand whatsoever.

23. It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any

theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation, as an additional link which completes the chain.”

24. Thus, great care is to be taken in evaluating circumstantial evidence and if the evidence relied upon is reasonably capable of two inferences, the one in favour of the accused must be accepted and that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must have been consistent only with the hypothesis of guilt. In ***State of U.P. vs. Ashok Kumar Srivastava (1992) 2 SCC 86*** it has been held that:

“This Court has, time out of number, observed that while appreciating circumstantial evidence the Court must adopt a very cautious approach and should record a conviction only if all the links in the chain are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negated on evidence.”

25. The Hon’ble Supreme Court in ***Ashish Batham vs. State of M.P. 2002 (7) SCC 31*** has observed that:

“Realities or Truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by heinous nature of

the crime or the gruesome manner in which it was found to have been committed.”

26. In ***Main Pal & Anr. v. State of Haryana & Ors, 2004 (2) RCR (Criminal) 466***, the Apex Court has held that :

“12. ...The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent.”

27. It is a settled principle of law that the Court should examine the statement of a witness in its entirety and read the said statement along with the statement of other witnesses in order to arrive at a rational conclusion. In ***Sarwan Singh Rattan Singh v. State of Punjab, AIR 1957 SC 637***, it has been held by the Apex Court that :

“In criminal cases mere suspicion however strong cannot take the place of proof. The court must be satisfied that the case of the prosecution is not only substantially proved, but the guilt of the accused has also been established beyond reasonable doubt.”

28. It is settled proposition of law that the prosecution case must stand or fall on its own legs and cannot derive any strength from the weaknesses of

- the defence. So far as the case on hand is concerned, which entirely rests on circumstantial evidence and the defence plea that the prosecution witnesses did not support the case of prosecution and the documents having been prepared in the absence of public witnesses by the police officials it is to be ensured that the prosecution has not presented a tailored case to suit its game plan of somehow securing a conviction.
29. Applying the above principles of law to the present case the same must fail for the reasons that PW-5 Sukhdev Singh on whose statement the FIR was registered failed to support the case of the prosecution. PW-13 Arun did not support the case of the prosecution that he informed the police about the incident on number 100 nor PW-19 Sanjay supported the case of the prosecution regarding purchase of daiv, weapon of offence from his shop. It would be wrong to draw an adverse inference against the appellant as he refused to wear his clothes Ex.P2 to Ex P4. It was the duty of the Investigating Officer to investigate the claim of the appellant that he was on duty as driver at the relevant time with one Surender Jain of Pragati Apartment, Pitampura. The police failed to question the employer of the appellant. The Investigating Officer did not investigate the complaint of deceased lodged against Rocky given to P.S. Aman Vihar vide DD No.52B dated 22.6.2009 as Mark B. and DD No.44B dated 10.8.2009 as mark D.
30. At the same time, no infirmity attaches to the testimony of Police Officials merely because they belong to Police Force. There is no rule of law which lays down that no conviction can be recorded on the testimony

of Police Officials. Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case. Considering that the memos were not signed by those witnesses who were present at the spot, the fact that the appellant was arrested at the end of the day whereas the incident took place in the morning hours, the circumstances from which an inference of guilt of the appellant is to be drawn has to be proved beyond reasonable doubt and the conclusion of guilt is to be drawn from fully proved circumstances which must be conclusive in nature.

31. Analyzing the material on record, it appears that the case of the prosecution has not stood sufficiently or properly established. It is doubtful that the appellant was last seen with the deceased before she was killed as the only witness who saw them together was the brother of the deceased, who turned hostile and this circumstantial evidence against the appellant has not been established. The Crime Team who visited the crime scene has nowhere shown the presence of the appellant at the scene of crime. Besides, the above, it is extremely difficult to believe that the appellant would have asked his brother-in-law to remain present close to the place of occurrence if he had intended to kill the deceased. If the story of the prosecution were to be believed that the blood stained shirt of the appellant was picked up from the body of the deceased from where it

was sent to FSL for analysis, it would show that the conduct of the appellant was unnatural.

32. Having said, we are of the view that prosecution has failed to prove its case against the appellant. Resultantly, the appeal is allowed. The judgment dated 28.07.2011 and order on sentence dated 30.07.2011 is set aside. The appellant stands acquitted and is ordered to be released forthwith if not required in any other case. Trial court record be returned to the concerned Court.

G. S. SISTANI, J

SANGITA DHINGRA SEHGAL, J

5th FEBRUARY, 2015

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