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

+ CRL. APPEAL No.526/2000

% Date of decision : 12th August, 2016

MOHD. SUDHIR

..... Appellant

**Through: Mr. M.L. Yadav and Mr.
Lokesh Chandra, Advs.**

versus

THE STATE

..... Respondent

**Through: Ms. Aashaa Tiwari, APP for
the State with SI Khalid
Akhtar from PS Patel Nagar**

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE R.K. GAUBA

JUDGMENT (ORAL)

Gita Mittal, J

1. The appellant has assailed the judgment dated 10th July, 2000 whereby the learned Trial Judge has found him guilty for commission of offences under Section 302 read with Section 201 of the Indian Penal Code ("IPC") in Sessions Case No. 39/97 arising out of FIR No. 71/97 which had been registered by the Police Station Parsad Nagar. The appellant has also assailed the order of sentence dated 10th July, 2000 whereby, for his conviction

for the offence punishable under Section 302, he has been sentenced to undergo imprisonment for life and fine of ₹1,000/-, in default to undergo RI for three months. The appellant has been further sentenced, for the commission of the offence under Section 201, to undergo rigorous imprisonment for three years and fine of ₹1,000/-, in default RI for three months.

2. On 1st March, 1997 ASI Ranbir Singh (PW-2) and Constable Madan (PW-7) posted with the Police Station Parsad Nagar were returning from the patrolling duty. When they reached near Tikona Park on the Ravi Dass Marg at about 04:55 a.m., they saw a cycle cart being pulled by the appellant, going from the Khalsa College. As a dog was barking behind the cart, ASI Ranbir Singh became suspicious and he called upon the appellant to stop. Instead of stopping when called upon to do so, the appellant increased the speed at which he was moving. It was the case of the prosecution that ASI Ranbir Singh (PW-2) and Constable Madan (PW-7) thereupon chased the cycle cart and apprehended it near the T point at the Sohan Lal Marg. On enquiry, the appellant disclosed that the goods loaded in the cycle cart belonged to him.

3. ASI Ranbir Singh (PW-2) checked the cycle cart and found that the load which was being carried on the cycle cart was a dead body covered with gunny bag pieces. A polythene was found tied on the face and abdomen of the body. Several articles including the gunny bag as well as the cart had blood stains on them.

4. The appellant alongwith the dead body and the cart were removed to the Police Station Parsad Nagar. He was produced before SI Attar Singh (PW-9) who was present on emergency duty. The appellant disclosed the identity of the dead body as that of one Parkash Yadav. The appellant had also disclosed the complicity of two other persons, his brother Shiraj and one Jeenat in the commission of the offence as well as cleaning up of the room where the offence was committed and disposal of the weapon and clothes.

5. On the statement of ASI Ranbir Singh (PW-2), necessary endorsement was made by SI Attar Singh (PW-9) and FIR No. 71/97 (Exhibit PW-1/A) was registered under Section 302/201/34 of the IPC. Investigation was entrusted to SHO Inspector Ishwar Singh - PW 18. He was assisted by SI Babbar Khan (PW 8).

6. Shiraj, the brother of the appellant, and Jeenat could not be traced and were declared proclaimed offenders. The challan was submitted against the appellant for commission of offences punishable under Section 302/201/34 IPC whereas his brother Shiraj and Jeenat were shown in column no. 2 of the final report. After committal of the case to the court of sessions for trial, charges under Section 302/34 read with Section 201 of the IPC were framed against the appellant to which he pleaded not guilty and claimed trial.

7. The prosecution examined 19 witnesses in support of its case. In his statement recorded under Section 313 of the CrPC, the appellant denied all allegations stating that the police had recovered an unclaimed dead body and planted it on him on account of his enmity with the brother of the deceased. He also stated that thereafter while he was cooking food in his room, Ajay Yadav (PW-6), brother of the deceased reached there accompanied by police and at his instance, the police had falsely implicated him.

8. After consideration of the matter in entirety, by the impugned judgment dated 10th July, 2000, the learned trial judge

has found the appellant guilty for commission of the offences with which he was charged and an order dated 10th July, 2000 sentenced him as above.

9. For the purposes of the present appeal, learned counsel for the parties have drawn our attention to the testimony of ASI Ranbir Singh (PW-2) and Constable Madan Singh (PW-7) who had apprehended the appellant with the body of the deceased. In addition, reference has been made to the testimony of PW-3 Dhani Ram who was the owner of the building where the appellant resided; Ajay Yadav (PW-6), brother of the deceased and Ajay Kumar (PW-15) who was living in the same building as the appellant. In addition, reference has been made to the testimony of SI Babbar Khan (PW-8), SI Attar Singh (PW-9) and Inspector Ishwar Singh (PW-18), the investigating officer of the case. The consideration would be incomplete without the examination of the testimony of Dr. S.K. Khanna (PW-11) who had conducted the post mortem on the deceased.

10. The prosecution case rested on circumstantial evidence which included the circumstances of motive, the deceased having

been last seen alive in the company of the appellant shortly before he was murdered; recovery of the dead body from the appellant; recoveries of the bloodstained shirt and gunny bag from the taand (ladder) in the room of the appellant on his pointing out and blood from different places in and around his room. The prosecution has relied on the report of the Central Forensic Science Laboratories with regard to the blood group of the appellant and the detention of human blood on some of the recovered articles.

11. PW-3 Dhani Ram has established that the appellant was a tenant in one room on the first floor of the property no.I-16/344, Bapa Nagar, Gali No.3, New Delhi. This witnesses attempted to assist the appellant in the witness box stating that two of his brothers also lived in the tenanted premises. However, the testimony of the other witnesses clarified the position. At this stage, we may examine the testimony of Ajay (PW-6), a brother of the deceased who established that in 1997, he was living with the deceased in Anand Parbat. The witness brought out enmity between the appellant and deceased Parkash Yadav for the reason that the deceased had eaten a goat belonging to the appellant. In

his testimony, reference was made to a quarrel between the two as well. He establishes the appellant and he hailed from the same village within the jurisdiction of police station Ghogri, Jamalpur.

12. The prosecution has also examined one Ajay Kumar (PW-15) who is also a tenant in a room in the property no. 16/244, Gali No. 3, Bapa Nagar, New Delhi. The appellant was also a tenant in another room on the same floor of the house located about 25 hands a way.

13. Ajay Kumar (PW-15) has established that he is the witness who last saw the deceased Parkash Yadav alive on the fateful night. He has established that on 28th February, 1997 he was also living as a tenant on the first floor of the same property as the appellant, in a room separated by a distance of about 25 hands from each other. The witness has stated that though he was on talking terms with the appellant but was not intimate with him. Ajay Kumar (PW-15) stated that he knew Parkash Yadav from three months prior to the occurrence. This witness has further stated that on his return from duty at about 9 p.m. on 28th February, 1997, he saw the deceased Parkash Yadav; the appellant as well as his brother and one Jeenat

together in the room of the appellant. He went to sleep after taking his food. The next morning at about 05.30 a.m., he saw the brother of the appellant and Jeenat washing the appellant's room. No other person has seen Parkash Yadav alive. Thereafter, his body was recovered by ASI Ranbir Singh (PW-2) and Constable Madan (PW-7) at about 4.55 a.m. from the rickshaw in which it was being carried by the appellant.

14. We shall advert to the testimony of Ajay Kumar (PW-15) with regard to his participation in the investigation later in this judgment.

15. After registration, copy of the FIR (Exh.PW-1/A) was delivered by Ct. Yashvir Singh (PW-12) to senior officers including the concerned Metropolitan Magistrate. The dead body was identified by Manoj Kumar (PW-5) and Bilas Yadav (PW-13) as that of Parkash Yadav at the Police Station Prasad Nagar.

16. A scaled site plan of the place of occurrence (Exh.PW-4/A) was prepared by SI Mukesh (PW-4).

17. After registration of the FIR, (Exh.1/A), the same was handed over to Inspector Ishwar Singh (PW-18) for investigation.

It is in his evidence that the injuries on the body were covered with polythene which was thereafter tied with jute string. He had summoned the photographer Ajeet Kumar (PW-17) who had taken photographs at the police station. Inspector Ishwar Singh (PW-18) was assisted in the investigation by SI Babbar Khan (PW-8).

18. The coir rope by which the body was tied was seized by memo Exh.PW-8/A; the polythene sheet tied over the dead body was seized vide memo Exh.PW-8/B; the cycle rickshaw was seized by memo Exh.PW-8/C; gunny bag used for covering the dead boy was seized by memo Exh.PW-8/D; and the bloodstained wrist watch worn by the appellant was also seized and sealed vide memo Exh.PW-8/P. The accused was arrested vide memo Exh.PW-8/E. Other than the rickshaw, the other seized articles were sealed in a separate pullanda; seal of ISD affixed, which after use, was handed over to PW-9 SI Attar Singh.

19. During the investigation, Bilas Yadav (PW-13) and Manoj Kumar (PW-5) and Ajay (PW-6) reached the police station and identified the dead body.

20. Inspector Ishwar Singh (PW-18) then initiated and conducted the inquest proceedings (Exh.PW-18/A) and arrested the accused vide memo Exh.PW-8/E.

21. SI Attar Singh (PW-9) as well as Inspector Ishwar Singh (PW-18) both referred to a disclosure statement (Exh.PW-8/F) made by the appellant. Pursuant whereunto, he led the police party to his aforesaid tenanted premises. In the tenanted premises, the appellant took out one shirt which was seized vide memo Exh.PW-8/G and pieces of gunny bags which were seized vide memo (Exh.PW-8/H) from the *taand* both having bloodstains.

22. When the appellant had led the police party to the house, the investigating officers stated in their testimony that Ajay Kumar (PW-15) had joined investigation. He has also corroborated the recoveries and seizures effected by the police from the residence of the appellant on his pointing out.

23. SI Attar Singh, PW-9 had also explained that many neighbours of the appellant were asked to join the investigation but only Ajay Kumar (PW-15) had agreed to join.

24. While in the residence of the appellant, the investigating officers had noticed bloodstains on the wall of the staircase in the gali and the entrance to his room (*dahleej*). These places, having bloodstains, were duly photographed. The police had lifted and seized blood from the gali vide memo (Exh.PW-8/J) from a cemented portion vide Exhibit-8/K; control earth was also seized vide Exh.PW-8/L which was smeared with blood was seized.

25. SI Attar Singh (PW-9) has deposed that when the inspection of the room of the appellant was conducted, it had appeared that the room had been recently washed with water.

26. SI Attar Singh (PW-9) had also participated in the investigation and inspections. He was responsible for recording the statement of ASI Ranbir Singh and making the endorsement Exh.PW-9/A upon which the FIR was registered.

27. Ajay (PW-6), brother of the deceased, has also identified the cycle cart which was being driven by the appellant wherefrom the dead body of Prakash Yadav was recovered. The cycle cart/rickshaw which was owned by Prakash Yadav was marked Exh.P-4.

28. An autopsy was conducted on the dead body by Dr. S.K. Khanna (PW-11) on 2nd March, 1997. As per the post mortem report (Exhibit PW-11/A), the deceased was having the following injuries :-

“External injury

1. Incised wound 6x3.5x0.5 c.m. on the right upper eye lid. A part of the skin of the eye lid had been cut off.
2. Incised wound 8x1x0.5 cm.m on the left upper eye lid.
3. Incised wound 3.5x2.5x1 c.m. on the tip of nose. Some part of the soft tissue of the nose had been cut off.
4. Incised wound 13x10x1 c.m. around the mouth. It was involving the lips and the skin near both the angles of the mouth and the chin. Some part of the skin of the chin near the left angle of the mouth had been avulsed.
5. Incised wound 5x1.9x2 cms. lower part of the neck in the mid line just above the supra-sternal notch. After cutting the skin and subcutaneous tissues, it had cut the tracheal wall making a wound of size 1.8x0.2 c.m.
6. Incised wound 3.4x1.9x1 c.m. lower part of front of neck 0.5 c.m. to the right of injury no.5.
7. Stab wound 1.6x0.8x2 c.m. upper part of left side of front of chest 2 c.m. away from mid line and 4 c.m. below the clavical.

8. Incised wound 2.2x0.8x1.5 c.m. right side of upper part of chest 5 c.m. away from the mid line at the level of right nipple.

9. Stab wound 4x1.4x15 c.m. left side of chest 5 c.m. from the mid line and 10 c.m. below the clavical. It had entered the chest cavity through the second inter-costal space, causing a wound of size 4x1.3 c.m. in the chest wall. Thereafter it had gone through upper lobe of left lung and then caused a wound in the posterolateral aspect of chest wall in the sixth inter-costal space of size 1.5x0.8 c.m. There was no exit wound on the skin. Direction of this wound was down wards, outwards and backwards.

10. Stab wound 3x1.1x6 c.m. left side of the chest 7 c.m. below and lateral to injury no.9. It had entered the chest space and had then caused a wound in the upper lob of left lung.

11. Stab wound 2.7x0.8x5 cm lower part of front of chest in the midline. It had caused a cut in the lower part of body of sternum and then entered the chest cavity where it had caused the cut in the interior wall of right vertical of heart. The wound had not entered the cavity of the vertical.

12. Incised wound 2.7x0.8x1 c.m. upper part of abdomen in the mid line 5 c.m. below injury no. 11

13. Incised wound 3x1x2 c.m. upper part of abdomen in the mid line 4 c.m. below injury no. 12.

14. Stab wound 1.8x0.7x5 c.m. left side of lower part of abdomen 7 c.m. from mid line and 3 c.m. below the level of umbilicus. It had entered the paritonal cavity.”

29. The doctor had opined that the cause of death was due to hemorrhage and shock consequent upon multiple injuries which were ante-mortem and recent. The injury nos. 1 to 4 were opined as possible to be caused by any sharp edged weapon while injury nos. 5, 6, 8 to 14 could be caused by a double edged sharp weapon. Injury no. 7 was possible by a single edged sharp weapon. The doctor had opined that the injury nos. 9, 10 and 11 were individually sufficient to cause death in the ordinary course of nature.

It would appear that as per the doctor, three weapons were utilized for commission of the offence.

30. The viscera of the deceased was preserved for chemical analysis. The doctor also preserved a blood sample of the deceased on a gauze piece. The doctor had also seized the bloodstained trouser of the deceased which were handed over SI Attar Singh (PW-9) on 14th March, 1997. SI Attar Singh (PW-9) handed over the seized articles to the SHO vide memo Exh.PW-9/B as well as the post mortem report vide memo Exh.PW-9/C. Ct. Purshotam (PW-14) had brought the sample of the viscera and clothes of the

deceased from the mortuary and handed them over to SI Attar Singh (PW-9) who had seized the same vide memo no. Exh.PW-9/C. So far as the case property/exhibits are concerned, they were deposited with HC Balbir Singh (PW-16). Seven photographs (Exh.PW-17/1 to 7) were taken by the photographer Ajeet Kumar (PW-17) while Durga Dutt (PW-19) had taken photographs of the place of occurrence Exh.PW-19/1 to Exh.PW-19/5. However, both the photographers were unable to produce the negatives.

31. HC Ashok Kumar (PW-10) had taken all the exhibits to the Central Forensic Science Laboratory, Kolkata in 15 pullandas. The CFSL reports dated 5th September, 1997 have been proved on record as Exhibit PW-18/F, 18/G and 18/H.

32. As per that CFSL report dated 5th September, 1997 (Exh.PW-18/H), the rope, polythene, gunny bag, wrist watch; shirt, pieces of cotton, piece of floor, pieces of wall; pant were tested positive for blood. The gauze piece and the dark brown fluid (being sample blood) were also tested positive for blood. However, the floor chips and wall pieces were found negative for blood test. Though, the blood group could not be tracked. So far

as the sample blood is concerned, blood group-B was identified which was also detected on one of the gunny bags. On the other exhibits, the blood had disintegrated and consequently the group test was inconclusive.

33. Mr. M.L. Yadav, learned counsel for the appellant has pointed out that on an examination of the viscera of the deceased, the Central Forensic Science Laboratory has given a report dated 28th August, 1997 (Exh.PW-18/G) that ethyl alcohol was detected in the stomach and small intestine, liver, spleen and kidney of the deceased which would show that he had imbibed a heavy quantity of alcohol at the time of his death. He also suggested that no common poisons such as insecticidal, alkaloidal and metallic were detected in the samples.

34. In our view, nothing would turn on the drunken status of the deceased so far as his cause of his death is concerned in as much as it stands conclusively established on the record of the trial court that the deceased was subjected to homicidal violence and his death resulted as a consequence thereof.

35. Ms. Aashaa Tiwari, learned APP for the State has drawn our attention to the report of the serology section of the CFSL dated 8th October, 1997 (Exh.PW-18/H) which has confirmed the presence of the blood group-B on the gauze/cotton swab carrying the blood sample of the deceased as well as the gunny bag wherefrom the body of the deceased was recovered from the cart being pulled by the appellant in the early hours of 1st of March, 1997.

36. We also find that the prosecution has lead evidence of the deceased having been last seen alive in the company of the appellant shortly before his death. The deceased was residing with his brother Ajay Yadav. It has come in the testimony of Ajay Yadav (PW 6), who was the brother of the deceased, that on the fateful night of 28th February, 1997, the deceased had told his brother that he had been called by the appellant and he was going to meet him in his rickshaw. According to PW-6, the deceased had told his brother that he would return in one hour but he did not return.

37. We may at this stage advert to the evidence of the time of death of the deceased. The dead body of the deceased was

discovered in the custody of the appellant thereafter at 04:55 a.m. which was later identified by his brother Ajay Yadav(PW-6).

38. We also find that the prosecution has led evidence of motive against the appellant. Ajay Yadav (PW-6) has testified that the appellant and the deceased were from the same village and that there was prior enmity between the appellant and his brother for the reason that the deceased had eaten the goat of the appellant in their village.

39. The learned trial judge has held that the prosecution had affirmatively established that the deceased was last seen alive in the company of the appellant through the testimony of Ajay Kumar (PW 15) who was not only a neighbor of the appellant but was a colleague of the deceased Prakash Yadav as they worked in the same factory and used to accompany him to and fro to the factory. It is in the testimony of Ajay Kumar (PW 15) that on 28th February, 1997 when he had returned from his duty at about 9 p.m. he had seen deceased Prakash Yadav, Jeenat, the appellant and his brother, all talking to each other in the room which was occupied by the appellant. On the next morning at about 5.30 a.m., he had seen the

appellant, his brother and Jeenat washing the same room. This witness, then, has deposed about the arrival of the police along with the appellant at about 8 a.m. and the steps taken by the police. The witness has also proved the recovery of the bloodstained shirt at the instance of the appellant which had been concealed in a (taand) ladder as well as the seizure of the other articles including the blood from the walls, floor etc noted by us heretofore.

40. Ajay (PW-6) also establishes that on 28th February, 1997, Parkash Yadav left the tenanted premises in his rickshaw stating that he had been called by the appellant and so he was going to meet him in his rickshaw and that he would return within an hour. However, Parkash Yadav did not return during the entire night. He had not seen the residence of the accused. Next day, information of his brother's murder was given to him by the police.

41. Mr. M.L. Yadav has vehemently contended that the prosecution must be disbelieved for the reason that the entire investigation was conducted without there being any senior officer from the police station having been joined in the investigation.

This by itself cannot dislodge the prosecution evidence. The defence was unable to shake the prosecution witnesses.

42. We find that the prosecution has conclusively established that the appellant and the deceased nurtured the animosity; that on the fateful night, the deceased had told his brother Ajay (PW-6) that he had been called by the appellant and that he was going to meet him in his rickshaw which is a relevant and admissible statement. The appellant was seen talking to the deceased Parkash Yadav at about 9 p.m. on 28th February, 1997 alongwith his brother Mohd. Shiraj and Jeenat in his room, when they were seen by Ajay Kumar (PW-15). PW-15 Ajay had seen the appellant, his brother Mohd. Shiraj and Jeenat talking to the deceased Parkash Yadav in his room. At about 5.30 a.m. the next morning, PW-15 has established that Mohd. Shiraj and Jeenat were washing the said room. The appellant tried to flee when ASI Ranbir Singh PW-2 and Constable Madan PW-7 saw him in the morning at about 04:45 a.m. near Tikona Park and had to be chased by them leading to the recovery of a dead body of Parkash Yadav which was tied in a

polythene in the rickshaw cart. The appellant had claimed to PW-2 and 7 that the “goods in the rickshaw belonged to him”.

43. The appellant made a disclosure statement and led the police to recovery of his bloodstained shirt and pieces of gunny bag from the taand of his room, one bloodstained wrist watch which he was wearing when he was apprehended; bloodstained earth; cement etc.

44. The police also seized bloodstained earth from the room as well as blood from the gali.

45. It is in evidence that the room of the appellant had been freshly washed when the police visited it in the morning on 2nd March, 1997.

46. The defence set up in his statement under Section 313 of the CrPC was not put to any of the witnesses. Furthermore, the defence tried to urge that the rickshaw Exh.P-4 was one which was commonly available in the market and that, though the prosecution was contending that the cycle rickshaw was in working condition on the night of 28th February, 1997 however, the one produced in court was not so. Nothing material turns on either of these contentions. The cross examination of SI Attar Singh (PW-9) was

taking place only on 30th November, 1999 and the fate of a cycle rickshaw in police custody for over 2 years needs no graphic explanation.

47. It is trite that the prosecution has to establish an unbroken chain of events to establish the guilt of an accused by way of circumstantial evidence. The principles for the evaluation of the evidence in a case resting on circumstantial evidence were laid down in the cited pronouncements of the Supreme Court reported at *Sharad Birdhichand Sarda v. State of Maharashtra [(1984) 4 SCC 116 : 1984 SCC (Cri) 487]*.

These principles were reiterated in the pronouncements of *S.K. Yusuf v. State of West Bengal (2011) 11 SCC 754* and *Wakkar & Anr. v. State of U.P (2011) 3 SCC 306*.

48. The principles of circumstantial evidence so enunciated by the Supreme Court in *Sharad Birdhichand Sarda* are as follows :

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

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

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may

be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793]

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

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

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

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

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

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

(Emphasis by us)

49. The principles on which circumstantial evidence has to be tested, stand authoritatively laid down by the Supreme Court in the judgment reported at (2010) 8 SCC 593, *G. Parshwanath v. State of Karnataka* wherein the Supreme Court laid down as follows:-

"22. The evidence tendered in a court of law is either direct or circumstantial. Evidence is said to be direct if it consists of an eyewitness account of the facts in issue in a criminal case. On the other hand, circumstantial evidence is evidence of relevant facts from which, one can, by process of intuitive reasoning, infer about the existence of facts in issue or factum probandum. In dealing with circumstantial evidence there is always a danger that conjecture or suspicion lingering on mind may take place of proof. Suspicion, however, strong cannot be allowed to take place of proof and, therefore, the court has to be watchful and ensure that conjectures and suspicions do not take place of legal proof. However, it is not derogation of evidence to say that it is circumstantial. Human agency may be faulty in expressing picturisation of actual incident, but the circumstances cannot fail. Therefore, many a times it is aptly said that "men may tell lies, but circumstances do not".

23. In cases where 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. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have

regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts.

24. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. 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, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court."

(Underlining by us)

50. These very principles have been reiterated by the Supreme Court in the pronouncement *S.K. Yusuf* wherein it was stated thus:

“32. Undoubtedly, conviction can be based solely on circumstantial evidence. However, the court must bear

in mind while deciding the case involving the commission of serious offence based on circumstantial evidence that the prosecution case must stand or fall on its own legs and cannot derive any strength from the weakness of the defence case. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The facts so established should be consistent only with the hypothesis of the guilt of the accused and they should not be explainable on any other hypothesis except that the accused is guilty. The circumstances should be of a conclusive nature and tendency. 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 that the act must have been done by the accused. (Vide *Sharad Birdhichand Sarda v. State of Maharashtra* [(1984) 4 SCC 116 : 1984 SCC (Cri) 487 : AIR 1984 SC 1622] , *Krishnan v. State* [(2008) 15 SCC 430 : (2009) 3 SCC (Cri) 1029] and *Wakkar v. State of U.P.* [(2011) 3 SCC 306 : (2011) 1 SCC (Cri) 846]”

(Underlining by us)

51. In *Jainoddin S/O Karimbabu Shaikh v. State of Maharashtra*, (2012) 12 SCC 127 the Supreme Court held thus:

“12. This case rests squarely on circumstantial evidence. While circumstantial evidence by itself is enough to form the basis of conviction, provided there is no snap in the chain of events; the chain of events must, thus, be complete in such a way so as to point to the guilt of the accused person and none other. Law on this point is well settled. We need not have to labour much on that. In the present case, the trial court and the High Court, after carefully considering the entire case of the prosecution and the evidence on record, have found that the chain of events is well established and the circumstances are

complete and therefore, the appellant is guilty of the offence alleged against them.”

(Underlining by us)

The evidence on record must bear scrutiny from this perspective.

52. On a consideration of the abovenoticed circumstances, the learned Additional Sessions Judge has concluded that the prosecution has established the circumstances of motive; the deceased having been last seen alive in the company of the appellant shortly before his death; the appellant's apprehension alongwith the dead body; the recovery of the several bloodstained articles from the house of the appellant as well as his clothes; attempt and destruction of the evidence of the commission of the offence beyond any reasonable doubt resulting in the conviction of the appellant for commission of the offence under Section 302 read with Section 201 of the IPC by the judgment dated 10th July, 2000 which has been impugned before us.

53. The appreciation of the evidence on record manifests that the prosecution had conclusively established an unbroken chain of the circumstances which point only to the guilt of the appellant. No other conclusion is possible. On a consideration of the entirety of

the matter, we are satisfied that nothing has been pointed out which would enable us to have a view contrary to the view taken by the learned trial judge.

Accordingly, the present appeal is found to be devoid of any merit and is hereby dismissed.

Let the Registry sent a copy of this judgment to the Superintendent, Tihar Jail as well as to the appellant.

The appellant shall surrender to the Superintendent, Tihar Jail within one month of the receipt of this judgment.

In case the appellant does not surrender on or before 20th October, 2016, the Superintendent, Tihar Jail shall inform the trial court who shall issue due process in accordance with law for securing his presence to undergo the remaining sentence which has been awarded.

GITA MITTAL, J

R.K.GAUBA, J

AUGUST 12, 2016/kr