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

+ **CRL.A. 879/2013**

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Judgment dated 29th February, 2016

PREM SINGH

..... Appellant

Through : Mr. K. Singhal with Mr. Ajay Kumar,
Advocates

versus

STATE

..... Respondent

Through : Ms. Anita Abraham, APP for the State
with Inspector Pratap Singh.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J. (ORAL)

1. The present appeal has been filed under Section 374 (2) of the Code of Criminal Procedure against the judgment and order on sentence dated 03.09.2011 and 08.09.2011 respectively.
2. The facts of this case unfold a very sad story wherein the appellant has been convicted for strangulating his two sons aged 9 years and 5 years.
3. The case of the prosecution as noticed by the trial court is as under :

“Briefly stating the case of the prosecution is that on 03.05.2009, the accused Prem Singh had taken both of his sons namely Jitesh and Sunny aged about 9 & 6 years respectively to Haiderpur Canal at Haiderpur Water Plant, Prashant Vihar, Delhi at about 7.30 p.m. on the pretext of having fun and after reaching there since the place was secluded, the accused Prem Singh got an opportunity to get rid of both of his sons as he had suspected since long that his wife that was a characterless lady and that she used to maintain illicit relations and also doubted if Jitesh and Sunny were not his sons and accordingly, he took them about 200 meters away from Water Treatment Plant and asked them to

attend the call of nature and also planned that he would murder them by strangulation and would throw their bodies in the canal and would tell everybody that they had drowned.

(b) It is further the case of the prosecution, that firstly his elder son namely, Jitesh, after latrine, came to him whom he strangled and threw his body in the running water in the Canal and after a short while, his another son Sunny also came, whom also he had strangled in the same manner and threw his body in the Canal after which he himself jumped into the Canal and after swimming for some distance, he came out, so that he could explain that he had made efforts to save both his sons but did not succeed.

(c) It is further the case of the prosecution that thereafter, he also went to the nearby office of Water Treatment Plant and told to the officials that his sons had fallen down in the Canal while playing and requested them that if their bodies are traced out, then they must inform him after which he also went to the nearby Petrol Pump on the other side of the road and told one of its employees that since his children had drowned in the Canal, so he let him to make a call at 100 number on which the said employee allowed him make the call, after which he again came back to the Haiderpur Water Treatment Plant by which time police officials had also reached there and he narrated the same version to them also. The Police officials conducted necessary investigation and after obtaining the opinion of doctor on postmortem examination results of both the children, it was revealed to the police official s that the said children did not die due to drowning but due to manual strangulation which injuries were antemortem in nature and were sufficient to cause death in ordinary course of nature and they developed suspicion over the accused Prem Singh as he admittedly was lastly present with the deceased children and during interrogation, the accused Prem Singh confessed to have committed the said offence who also explained that he had murdered both of his children namely Jitesh and Sunny since he suspected that they were not his sons as he doubted chastity of his wife. The police officials had also conducted the other necessary investigation and after completion of investigation, the present charge-sheet under Section 173 Cr.P.C. was filed in the Court of Ld. Concerned MM who after compliance of necessary legal provisions U/s 207 Cr.P.C. had committed the

case to the court of Sessions whereupon vide order dated 07.01.2010, charge for committing offence as punishable under Sections 302/201 IPC, 1860 has been framed against the accused Prem Singh to which he had pleaded not guilty and claimed trial.”

4. The prosecution, in order to bring home the guilt of the appellant examined 18 witnesses in all. Thereafter, statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure wherein he claimed to be innocent and falsely implicated in this case. The appellant did not lead any defence evidence.
5. Mr. K. Singhal, learned counsel appearing on behalf of the appellant submits that the appellant has been falsely implicated in the present case, the judgment of conviction and order on sentence passed by the trial court are bad in law and based on conjectures, surmises and probabilities and hence not sustainable in the eyes of law. Counsel contends that the learned trial court has failed to appreciate that there were material discrepancies in the testimonies of the witnesses produced by the prosecution. It is also contended that the trial court has failed to take into account that all the independent witnesses have turned hostile and thus there was no ground to convict the appellant. Mr. Singhal also contends that the trial court has failed to appreciate that there were no independent witnesses in this matter and the case is based on circumstantial evidence. He submits that there are missing links in the chain of events and thus the prosecution has failed to prove the case against the appellant beyond reasonable doubt. He submits that material witnesses being PW-9 (wife of the appellant), PW-2 (cousin of the appellant) and PW-8 (brother of the appellant) have all turned hostile. It is submitted that the case of the prosecution which was set up was that there was strained relationship between the appellant and his wife PW-9 Sunita, and the appellant used to doubt her chastity however, PW-9

has turned hostile and she did not support the case of the prosecution qua the strained relationship. Mr. Singhal submits that in fact PW-9 has testified to the extent that no father can kill his own children whom the appellant had loved a lot. It is also the case of the appellant that the prosecution has placed heavy reliance on the statement of PW-1 Naresh Kaushik, PW-4 Mahesh Kumar Sharma and PW-6 Komal Ram. However, the evidence of the aforesaid witnesses do not prove the guilt of the appellant.

6. Counsel submits that no motive has been established for the appellant father to kill his own two children. Counsel submits that no public witnesses were joined at the time of investigation.
7. Ms. Anita Abraham, learned APP for State submits that the State Machinery was put into motion based on a telephonic call made by the appellant on the telephone of PW-1. The appellant informed that both his sons had fallen in the canal. She submits that the scientific evidence shows that the children died due to manual strangulation and not on account of drowning. Counsel further submits that the children were last seen in the company of their father which is established from the evidence of PW-9 the wife who although has turned hostile but part of the testimony which supports the case of the prosecution can also be relied upon. She further submits that the appellant had also made a police report to the extent that he was at the canal with both his children and while the younger son was playing and chasing his elder brother, they fell in the canal and were slipped away. Counsel submits that from the testimony of PW-9 it is established that the children were last seen in the company of the appellant, their father and as per Section 106 of the Indian Evidence Act the onus would shift on the appellant to explain the whereabouts of his children and the manner in which they were strangled. Reliance is also placed on

the PCR form Ex.PW17/D as learned APP for State also submits that the PCR form would establish that the information was given by the appellant that *“Do baccho ko ghumaane ke liye laya tha dono nehar me gir gaye hain jinki D/Body mil gayi hai Bade wale ladke ka naam Jitesh Age 9 years and chhote ka naam Shani Age 8 years hai”*. Additionally, the phone numbers have also been mentioned based on which the phone which was used to supply the necessary information. She submits that the testimony of PW-1 shows that the appellant had made a call at 100 number.

8. Before the submission of learned counsel for the parties are considered, we deem it appropriate to discuss the testimony of some of the material witnesses.
9. PW-1, Sh.Naresh Kaushik, has testified that on 3.5.2009 he was working as delivery boy at Indian Oil Petrol pump, namely, Ridge View at Shalimar Bagh, opposite Haider pur water plant. He has further testified that on 3.5.2009 at 8.15 p.m he was on duty there. This witness while identifying the appellant, who was present in the Court, has stated that the appellant had told him that he had come along with his two sons for a walk near Haidarpur Canal and while his both sons were playing near the canal, they fell down in the canal and drowned in his presence. The appellant has also told this witness that he tried to save his sons by jumping in the canal and even swam to some distance but was unable to save them. The appellant had requested this witness to allow him to make a call at no.100 from the phone bearing no.27492035 which was installed at the office of the petrol pump. PW-1 has further deposed that in his presence the appellant narrated the same facts to the police on telephone.
10. It has further been testified by PW-1 that some police officials alongwith appellant, whose name he learnt to be Prem Singh, arrived at his petrol pump and PW-1 has informed the Police that appellant is the person who

had made the telephone call to police on 3.5.2009 at 8.15 p.m. from his petrol pump. The IO has also recorded the statement of this witness on that day.

11. PW-1 has further testified that on 11.7.2009 the IO, Inspector Pratap Singh, arrived at the petrol pump and asked him to provide the bill of telephone no.27492035, which is in the name of Sh.Narender Kumar Mahajan, who is the owner of the said petrol pump. He has handed over a photocopy of the telephone bill for the period from 1.2.2009 to 31.3.2009. The said bill was taken in police possession vide seizure memo, Ex.PW-1/A, which was signed by PW-1, and the photocopy of the said bill is marked as PW-1/A signed by him at point A.
12. In his cross-examination, this witness has admitted that the appellant came to the petrol pump on 3.5.2009 at about 8:15 p.m. and remained there for about 5 minutes. He has also admitted that his first statement was recorded on 6.5.2009 at the petrol pump and no other witness was examined at petrol pump on that day.
13. PW-2, Sh.Puran Singh Yadav, has stated that the appellant, who is present in the Court, is the son of his uncle, namely, Sh.Girdhari Singh. This witness has further stated that in the night intervening of 3-4.05.2009 at about 12 midnight, his uncle Girdhari Singh informed him telephonically that two sons of the appellant, Prem Singh, namely, Jitesh and Sunny, had died due to drowning in Haidarpur Canal. On 4.5.2009, post-mortem of Jitesh and Sunny was conducted by the Police at BJRM Hospital. PW-2 had identified the dead body of Jitesh and Sunny. His statement to that effect has been marked as Exhibit PW-2/A, which was duly signed by him at point A. After the post-mortem, the dead bodies of both the children were handed over to them vide dead body handing over memo (Exhibit PW-2/B), which bears his signatures at point A.

14. PW-2 has further deposed that about 15/20 days prior to the present incident, he learnt that the appellant is admitted at Chetna De-addiction Centre in Auchandi Village due to his habit of consuming liquor. He had visited the said de-addiction centre and found the appellant admitted over there. He tried to contact the Doctor over there but the officials of the said centre informed him that the Doctor will come on Wednesday, on which day he was telephonically informed that the Doctor will come on Friday. It is further stated by PW-2 that on Friday, when he made a call to the de-addiction centre, he learnt that his uncle had already got the appellant discharged from the de-addiction centre, to which this witness had raised an objection, as the condition of the appellant was not normal. After 2-3 days of his discharge, this incident took place, which according to him, was a Sunday night. PW-2 has further stated that had the appellant not discharged from the de-addiction centre, this incident could have been avoided.
15. At that stage, the learned APP, on being asked, was allowed to put following leading questions to this witness:

“Q I put to you that Prem Singh used to quarrel with his wife Sunita and used to regularly beat and abuse his wife Sunita and his both the deceased sons. Prem Singh is a man of violent nature?”

A. I am unaware about the said facts as I was not a regular visitor in the house of Prem Singh. I never stated so in my statement recorded by the police and the IO had mentioned the said facts in my statement on his own.”

16. In his cross-examination, PW-2 has testified that the IO has never recorded his statement, nor any enquiry was ever made from him regarding this case. He has further testified that he had never seen the appellant beating his wife or abusing his children, as this witness reside separately from their family

and did not interfere in their house. This witness has refused that he is deposing falsely.

17. PW-3 is Jagbir Singh, who has testified that he is working as a Manager in Chetna Foundation (Regd.), Drug De-addiction and Rehabilitation Centre, Village Auchandi, Delhi, for the last thirty nine years. He has further testified that on 20.11.2008 the appellant present in the Court was admitted by his father, Girdhari Singh, and his wife, Sunita, in the said de-addiction centre for de-addiction of his habit of consuming liquor. The appellant remained admitted in the de-addiction centre till 29.4.2009. During the appellant's stay, his counselling was done and he never went to his home. During the period of stay, the behaviour of the appellant was normal and he was never given any medicine for mental illness, as no mental illness was observed, nor any previous history of his suffering from any mental illness was given by his family members. The appellant was only addicted to liquor as informed by his family members. He has handed over the photocopies of the record of the appellant, after attesting the same, to the Police, which was possessed by the Police vide seizure Memo, Ex.PW-3/A, which bears his signature at point A. This witness has further testified that on 29.4.2009, Girdhari Singh along with other persons got the appellant discharged from the said de-addiction centre against his advice. He had even advised them that the appellant should complete the course of 7-9 months. The IO has recorded his statement. This witness has also deposed that he has handed over a certificate (Exhibit PW-3/B) of the de-addiction course of the appellant and the photocopy of the entire file, containing eight pages, (collectively marked as Exhibit PW-3/C) of the appellant, to the IO, and the said documents bear his signatures at point A. Original documents, which were produced in the Court, was seen and returned by the Court.
18. PW-4, Sh.Mahesh Kumar Sharma, Shift Incharge, Raw Water Pump

House-Ist, Hadarpur Water Treatment Plant, Delhi Jal Board, has testified that on 3.5.2009 he along with Komal Ram was on duty from 4.00 p.m till 12 midnight at his aforestated work place. On that day at about 7.45 p.m. the appellant present in the Court (correctly identified) came to his office and told him and one, Komal Ram, that he was walking along the canal road and while running and playing both his children both fell in the canal and drowned. This witness has further testified that the appellant had told him that in case the dead bodies of his sons come there he would be informed. Thereafter the appellant left from there saying that he is going to inform the police telephonically. After sometimes dead bodies of two children came to their plant along with the water of the canal at screen (*jaali*). They passed on this message to the control room of treatment plant at about 8.10 p.m. and from there, their message was given at no.100. It is further testified that after sometime the appellant, Prem Singh, again arrived at their office and identified the dead bodies of his two sons, Jitesh and Sunny. This witness has further gone on to state that on 6.5.2009 the IO of the case along with the appellant arrived at their office and PW-4 has identified the appellant, Prem Singh, being the same person, who informed him on 3.5.2009 regarding drowning of his two sons in the canal. The statement of this witness was also recorded on 6.5.2009. This witness had seen the photographs (A1 to A6) of the deceased children in the judicial file. This witness was not cross-examined despite opportunity having been granted.

19. PW-5, Sh.Bishan Singh, close relation of the appellant, has turned hostile.
20. PW-6, Sh.Komal Ram, has testified on the lines of PW-4. This witness has testified that he is working as a Shift Incharge at Haiderpur Water Plant. On 3.5.2009 his duty at Haiderpur Plant was from 4.00 p.m. till 12.00 midnight and he was present in the office. This witness has further testified

that although he did not remember the exact time but at about 7.00 p.m., when he was present in his office along with Mahesh Kumar Sharma (another Shift Incharge), the appellant (present in the Court and correctly identified) came there and informed them that his two children have drowned in the canal while playing near the canal and thereafter the appellant left their office after informing them. After sometime the dead bodies of the two children came to their plant one by one and got struck in the jaali/mash of the plant. He immediately passed this information through intercom to his control room on seeing the said dead bodies and the control room in turn pass this information to the Police. After sometime, the Police officials of Police Station Prashant Vihar arrived there and conducted an investigation. The appellant also came there and identified the dead bodies as that of his two children, Jitesh and Sunny.

21. PW-6 has further testified that on 6.5.2009 the IO of the case along with the appellant arrived at his office and PW-6 has identified the appellant being the same person who had informed him on 3.5.2009 regarding drowning of his two sons in the canal. The statement of PW-6 was also recorded by the IO on 6.5.2009. This witness has also testified that he had seen the photographs (A-1 and A-2) of the dead bodies of the two children in the judicial file.
22. In his cross-examination, PW-6 has testified that there was a guard in his office. He has further testified that he did not know that whether any guard was deputed or not at the relevant time. PW-6 has admitted that the accused did not meet him on that day. This witness has volunteered to state that he had seen the appellant on that day. He has also admitted that he had no personal knowledge of this case. He did not see body of those children. He denied the suggestion that he had seen the appellant on 3.5.2009.
23. PW-7, Mahender Kumar Yadav, has testified that his niece, Sunita Yadav,

had been married to appellant, Prem Singh, in the year 1996 was residing with the appellant. The appellant (present in the court) used to comment on the chastity of Sunita and accused her of bad character. This witness has further testified that appellant was in the habit of taking liquor and beating Sunita. Two sons were born out of the wedlock of the appellant and Sunita. Upon the advice of his father, the appellant was admitted to Nasha Mukti Kendra at Auchandi Village for his treatment by his niece. But on 29.4.2004 the father of the appellant took him away from the Nasha Mukti Kendra. This witness has further testified that the appellant used to quarrel with Sunita. The appellant, with regard to the birth of both the children, used to comment that they do not belong to him and belong to someone else. The appellant had also attempted to kill both the children once by giving them electric shock, however, his niece was able to save both the children. Thereafter Sunita came to his house and remained there for about 5-6 months. Thereafter the appellant took his wife to his house. After the appellant returned from his house, he remained quiet for 2-3 days but thereafter he continued with his misbehaviour and used to blame her and talked inappropriately (vulgar) and even accuses her of indulging in sexual activities.

24. PW-7 has further testified that on 3.5.2009 Sunita came to his house and stated the appellant is quarrelling with her. This witness had gone to the house of the appellant and tried to reconcile the matter but could not succeed and thus he returned to his house. On the same day at about 11.00 am he had received a phone call by the Police that both the children of his niece, Sunita, had died of drowning in the canal near Haiderpur Water Treatment Plant. This witness has further testified that he had suspected that both the children have not drowned on their own but they were killed by the appellant. This witness went to the Police Station after the post-

mortem was conducted and the recovery of the dead bodies of both the children. The statement (Exhibit PW-7A) of this witness was recorded, which bears his signature at Point A.

25. PW-7 has further testified that he had seen the dead bodies. He has also testified that after the post-mortem from the BJRM Hospital, the dead bodies of the children were handed over to them vide Receipt, Exhibit PW-2/B, which was signed by him at Point B. This witness has further gone on to state that the appellant was arrested on the next day i.e. on 6.5.2009 and he has signed the arrest memo, Exhibit PW-7/B at point A. The personal search memo of the appellant was prepared vide Exhibit PW-7/C and signed by him at point A. At the time of recovery of the dead bodies, the appellant was claiming that both the children have drowned in the canal on their own but after he was arrested he admitted that he has committed murder of his both the sons. The disclosure statement of the appellant was recorded in the presence of PW-7, which has been marked as Exhibit PW-7/D and the same was signed by PW-7 at point A.
26. In his cross-examination, PW-7 has testified that they had not made any complaint with regard to the behaviour of the appellant to the Police. His statement was recorded at Police Post Prashant Vihar. It has further been deposed by this witness that they have not called Panchayat with regard to the quarrel held between his niece and the appellant. This witness has volunteered to state that they had gone to the house of the appellant for number of times for reconciliation of the matter but the appellant did not give any heed. He has also testified that his niece had told him about the attempt made by the appellant to kill his both the children by giving them electric shock, but he had not seen this personally. It is further testified that they had not made any complaint to the Police with regard to the above incident. It is also deposed that he had not seen personally the appellant

beating his wife. PW-6 has also testified that the house of the appellant is 5 kms. away from his house. This witness has also testified that it is incorrect to suggest that he was deposing falsely, being the maternal uncle of Sunita or the accused used to love Sunita and the children or that he did not commit the alleged offence or that being relative of Sunita he is deposing falsely in the Court.

27. PW-8, Rajendr Yadav, has testified that Sunita, wife of the appellant, is his niece, who has been married to the appellant for about 12-13 years. Initially the appellant was working as a transporter but later he became unemployed and used to consume liquor very often. Whenever Sunita used to come to their house, she complained of the appellant abusing her, his demanding money from her and giving beatings to her. Both the sons, Jitesh and Sunny, of Sunita lived with PW-8 in his house for about two years.
28. This witness has further testified that because of the appellant's habit of drinking, he was once admitted to Nasha Mukti Kendra by his wife Sunita but later on the family members of the appellant released him against the wishes of Sunita. On the day of his release, the appellant gave severe beatings to Sunita and both of his children. Sunita then come to his house, leaving the children at the house of the appellant.
29. PW-8 has further deposed that on 3.5.2009, he received a phone call from the Police Station Prashant Vihar that the appellant had informed them that his two children had drown in the Haiderpur Canal while they were playing near the canal in front of him. It is also testified by this witness that thereafter he along with Mahender Sing, son of his uncle Sh.Ram Kishan, went to the Police Station and saw that the appellant had been apprehended by the Police. This witness has a very strong suspicion that the appellant had drowned both his children as the appellant had a suspicion over the character of Sunita. It has also been testified by PW-8 that the behaviour of

the appellant towards both of his sons was abnormal and he withdrew both of his sons from the school. On account of his drinking habit, the appellant used to beat both his sons. This witness has also identified the dead bodies of both the children. After post-mortem the dead bodies of the children were handed over to PW-8 and other relatives vide Receipt, Exhibit PW-2/B, which was signed by him at point C. According to this witness, the appellant wanted to take revenge from Sunita and drowned both of her sons.

30. In his cross-examination, PW-8 has testified that his statement was recorded by the Police in the Police Station on 3.5.2009 in the evening. This witness has testified that it is correct that his statement was recorded on 13.6.2009 after he was pointed out the date of statement recorded under Section 161 of the Code of Criminal Procedure. He has further testified that he had stated to the Police in his statement that Jitesh and Sunny were living in his house before their death for about two years. This witness has confronted from the statement, Ex.PW-8/DA, wherein it has not been so recorded. He has also testified that after the appellant returned from Nasha Mukti Kendra, he gave beatings to both of his sons. This witness was again confronted from the statement, Exhibit PW-8/DA, wherein it was not so recorded. This witness has further testified that he had not made any complaint to the Police regarding beating of his niece and her children by the appellant. This witness has denied the suggestion that the appellant was affectionate to his children and he was not suspicious of the character of Sunita. This witness has admitted that his niece only informed about the beatings whenever she used to visit his house. He has also admitted that his niece and her sons were not beaten in his presence.
31. Although, PW-9, Sunita, wife of the appellant has turned hostile, however, we may note that in her testimony she has stated that she did not know

what had happened to the children as she had gone to her maternal uncle, leaving both of his sons with their father, as her *nani* was ill. (Relevant portion is to be dictated by his Lordship).

32. PW-14, Dr.V.K. Jha, Medical Officer, BJRM Hospital, Jahangirpuri, Delhi, has testified that on 4.5.2009 he had conducted the post-mortem of the dead body of Jitesh with an alleged history of found dead in Haiderpur Water Plant. This witness has observed the following external injuries on the dead body of the deceased, Jitesh:

- “1. *Two scratch abrasion over front of neck 1 cm. X .5 cm each.*
2. *Right hand has washer man appearance.*
3. *Both feet were wet and smeared with sand particles.*
4. *Lower lip was contused.”*

33. On internal examination of neck, PW-14 further opined that the neck tissue was bruised on front end side. Bruising was also observed in the midline over thyroid cartilage. After post-mortem examination, this witness has opined the cause of death as asphyxia as a result of manual strangulation. All the signs were ante-mortem in nature and neck injury was sufficient to cause death in ordinary course of nature. Time since death was approximately 19 hours. His detailed report has been marked as Exhibit PW-14/A, which bears his signatures at point A.

34. It has further been testified by PW-14 that blood and viscera of the deceased was preserved in common salt to rule out common poisoning. This witness has also testified that at that stage he had seen the viscera report, Exhibit PW-14/B, in which no common poison had been detected. After perusal of the viscera report and PM report, this witness was of the final opinion that the cause of death is asphyxia as a result of manual strangulation inflicted by other party.

35. PW-14 has further testified that he had also conducted the post-mortem of

the dead body of Sunny, with the alleged history of found dead in Haiderpur Water Plant, and he observed the following external injuries on the dead body of the deceased:

- “1. Left hand has washerman appearance.*
- 2. Both feet were wet and smeared with sand particles.*
- 3. Three scratch abrasion of size 1 cm X 0.5 cm on front two in numbers and on left side one in number.”*

36. On internal examination of neck, PW-14 has opined that the neck tissue was bruised on front end sides and laceration over thyroid cartilage. After post-mortem examination, PW-14 has opined the cause of death as asphyxia as a result of manual strangulation. All the signs were ante-mortem in nature and neck injury was sufficient to cause death in ordinary course of nature. Time since death was approximately 19 hours. A detailed post-mortem report has been marked as Exhibit PW-14/C, which bears his signatures at point A.
37. Blood and viscera of the deceased were preserved in common salt to rule out common poisoning. This witness has also testified that at that stage, he had seen the viscera report, Exhibit PW-14/B, in which no common poison have been detected. After perusal of the viscera report and post mortem report, PW-14 was of the final opinion that the cause of death is asphyxia as a result of manual strangulation inflicted by other party.
38. In his cross-examination PW-14 has stated that it is incorrect to suggest that he has not conducted the post mortem of the dead bodies of Jitesh and Sunny and he has not signed the report and manipulated the same at the instance of the Police.
39. PW-15, Inspector Joginder Singh, D-3176, Inspector Investigation, Police Station Prasad Nagar, has testified that on 3.5.2009 he was working as Incharge Mobile Crime Team, Outer District. On 3.5.2009, upon receiving

the wireless message from control room he along with the photographer and Constable Ravinder went to the spot i.e. Haiderpur Water Plant. At the spot, two dead bodies of the children were lying on the ground, the same were taken out from the water and their names were revealed as Jitesh and Sunny. He got the photography of the dead bodies done and thereafter submitted his report, marked as Exhibit PW-15/A, which bears his signature at point A.

40. In his cross-examination, PW-15 has testified that he learnt the name of the deceased persons at the spot.
41. PW-17, Inspector Pratap Singh, SHO has testified that on 3rd May, 2009, an information was received regarding recovery of two dead bodies at Haiderpur Water Treatment Plant . After registration of case, investigation was handed over to him on 6th May, 2009. On 6th May, 2009, he along with SI Sunil Kumar, Constable Sandeep and Constable Het Ram went to the Haider Pur Water Treatment Plant along with complainant Mahinder Kumar. At his instance, site plan Ex.PW 17/A was prepared and at point 'A' from where the dead bodies of Jitesh and Sunny were recovered. This witness has testified that search of the accused was carried out and the accused, appellant herein was apprehended from the bus stand Haider Pur at 4 pm vide arrest memo Ex.PW 7/B. Upon his disclosure statement, Ex.PW 7/D, he pointed out the place vide memo Ex.PW 17/B where he drowned his two sons after strangulating them. A rough site plan was also prepared at the instance of the appellant. This witness also testified that he collected PCR form from the Control Room regarding receiving of call on 3rd May, 2009 at about 7.49 pm (Ex.PW 17/D). He also testified of having collected the telephone bill of Ridge View Service Station, Petrol Pump on 11.7.2009 from the cashier Naresh Kaushik vide memo Ex.PW 1/A.
42. PW-18, SI Sunil Kumar has testified that on 3rd May, 2009, he was posted

at Police Station Prashant Vihar. On receiving DD No.33 Ex.PW 17/F, he along with Constable Het Ram went to the spot i.e., Haider Pur Water Treatment Plant where the appellant, whom he identified in court, met him and stated that both his children Jitesh and Sunny had drowned in the canal. He along with Constable Het Ram entered the Water Treatment Plant from gate no.2 when body of the elder son of the appellant was taken out from the plant. Thereafter dead body of the second son was also found in the jal. These bodies were identified by their father, the appellant herein. The bodies were sent for post mortem. The post mortem report was collected by him as per which the cause of death was manual strangulation.

43. The arguments of the learned counsel for the parties can be summarised as under:-

44. Mr.Singhal has contended that:-

- i) The appellant has been falsely implicated in the present case.
- ii) The trial court has failed to appreciate the material discrepancies in the testimonies of the witnesses of the prosecution.
- iii) The independent witnesses have turned hostile, thus there is no ground to convict the appellant.
- iv) Missing link of chain of events, thus the case of the prosecution is not proved beyond a reasonable doubt.
- v) The motive has not been proved and PW-9, the wife of the appellant did not support the case of the prosecution with respect to alleged strained relationship. It is improbable that a father would strangle his own children.

45. Ms.Anita Abraham, learned APP for the State has submitted that:-

- (i) The prosecution has been able to prove its case beyond any shadow

of doubt.

- (ii) The State machinery was put into motion based on telephonic call made by the appellant that his sons had fallen in the Haider Pur canal.
- (iii) The children were last seen in the company of the appellant.

46. The case of the prosecution is entirely based on circumstantial evidence. It is settled law that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete, forming a chain and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused totally inconsistent with his innocence.
47. The principle of circumstantial evidence has been reiterated by the Hon'ble Apex Court in plethora of cases. In ***Bodhraj @ Bodha and Ors. v. State of Jammu & Kashmir***, (2002) 8 SCC 45, the Hon'ble Apex Court quoted number of judgments and held as under:

“10. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See Hukam Singh v. State of Rajasthan : (1977) 2 SCC 99, Eradu v. State of Hyderabad : AIR 1956 SC 316, Earabhadrapa v. State of Karnataka : (1983) 2 SCC 330, State of U.P. v. Sukhbasi (1985) Suppl. SCC 79, Balwinder Singh v. State of Punjab : (1987) 1 SCC 1 and Ashok Kumar Chatterjee v. State of M.P. 1989 Suppl. (1) SCC 560). 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 v. State of Punjab : AIR 1954 SC 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 home the offences beyond any reasonable doubt.

11. We may also make a reference to a decision of this Court in **C. Chenga Reddy v. State of A.P.**,: (1996) 10 SCC 193, wherein it has been observed thus: (SCC pp. 206-07, para 21)

21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.”

48. In **Trimukh Maroti Kirkan v. State of Maharashtra**, (2006) 10 SCC 681, the Hon’ble Supreme Court held as under:

“12. In the case in hand there is no eyewitness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that 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 they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence.”

49. The same principles were reiterated in **Sunil Clifford Daniel v. State of Punjab**, (2012) 11 SCC 205, **Sampath Kumar v. Inspector of Police, Krishnagiri**, (2012) 4 SCC 124 and **Mohd. Arif @ Ashfaq v. State** (NCT of

Delhi): (2011) 13 SCC 621.

50. In case of circumstantial evidence, the Court has to examine the entire evidence in its entirety and ensure that the only inference that can be drawn from the evidence is the guilt of the accused. For establishing the guilt on the basis of the circumstantial evidence, the circumstances must be firmly established and the chain of circumstances must be completed from the facts.
51. The question which arises for consideration is whether there is sufficient evidence on record which would cogently and firmly establish the guilt of the appellant, whether the prosecution has proved the circumstances which unerringly point towards guilt of the appellant and whether the prosecution has been able to cumulatively form a chain so complete which leaves no doubt of appellant having murdered his sons.
52. Having discussed the testimonies of material witnesses in detail in the paragraphs foregoing, we may note that PW-4, Mahesh Kumar Sharma and PW-6, Komal Ram are material witnesses. Both the witnesses have testified that they were on duty at Haidarpur Water Treatment Plant on the fateful day, *i.e.* on 03.05.2009. Both have also testified that the appellant had first approached Mahesh Kumar and informed him that he had come to the canal along with his two sons who were playing near the canal, they fell down and drowned. As per the testimony of Mahesh Kumar, appellant had met him at about 7:45 p.m. and Mahesh Kumar had passed over this information regarding recovery of dead bodies at number 100. On the truthfulness of this statement, there has been no cross-examination on behalf of the appellant. PW-6, Komal Ram has also testified on the lines of PW-4. A very important factor which is to be noticed at this stage is that there is no cross-examination by the appellant regarding his not having gone to canal along with sons and having not informed PW-4 and PW-6

regarding the drowning of his sons who were with him and had drowned while playing.

53. Naresh Kaushik, PW-1 has testified that on 03.05.2009 when he was working as a delivery boy at Indian Oil Petrol Pump, Shalimar Bagh opposite Haiderpur Water Plant at about 8:25 p.m., the appellant came to him and told him that he was walking near Haiderpur Canal with his sons and while his both the sons were playing, they fell down in the canal and drowned despite his having tried to save them by jumping in the canal. Appellant requested him to allow him to make a call at 100 number. In his presence, on telephone number 27492035, the appellant narrated the above facts to the police officials. On 06.05.2009, he had identified the appellant in the presence of the police officials as the person who had made a call at 100 number on 03.05.2009 at 8:15 p.m. Bill of telephone number 27492035 Ex.PW1/A and the testimony of PW-1 stand established that a phone call was made by the appellant at 100 number.
54. PW-1, Naresh Kaushik had also identified the appellant who had made phone call from his phone. We may, at this stage, also note that although the wife of the appellant had turned hostile, but as far as the children last seen in the company of the appellant is concerned, it stands established by the testimony of PW-9, Sunity Yadav, wife of the appellant. She testified that *“on the day of incident, I went to the house of my maternal uncle as my Nani was ill leaving my both the sons with their father/accused”*.
55. In view of the testimonies of PWs-1, 4, 6 and 9, in our view, it stands firmly established that the children were with their father as per the testimony of PW-9. As per the testimonies of PWs-1, 4 and 6, the appellant had himself informed them that his children had come with him at the canal and while playing, they have got drowned. The testimonies of PWs-1, 4 and 6 on this aspect has remained unrebutted.

56. Dr. V.K. Jha, PW-14, has testified that cause of death is asphyxia as a result of manual strangulation and all the injuries were ante-mortem in nature and neck injury on their persons was sufficient to cause their death in the ordinary course of nature. The evidence of Dr. Jha clearly points out that the children did not die due to drowning but on account of manual strangulation. Neither the appellant has been able to make any dent in the examination of this witness nor there is any reason for us to disbelieve the testimony of Dr. V.K. Jha.
57. The motive stands established. Upon reading of the testimony of PW-7, Mahender Kumar Yadav, the deceased were the sons of his niece Sunita. He has testified that the appellant used to comment on the chastity of her niece Sunita and accused her of bad character. He was in the habit of drinking liquor and beating Sunita. This witness has also testified that the appellant used to comment that the children did not belong to him but to someone else and, in fact, had attempted to kill the children in the park by giving them electric shock. However, the children were saved by their mother. In the past, Sunita had remained in the house of PW-7 for 5-6 months, however, she joined the company of her husband but he continued to misbehave with her and used to talk inappropriately and accuse her of indulging in sexual activities. Even on 03.05.2009, as per the testimony of PW-7, the mother of the deceased had come to his house and informed him that appellant was quarrelling with her. He had tried to reconcile the matter, but could not succeed. On the same day, he received a phone call by the police that both the children of his niece had died by drowning in the canal. PW-7 has further testified that he had suspected that both the children had not drowned on their own but they were killed by the appellant.
58. PW-8, Rajender Yadav has also testified that his niece was married to the

appellant and whenever Sunita came to their house, she complained that appellant used to abuse her and beat her as well as the children. On learning the news about death of both the children, this witness also testified that he had strong suspicion that appellant had drowned his children on the issue of character of Sunita.

59. In view of the testimonies of PW-7 and PW-8, motive stands clearly established that the appellant used to beat his wife and children under the influence of liquor. He suspected that the children did not belong to him but belong to someone else. The appellant informed PW-1, PW-4 and PW-6 that the children had drowned, whereas as per the testimony of PW-14, Dr. V.K. Jha, external injuries were found on the dead bodies and the cause of death was manual strangulation. Thus, in our view, the conduct of the appellant also points towards his guilt.
60. In the light of the testimonies discussed above, the submission of learned counsel for the appellant that the appellant has been falsely implicated or that there are material discrepancies in their testimonies or the fact that the wife of the appellant has turned hostile thus there is no ground to convict the appellant, are all without any force. The Trial Court has passed a well-reasoned order taking into consideration the testimonies of all the material witnesses which have been discussed hereinabove.
61. We find that there is no merit in the present appeal and the same is accordingly dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

FEBRUARY 29, 2016

msr/ssb