

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.A. 423/2015

Date of decision: 14th May 2015

NADEEM ...Appellants

Through: Mr.S.K . Kashyap, Advocate

Versus

THE STATE NCT OF DELHI ...Respondent

Through: Mr. Feroz Khan Ghazi, APP for the
State along with Inspector Rajeev
Ranjan and SI Jagbir Singh,
PS –Usman Pur.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. Present appeal arise out of a judgment dated 20.11.2006 and order on sentence dated 25.11.2006 passed by the learned Additional Sessions Judge in Session case No. 26/06 by virtue of which the appellant has been convicted under section 302/364/201 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC"), and sentenced to undergo imprisonment for life and to pay a fine of Rs. 5,000/- for the offence punishable under Section 302 of the Indian Penal Code, and in default of the payment of fine to further undergo rigorous imprisonment for a period of one year . The appellant was also sentenced to undergo imprisonment for life and to pay a fine of Rs. 5000/- for the offence punishable under Section 364 of the Indian Penal Code, and in default of the

payment of fine to further undergo rigorous imprisonment for one year. The appellant has been further sentenced to undergo rigorous imprisonment for three year and to pay a fine of Rs.2000/- for the offence punishable under Section 201 of the Indian Penal Code, and in default of the payment of fine to further undergo rigorous imprisonment for six months. All the sentences were ordered to run concurrently.

2. The facts of the case, as noticed by the learned Trial Court, are as under:

“1.Tanshir @ Sher Khan was an out-law to whom Heema was married. Three children were born to Heema out of her wedlock with Tanshir @ Sher Khan. Tanshir @ Sher Khan was involved in various heinous offences and a prize offender of Uttar Pardesh. He lost his life in a police encounter. His wife was residing in house no. 203, situated in Street no. 6, A Block, Rajeev Nagar, Khajoori Khas, Delhi, along with her children. After the death of Tanshir @ Sher Khan, Nawaz Khan, younger brother of Tanshir @ Sher Khan wanted to marry Heema with his younger brother, which proposal was declined by the lady. Nawaz Khan started nurturing grudge against Heema and her children. According to the prosecution, on 15.06.2005, Umar Khan, youngest child of Heema, went missing. On 17.06.05 at about 9.00 a.m. Heema received a telephone call at the shop of one Kailash and gathered that her son was abducted by Nadeem. On that very day, dead body of Umar Khan was recovered from a place near water pipe line leading to Khajoori Chowk from Wazirabad Bridge, Delhi.

2. Ishwar Singh ASI reached the spot on 17.06.2005 and recovered the dead body of Umar Khan (deceased) from there.

3. Case for offences punishable under Sections 302/201/364-A/120-B IPC was registered and during the course of investigation by Inspector Kishan Lal, Nawaz Khan was

arrested in the case. Later on Nadeem was also arrested. Investigation culminated into a charge sheet against them.

4. Shri Ravinder Singh, MM, had recorded refusal statement of accused Nadeem, when he opted not to participate in the proposed TIP. He proved his refusal statement as PW8/A. Dr. S. Lal conducted autopsy on dead body of Umar Khan. He has proved his autopsy report as Ex. PW18/A and opined that death was caused on account of shock due to ante-mortem cut throat injury produced by a sharp edged weapon. He further opined that injuries were sufficient to cause death in ordinary course of nature.

5. Witnesses were brought in the witness box to prove facts. Kailash Chand opted not to support prosecution on all material particulars. However, he deposed that a telephone call was received by Heema at his PCO on 17.06.05. Tafsir Khan detailed events to the effect that on 15.06.05, it was Nadeem who tried to abduct his brother Umar Khan. Nazim Khan narrated that son of his sister went missing whose dead body was recovered on 17.06.05. Heema detailed events to the effect that Nawaz Khan used to criminally intimidate her and declare that he will cause harm to her children. She further stated that on 17.06.05, Nadeem gave a telephone call to her, whose voice she could recognise after boggling her mind. She concludes that Nawaz Khan made an extra judicial confession before her.

6. Satish Chand Head Constable was working as DD writer at PS New Usman Pur on 17.1.2006. He recorded DD No. 40-B and proved copy of it as PW9/A. Ratti Ram Head Constable was working as duty officer who recorded formal FIR besides DD No. 15A. He proved copy of FIR as PW10/A and copy of DD No. 15A as Ex. PW10/B

7. Charge for offences punishable under Sections 120-B, 302, 364 and 201 read with Section 120-B of the Indian Penal Code was framed against the accused persons to which charge they pleaded not guilty and claimed trial.

3. In order to bring home the guilt of the accused the prosecution examined 21 witnesses.
4. The accused persons were examined under section 313 of the Code of Criminal Procedure in which accused Nawaz Khan admits that Heema was married to Tanshir @ Sher Khan, who met his death in a police encounter. He further admits that Heema used to reside with Tafsir Khan, Umar Khan and Mariam. The accused Nawaz Khan did not dispute that on 15.06.05, Umar Khan went missing and a report was lodged at Police Station Khajoori Khas and that on 17.06.05, dead body of Umar Khan was recovered from a place near water pipe line leading to Village Wazirabad. Further he nowhere disputes that dead body was seized by the police, besides blood stained soil and earth control sample were collected. However, other allegations are denied by him. He asserts that Heema has falsely framed him in the case. According to him, he never demanded any money from her nor criminally intimidated her. However, he admits that he was arrested in this case, but pleads that he has been made victim of circumstances. According to him, he is not involved in the murder of Umar Khan. Nadeem denies all allegations except the fact that on 28.01.2006, he was arrested in this case. His case has been of denial simplicitor. He presents that neither he abducted Umar Khan nor made any telephone call to his mother (Heema). He also asserts that he has been framed in this case. None of the accused persons opted to lead any evidence in their defence.

5. The accused Nawaz Khan who was one of the accused in the present case was acquitted from all charges by the learned Trial Court.
6. The Learned Trial Court while passing the impugned judgment relied upon the testimony of child witness PW14 Tafseer Khan, PW2 Heema (mother of the deceased) and PW1Nazim Khan (brother of Heema) and other accompanying circumstances and found the present appellant guilty for the offences punishable under Section 302/364/201 of The Indian Penal Code and convicted him accordingly.
7. Mr. S. K. Kashyap, learned counsel appearing on behalf of the appellant submits that the impugned judgment is based on surmises and conjectures and is against the settled proposition of law.
8. Counsel for the appellant further submits that the Trial Court has failed to appreciate the material contradictions in the testimonies of witnesses so examined.
9. Elaborating his arguments further the counsel for the appellant submits that the prosecution has failed to explain the delay of about six months in naming the appellant Nadeem by PW2 Heema when according to her she had already recognised his voice on 17.06.05.
10. It has also been contended by the counsel for the appellant that there is no eye witness in this case and no independent witness has been examined by the prosecution and thus the order of conviction cannot be sustained.
11. Learned counsel for the appellant submits that the Trial Court has committed gross error in the judgment as the case of the prosecution is based on circumstantial evidence. According to him,

the chain of the circumstantial evidence is not complete and the appellant should have been given the benefit of doubt.

12. Counsel for the appellant lastly urged that since the prosecution is not able to prove its case and on the basis of aforesaid submissions, the impugned judgment is liable to be set aside
13. Mr. Ghazi learned APP for the State, on the other hand, strongly refuted the submissions made by the counsel for the appellant and lent support to the judgment on conviction and order of sentence passed by the learned Sessions Judge. Counsel argued that the prosecution has been able to prove their case beyond any shadow of doubt. The testimonies of the witnesses so examined prove the guilt of the appellant. Further the testimony of PW2 Heema stands corroborated from the testimony of PW1 Nazim Khan.
14. Counsel for the State further submits that on the basis of evidence produced on record as well as the circumstances proved by the prosecution formed a complete chain pointing unequivocally towards the guilt of the accused.
15. Based on these submissions counsel for the State urged that this Court may not interfere with the well reasoned order passed by the learned Sessions Judge convicting the appellant for committing an offence under Section 302/364/201 of the Indian Penal Code.
16. We have heard learned counsel for the parties at considerable length and given our anxious consideration to the arguments advanced by them. We have also gone through the entire material placed on record including the record of the Trial Court.
17. In the facts of the present case there is no direct evidence to prove the commission of crime of murder by the appellant, and the case

primarily rests upon the circumstantial evidence only. It is a trite law that where the case is based on circumstantial evidence, 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. 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.

18. In the recent judgment of the Hon'ble Apex Court, in the case of ***Rumi Bora Dutta V. State of Assam, 2013(7) SCALE 535***, it was held that when a case totally hinges on the circumstantial evidence, it is the duty of the Court to see the circumstances which lead towards the guilt of the accused to have been fully established. The germane portion of the judgment is extracted below:

“10. It is seemly to state here that the whole case of the prosecution rests on the circumstantial evidence. The learned Trial Judge as well as the High Court has referred to certain circumstances. When a case is totally hinges on the circumstantial evidence, it is the duty of the Court to see that the circumstances which lead towards the guilt of the accused have been fully established and they must lead to a singular conclusion that the accused is guilty of the offence and rule out the probabilities which are likely to allow the presumption of innocence of the accused.”

19. The law on this aspect of circumstantial evidence is well settled. In the case of ***State of Goa v. Sanjay Thakran reported at 2007 (3) Scale 740*** the apex court reiterated the following tests which must

be satisfied in case of circumstantial evidence to support a conviction:-

"13. The prosecution case is based on circumstantial evidence and it is a well-settled proposition of law that when the case rests upon circumstantial evidence, such evidence must satisfy the following tests: -

(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 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."

20. The well known principles laid down by the Supreme Court in the landmark judgment of ***Sharad Birdhichand Sarda v. State of Maharashtra AIR 1984 SC 1622***, are well known which read as follows:-

"150. It is well settled that the prosecution, must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only

this: where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court.

151. 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 v. State of Madhya Pradesh 1953 CriLJ 129***. 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 Uttar Pradesh (1969) 3 SCC 198 and Ramgopal v State of Maharashtra 1972 CriLJ 473***. It may be useful to extract what Mahajan, J. has laid down in Hanumant's case (supra):

"It is well to remember that in cases where tile 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."

152. 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 Sahebrao Bobade v. State of Maharashtra 1973 CriLJ 1783 where the following observations were made:

"(1)xxxxxxx 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.

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

21. 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 appellant to be found innocent.
22. PW1 Nazim Khan who is the complainant in the present case testified that on 15.06.05 Umar Khan (deceased child) went missing during evening hours. PW1 also deposed that he lodged a report at police station Khajuri on the same day at about 10pm. PW1 further deposed that on 17.06.05 when he was searching for Umar Khan (deceased), he reached a place near pipeline of Wazirabad and found dead body of deceased child lying there. Both hands of the dead body were missing since they were chopped off and his neck was slit by some sharp edged object. PW1 next deposed that thereafter within ten minutes police control room gypsy reached there and after sometime local police also reached. PW1 further deposed that police lifted blood stained soil, earth control sample and chappal of the deceased from the spot and signatures were obtained on memo Ex. PW1/A, at point A. PW1 also deposed that he lodged report in PS Usmanpur, which is Ex. PW1/B and signed it at point B. PW1 next deposed that he did not come to know as to who murdered Umar Khan. Nawaz Khan was arrested in this case during Chhat Puja which took place after 6-7

months from recovery of the dead body. His sister Heema told him that Nawaz Khan was criminally intimidating her and was demanding money from her and these facts were brought in notice of SHO but he never asked Nawaz Khan to verify those facts. PW1 also deposed that no information was received by him at any point of time as to with whom Umar Khan was when he went missing. PW1 further deposed that on 17.06.05 at about 11AM, a telephone call was received by his sister Heema at the shop of one Kailash, whose shop is located in his neighborhood and Heema told him that the caller had told that her child was in his custody. Except this fact, nothing was divulged by Heema at that time.

23. PW2 Heema mother of the deceased child testified that on 15.06.05 her sons were playing outside on pushta near Kachi Khajuri. During evening hours her son Umar Khan went missing with respect to that one report was lodged in police station Khajuri Khas, Delhi. PW2 also deposed that she searched for Umar Khan but he was not traceable and on 17.06.05 her brother Nazim Khan (PW1) came and told her that dead body of Umar Khan (deceased) was lying near water pipeline leading to Khajoori Chowk from Wazirabad Bridge, Delhi. PW2 further deposed that on 17.06.05 at about 9AM she received a telephone call at the shop of one Kailash which is located in her neighborhood. The caller told her that her son was in his custody. PW2 next deposed that she questioned the caller as to why he has lifted her son and the motive behind this act, the caller immediately disconnected the line. PW2 also deposed that no other call was made to her. PW2 further deposed that Nadeem (appellant) used to visit her husband Tansheer and on

account of his visits she was familiar with his voice. PW2 next deposed that on 15.06.05 her son Tafseer (PW14) told her that some unknown person tried to lure Umar Khan (deceased) and he had forbidden him not to go with the said person. PW2 further deposed that after death of Tanshir @ Sher Khan behaviour of accused Nawaz Khan was different qua her. He used to say that he had given money to her husband and he used to demand a sum of Rs. Two lacs from her and criminally intimidate her that he will get her children abducted.

24. PW14 Tafseer Khan testified that on 15.06.05 he along with his brother Umar Khan was playing when a person who was sporting beard tried to lure his brother Umar Khan (deceased). PW14 further deposed that he had forbidden him not to go near him and thereafter they both left from that place. PW14 further deposed that during night he saw the appellant near his house. PW14 next deposed that his brother was feeling hungry and he went to the street to purchase some eatable and thereafter he did not return.
25. From the perusal of the testimonies examined by the prosecution we are of the view that Heema PW2 (mother of the deceased child) corroborated the testimony of Nazim Khan PW1 on various aspects. PW2 in her testimony stated that she knew the appellant Nadeem who was a visitor to her house when her husband was alive and was familiar with his voice. Shockingly the mother of the deceased Heema PW2 in her statement recorded under Section 161, Cr.P.C. did not name the appellant as the person who made the telephonic call to her and who caused the death of her child. Undoubtedly, no plausible answer has come forth from the

prosecution as to why did they fail to explain the delay in naming the appellant for a period of about six months when she had already recognised his voice on 17.06.05 and this is a glaring lapse on the part of the prosecution. The above circumstances render the evidence of PW2 tenuous, flimsy and unreliable.

26. We may notice that with regard to the testimony of PW1 Nazim Khan, there is no mention of the name of the appellant Nadeem regarding his involvement in the commission of the offence. From the perusal of the testimony of PW14 (Tafseer Khan) the child witness we are of the view that it is tenuous. The law is well settled that the testimony of a child witness is to be accepted with great caution and it is a sound rule of practice not to act upon uncorroborated evidence of a child, but that is a rule of prudence and not of law. As a matter of prudence, the courts are generally chary of putting absolute reliance on the evidence of child witness and look for corroboration of the same from other circumstance in the case. The child must be of mature understanding and intelligence to perceive facts, recollect it and to articulate it into words. In the light of the facts and circumstance of the present case we are of the view that the testimony of the child witness PW14 Tafseer Khan is not sufficient to convict the appellant herein. The testimony of the child witness appears to be doubtful and shows tutoring.
27. We may also notice that PW2 mother has testified that the appellant used to visit her husband and on account of this she was familiar with his voice. In case the appellant used to visit the house and the husband of PW2, surely her son PW14 would have seen

him or would have stated that the person who was trying to lure used to come to their house.

28. We find that even if the testimony of child witness PW14 Tafseer Khan is accepted, there is no other evidence which point towards the guilt of the appellant. In the absence of any medical evidence corroborating towards the guilt of the appellant it renders difficult to clinchingly fasten guilt for the offence of murder on the appellant.
29. Besides that, so far as the accused Nawaz Khan is concerned, absolutely no incriminating evidence has come on record to connect him with the crime and we are of the opinion that the trial court has rightly acquitted him of all the charges framed against him.
30. As far as accused Nadeem is concerned, it is the case of the prosecution that it was the appellant who went to a place where PW14 Tafseer (elder brother of the deceased child) and Umar Khan (deceased child) were playing and he tried to lure Umar Khan. PW14 in his testimony stated that during night hours, appellant Nadeem had again came near his house. The learned trial court observed from the above facts and reached to this conclusion that appellant Nadeem tried to lure Umar Khan during day hours, but could not succeed and again reached there during night hours and since then the deceased child went missing. Thereafter, on 17.06.05 dead body of deceased child was found from a place near water pipe line leading to Khajoori Chowk from Wazirabad Bridge, Delhi, having injuries inflicted with sharp edged object on his throat. The time of death of the deceased as opined in the post-

mortem report point out to the time being approximately 3-4 days after the deceased was taken away by the appellant and it was therefore concluded that nobody else except the appellant had an opportunity to kill the deceased. It was held by the learned ASJ from the circumstantial evidence adduced on record, it was the appellant who had taken away the deceased from a place near his house and thereafter had caused injuries on his neck with the sharp edged weapon. Consequently, the appellant was found guilty of the charges and convicted.

31. Besides this there is no other incriminating piece of evidence on record to connect the appellant with the crime. It is true that circumstances alleged by the prosecution give rise to a suspicion against the appellant but suspicion howsoever strong it may be, is not enough to justify conviction of the appellant for murder. The trial court has, in our opinion, proceeded more on the basis that the appellant may have murdered the deceased. 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.
32. It is no doubt true that conviction can be based solely on circumstantial evidence but it should be tested by the touch stone of law relating to circumstantial evidence laid down by the Apex Court as far back as in 1952 in ***Hanuman Govind Naragundkar and Anr. Vs 1953CriLJ129***, wherein it was observed thus:

"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.

33. The circumstances from which an inference as to the guilt of the accused 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 ***Bhagat Ram Vs State of Punjab : AIR 1954 S.C. 621*** it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.
34. In ***State of U.P. Vs. Ashok Kumar Srivastava : 1992 Crl. L.J. 1104***, it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favor of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.
35. Judged in the background of legal principles set out above relating to circumstantial evidence, evidence tendered by the prosecution

falls short of requirement to bring home the accusations. Inevitable conclusion is that prosecution has failed to establish the case against the appellant.

36. We may also notice that the appellant was arrested pursuant to the disclosure statement made by the other accused Nawaz Khan and that the prosecution had failed to prove on record any such strong motive on the part of the appellant, or any such circumstance which could provoke him to kidnap and murder the deceased child.
37. On perusal of the judgment of the learned Trial Court, we find that one of the reasons given by the learned trial Judge to hold the appellant guilty for the commission of crime was that the appellant had refused to participate in TIP proceedings as he had apprehension of being seen at the spot but this by itself is not sufficient to hold the appellant guilty of the offences punishable u/s 302/364/201 of The Indian Penal Code.
38. 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.”

39. Even if we take the view in favour of the prosecution, it would only result in suspicion against the appellant which cannot take the

place of proof, therefore, appellant is entitled to get benefit of the same.

40. We may refer to the case of ***Sohan vs. State of Haryana 2001 3 SCC 620*** wherein Apex Court observed that:

“An accused is presumed to be innocent until he is found guilty. The burden of proof that he is guilty, is on the prosecution and that the prosecution has to establish its case beyond all reasonable doubts. In other words, the innocence of an accused can be dispelled by the prosecution only on establishing his guilt beyond all reasonable doubts on the basis of evidence. In this case, if only the sessions judge had reminded himself of the above mentioned basic or fundamental principles of criminal jurisprudence, direction of his approach and course of his appreciation of evidence would have been different and thereby perversity in appreciation of evidence could have been avoided”.

41. In ***Ramanand Yadav v. Prabhunath Jha 2004 Crl. L.J. 640*** , this Court observed;

".....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.”

42. In the factual matrix of the case and on the basis of evidence adduced by the prosecution, there is no evidence on record at all with regard to the spot where the deceased child Umar Khan was murdered. The body of the deceased child was recovered from a public place and there is also not a whisper of evidence as to the manner in which the body of the deceased child reached a place

near water pipe line leading to Khajoori Chowk from Wazirabad Bridge, Delhi. Further no weapon of offence has been recovered. This important aspect of the matter is completely uninvestigated. Also there is no last seen evidence with respect to the commission of offence. Hence we are of the view that the findings of the trial court are not legally sustainable.

43. In view of the above discussion, the judgment dated 20.11.2006 and order on sentence dated 25.11.2006 passed by the learned Additional Sessions Judge, Delhi, are hereby set aside. Appeal is allowed. Appellant is in custody. He is directed to be released forthwith, in case he is not required in any other case.
44. Copy of the judgment along with Trial Court Record be sent back forthwith.

SANGITA DHINGRA SEHGAL, J

G. S. SISTANI, J

MAY 14, 2015

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