

\$~R-11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 892/2015**

%

Judgment dated 21st January, 2016

CHETRAM SAINI ALIAS AJAY Appellant
Through : Ms. Saahila Lamba, Advocate

versus

STATE (NCT OF DELHI) Respondent
Through : Ms. Aashaa Tiwari, APP for State
with Inspector J.S. Mehta, IO, P.S.
Karawal Nagar

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J. (ORAL)

1. Present appeal has been filed under Section 374(2) of the Criminal Procedure Code, 1973 is against the judgment and order on sentence dated 19.03.2015 and 27.03.2015 respectively. The appellant stands convicted under Sections 302/201/381 of Indian Penal Code. The appellant was sentenced to undergo rigorous imprisonment for life under Section 302 IPC and to undergo rigorous imprisonment for a period of four years along with fine of Rs.20,000/-, and in default of payment of fine six months simple imprisonment under Section 381 IPC and further sentenced to undergo rigorous imprisonment for a period of three years with fine of Rs.5,000/-, in default to undergo simple imprisonment for six months. All the sentences were to run concurrently.
2. The case of the prosecution as noticed by the Trial Court is as under:

“2. On receipt of DD No.7-A dated 22.06.2009, a police team comprising Inspector Ishwar Singh, Head Constable Surender and Constable Akhtar went to the first floor of House No.A-165 Defence Colony, New Delhi where one Bhagat Singh Rawat and Vinod Kapad met the police team and informed that the foul smell is emanating from the flat on the first floor in building belonging to retired Chief Justice of Kerala High Court. In the meantime, Inspector J.S.Mehta also reached at the spot. Bhagat Singh Rawat, being an employee of the flat, was having the key of the flat and, thus, opened it. The scene outside the flat was gruesome as blood was found splattered at various places and a dead body was recovered with a completely burned torso and smashed face. The crime team was requisitioned and the scene was examined. The kundas/latches of the two bed rooms were found broken and the almirah open. The house was ransacked. The dead body came to be identified as that of Chetram Saini, who was employed as a cook in the house and used to look after the flat in the absence of its owner. Wife of Chet Ram Saini namely Smt.Manju came and identified the dead body with the help of the nikkar/half pant which was intact on the dead body lying in the flat. Thereafter, the inquest proceedings were carried out and the post-mortem was conducted. Dead body was handed over to the relatives of the deceased. Requisites of the investigation such as seizure of various articles, clothes, shoes, chappals etc. from the flat was carried out and chance prints were also lifted from the spot. The site plan was prepared by the Investigating Officer.

3. The police was able to crack the case in the beginning of August, 2009 with the arrest of the present accused, who turned out to be the husband of Manju i.e., Chetram Saini qua whom initially it was the belief that it was he who was killed. This added a twist to the case and a new responsibility came over to be shouldered with by the police as to whose dead body it was if it was not that of Chetram Saini. The investigations finally came to the conclusion that it was Chetram Saini who had lured one rickshaw puller namely

Shivram and committed the burglary in the house after committing the murder of Shivram. Clothes of Shivram were removed by Chetram Saini, who put on his clothes on the body of Shivram in order to conceal the true identity and to portray that it was he, that is Chetram, who had been killed. To achieve this, he had burnt the face and upper portion of the body, but seemingly left the left portion untouched, deliberately and consciously, in order to mislead the police and to make the people believe that it was Chetram Saini who has been killed.

4. The blood samples for DNA etc. were taken which confirmed the aforesaid fact that it was the dead body of Shivram and not that of Chetram as the blood samples of the mother of the accused namely Kishori Devi and the brother of deceased Gore Lal were already taken and that confirmed identity of the persons. As in order to confirm the identity of the accused Shivram blood samples of his father Krishna Thakur was taken, at a later stage, together with fingerprints.”

3. Ms. Saahila Lamba, learned counsel appearing for the appellant submits that the judgment and order on sentence is based on surmises and conjectures. There is no eye witness. The evidence of the last seen is extremely weak and further the testimonies of the witnesses relied upon by the prosecution are full of contradictions which make the case of the prosecution highly unreliable and suspicion howsoever strong cannot take the place of the proof. Counsel also submits that the Trial Court has failed to take into consideration that besides the appellant, three other persons had access to the premises where the offence was committed and thus, the appellant could not have been convicted. There is no evidence on record to show that the appellant was last seen at the place of the crime or seen entering the house or leaving the house

where the offence was committed. Ms. Lamba also submits that since there was no specific mark of identification on the cash and silver coins which were allegedly recovered at the instance of the appellant, it cannot be ruled out that the same were planted. Counsel also submits that there is nothing on record to connect the appellant with the mobile handset. Additionally, counsel submits that the chain of circumstances is not complete, thus, the Trial Court has erred in convicting the appellant based on circumstantial evidence.

4. Ms. Aashaa Tiwari, learned counsel appearing for the State submits that the prosecution has been able to establish its case beyond any shadow of doubt. Counsel for the State submits that the prosecution has been able to establish that the appellant was last seen in the company of the deceased Shivram in the evening of 18.06.2009. Evidence placed on record has established that the appellant in order to conceal his true identity after the incident stayed in a municipal guest house under the name of Ajay Singh in Kolkata. Counsel also submits that the post mortem report would show that throat of deceased Shivram had been slit while the body was smashed and his face had been burnt which is another attempt on the part of the appellant to mislead and stage his own death which is further evident from the fact that after Shivram was murdered, the appellant put his clothes on Shivram and since his face could not be identified, the wife of the appellant based on the clothes which were on the body which was lying in the flat in question identified him to be her husband, the appellant herein. Counsel for the State further submits that the recovery of the stolen goods, currency notes and three silver coins, the recovery of

weapon of offence, the extra judicial confession made by the appellant to his wife would leave no room for doubt that the appellant had murdered Shivram and the entire scene of the crime was stage managed.

5. We have heard the learned counsel for the parties and considered their rival submissions as also examined the Trial Court record and the testimonies of the witnesses.
6. The prosecution has in all examines 51 witnesses. No evidence has been led by the defence. Statement of the appellant has been recorded under Section 313 Cr.P.C.. The submission of the learned counsel for the appellant is correct to the extent that there is no eye witness. The case of the prosecution is based on circumstantial evidence. The appellant stands convicted based on the circumstances as detailed in para 32 of the impugned judgment, which reads as under:

“32. The evidence/circumstances against the accused can summarily put in the following categories;

- a) Last seen where deceased was lastly seen alive in the company of accused on 18.6.2009 in the evening.
- b) Misrepresentation, in order to conceal his true identity before the persons with whom he came in contact at West Bengal.
- c) Staying with an assumed name of Ajay Singh in Municipal Guest House and signing as Ajay Singh.
- d) Fingerprints/comparison with verification form of servant (Ex.PW2/A) stated by owner of the house too and admitted his signature.
- e) post-mortem report/opinion qua death that it was on account of slitting of the throat.
- f) Second opinion qua death and use of weapon

recovered at the instance of the accused Ex.PW7/B.

g) Use of the backsaw blade for cutting the door knobs/latches and scientific evidence in this context vis-a-vis the implement recovered at the instance of accused which was used for this context report Ex.PW 31/B.

h) Telephone record/evidence i.e. CDR of 9850706740(Manju), 9775346390(Chetram) 999914251. Landline 24337977 [call diversion was permitted Sub Inspector Sanjay 9811585655 heard the calls of Chetram (9775346390) to his wife.

i) DNA test PW-36 Dr.Anupam Raina in her report Ex.PW36/A opined that deceased was not the biological child of Kishori Devi, mother of Chetram. Second report Ex.PW 36/B that deceased was child of Krishna Thakur.

j) PW-42 Krishna Thakur says his blood was taken for DNA test, form is Ex.PW 42/A.

k) recovery of currency notes/three silver coins.

l) recovery of weapon of offence i.e. knife, implement used for cutting the door knocks, mobile phone(s), crime scene manipulation by the accused.

m) missing report of Shivaram PW-24 Head Constable Ram Chander recorded DD No.35-A in this context and Ex.PW 24/A-2 are the documents filed by Investigating Officer including photo of Shiv Kumar.

n) Krishna Thakur stating Shivram resides separately, and contacting once/twice in a month. Shivram did not call to his father, thus missing report lodged.”

7. The appellant was working as a domestic cook with a former Chief Justice of the Kerala High Court at his flat bearing House No.A-165, Defence Colony, New Delhi. PW-17, Om Prakash has deposed that he is engaged in giving cycle rickshaw on rent under the name of M/s. O.P. Yadav Cycle Works. While testifying that he maintains a register for giving rickshaws on rent at about Rs.40/- a day, he has deposed that one Shiv Kumar used to hire rickshaws from his garage. Shiv Kumar

had taken a rickshaw lastly on 18.06.2009 and thereafter he had not returned to the garage. Identifying Chet Ram Saini, the appellant herein in court he deposed that on 18.06.2009, the appellant had come along with Shiv Kumar when Shiv Kumar hired a rickshaw for the day. When Shiv Kumar returned the rickshaw which he had hired for the day, thereafter the appellant and Shiv Kumar left his stand at about 7:15 to 7:30 p.m. Based on the record, he informed the police that Shiv Kumar had lastly hired a rickshaw on 18.06.2009.

8. Learned counsel for the appellant has drawn our attention to the statement of PW-17 when during his cross-examination, PW-17 had deposed that on 18.06.2009 Shiv Kumar and Chet Ram had stayed with him for about 15-20 seconds and when Shiv Kumar was paying rent to him, Chet Ram was also standing closely. It has been submitted that it was not possible for PW-17 to have identified the appellant in Court as admittedly when he had only stayed for about 15-20 seconds.
9. Learned counsel for the State has clarified that the statement of this witness is to be read as a whole and it is not possible firstly for Shiv Kumar to have handed over rent to PW-17 in 15-20 seconds and secondly this witness has deposed in his testimony that the appellant was standing closely which would have given the witness a fair opportunity to see the appellant and subsequently identify him. Counsel for the State has further explained that this witness had repelled this suggestion that he not correctly identified the appellant as he had only seen him for only about 15-20 seconds. In our view, PW-17 is a reliable and trustworthy witness and there is nothing on record to suggest that PW-17 was, in any case, inimical to the appellant and

had any reason to falsely implicate the appellant. Additionally, it may be seen that this is only one circumstance in the thread of circumstances which have been held against the appellant to bring home the guilt against him.

10. The prosecution has relied upon heavily on the fact that the appellant had misrepresented in order to conceal his true identity. PW-25, Mahadev Rajvanshi @ Sadhu has testified that he used to run a sugarcane juice stall at Triveni bus stand. In July, 2009, a person claiming himself to be Ajay Singh had come in contact with him. During conversation, he expressed a desire to hire a room on rent and also expressed his eagerness to buy land. After 10-15 days, he again came and handed over Rs.40,000/- to him. PW-25 helped him to hire a room from one Khokhan Das in Triveni Westend. The rent was fixed at Rs.450/- per month. Thereafter, Madhev had gone to Hoogly during *rakhi* time. On his return, he learnt that the police was looking for the said person and was inquiring about the money. At that stage, he learnt that the correct name of appellant herein was Chet Ram who had introduced himself as Ajay Singh and had given Rs.40,000/- for buying land. This witness returned Rs.35,000/- to the police.
11. Another important witness is PW-28, Amiya Kumar Mitra, Sub-Registrar, Bansberia Municipality Triveni Hoogly, West Bengal. PW-28 testified that he had seen the boarder register for Municipal Guest House Triveni Ghat at page 66. In the entry, Ajay Singh had stayed in the guest house till 28.06.2009. He relied upon entries no.24 to 26, 28 and 29 of the register Ex.PW28/A. He identified his signature at point 'X1' and 'X' and identified the signature of Ajay Singh at points 'Q1'

to 'Q5'. We may note that during cross-examination, this witness did not identify Ajay Singh, but the prosecution relied upon the testimony of PW-30, Dr. Virender Singh, Senior Scientific Officer(Documents), FSL, Rohini. The relevant pages of the register containing the specimen writing of the appellant were sent to the FSL. This witness testified that after examining 'Q1' to 'Q5', *i.e.*, the writing of the register with the sample writing/signature of 'S1 to S78', he had prepared a detailed report Ex.PW30/A. He opined that the person who wrote the red enclosed writings/signatures stamped and marked 'S1 to S78' had also written the enclosed writings/signatures similarly stamped and marked 'Q1 to Q5' as per the detailed reasons in the report. 'Q1 to Q5' are the signatures of the appellant in the register of the guest house and 'S1 to S78' are the sample writings/signature writings of the appellant.

12. Based on the testimony of PW-25 Mahadev, who testified that Chet Ram had introduced himself as Ajay Singh read with the evidence of PW-28, Amiya Kumar Mitra, who had produced the boarder register for Municipal Guest House Triveni Ghat which contained the entries and signatures of the appellant as Ajay Singh and based on the strong evidence of PW-30, Dr. Virneder Singh clearly establish the presence of the appellant at West Bengal, his stay at the Municipal Guest House Triveni Ghat and posing himself to be Ajay Singh. There is no explanation of any another theory whatsoever as to why this appellant would soon after the murder in the house where he was employed would reach West Bengal and pose himself as Ajay Singh.
13. PW-11, SI Gangaram, Fingerprint Expert confirmed that the

fingerprints of Chet Ram who posed as Ajay Singh were the same as the prints of the appellant Chet Ram obtained at the time of his seeking employment and the impression taken at the time of police verification leading to the only conclusion that Chet Ram and the so-called Ajay Singh were one and the same person.

14. The prosecution had also carried out a DNA test on the dead body of the deceased Shiv Ram. PW-36, Dr. Anupama Raina, Scientist in her report Ex.PW36/A opined that the deceased was not the biological child of Kishori Devi, mother of Chet Ram and the deceased was the child of Krishna Thakur as per the second report Ex.PW36/B. We may add at this stage that Krishna Thakur, father of the deceased, was also produced as PW-42, who testified that he was working in Delhi as a *Kabari* in Sadar Bazar. Shiv Kumar was his son who was born out of his first marriage with Smt. Manju who had died. He also testified that his son used to ply a rickshaw. He testified that in the year 2009, his son Shiv Kumar went missing and did not come to meet him for a long time and thereafter he had lodged a report with the police. He was later on informed by the police that his son had been murdered. He was taken to AIIMS, where the doctor has taken his blood for conducting his DNA test.
15. This DNA test attains importance for the reason that the wife of the appellant Manju who has been examined as PW-47 and as per her testimony, she was residing with her husband Chetram at House no.1934, Gali no.3, Pijanji, Kotla Mubarkpur. Her husband used to ply a rickshaw and later on he joined as a cook in the house of one Judge Saheb at Defence Colony, New Delhi. He was staying in the flat and

used to visit her at the tenanted room once in a week or fortnight. In the month of June, 2009 as her husband did not visit her, she had made a call to him but he did not answer. She also testified that about a week before the incident, Chet Ram provided one new mobile phone to her after taking her own phone. This witness also testified that she had made a telephone call on the cell phone of Judge Saheb, but whereabouts of her husband were not known. In the morning of 22nd/23rd June, she along with brother of Chetram went to visit the flat, but the door was not open. Police was called. She was informed that a dead body was lying inside the flat. She could not identify the dead body as the face was charred but she assumed that the dead body was of her husband on the basis of green colour pant of Chet Ram. She had identified the dead body as that of the appellant Chet Ram. The police had come and she was asked not to switch off her phone provided by Chet Ram. She further goes on to testify that after one and half months, she received a call from Chet Ram on her mobile phone. She recognised his voice. He told her that he was in Ahamdabad. On the same day, she took her mobile phone to the Police Station Defence Colony as directed by one police official. She handed over her mobile phone to the police. The police returned her mobile phone and directed her not to switch off the mobile phone. Police officials used to visit her house to ask whether any phone call of Chet Ram had come on her phone or not. A lady police used to stay at her house to await a call of Chet Ram on her phone. She received three calls of Chet Ram on her phone. One or two days from the first call, Chet Ram again called on her phone and it was attended by the police who recorded the same.

Police officials were in constant touch with the calls of Chet Ram. Police asked her to continue to talk with Chet Ram on her phone and based on the conversation, the police overpowered her husband. Subsequently, she identified Chet Ram in the Police Station and also identified him in the Court. She also testified that on telephone, Chet Ram had told her that he had murdered one rickshaw puller and called her at Verthman near Kolkata she refused to go and advised him to surrender.

16. The testimony of this witness would establish that based on the clothes on the dead body, she identified the same as that of her husband Chet Ram. The testimony of this witness further goes on to establish that she had received a phone call after one or one and half months of the incident from her husband whose voice she recognised. She had informed the police and thereafter two phone calls were received by her in the presence of police officers. This statement is extremely important for the fact that according to the wife of the appellant, the appellant had admitted to her of committing the murder of one rickshaw puller. The testimony of this witness would also show the manner in which she identified the dead body based on the clothes and the physique but the parents of the appellant were also present after the post mortem and had cremated the body taking it to be that of their son. In our view, this is also an incriminating factor which points towards the guilt of the appellant for the reason that the appellant in his statement under Section 313 Cr.P.C. has failed to explain his absence. The testimony of his wife would show that he did not inform her before leaving Delhi and called her to come to Kolkata. He also did not keep

in touch with his parents. The post mortem report of the dead body shows that cause of death was on account of slitting of the throat. The face was smashed and the body was charred and it was partially burnt which could not be recognised. The testimony of the wife of the appellant would show that the pant on the dead body belonged to the appellant herein. The above factors would establish that after slitting the throat of deceased Shivram, his face was smashed and partially burnt so that he could not be recognised except by his pant which belonged to Chet Ram.

17. The prosecution has also relied upon the testimony of PW-31, Parshuram Singh, Senior Scientific Officer(Physics), FSL, Rohini. As per his opinion, the *kunda* and door and lock could have been cut with the hacksaw blade Ex.33. This hacksaw blade was recovered at the instance of the appellant vide seizure memo Ex.PW43/F-1. Additionally, the weapon of offence Ex.PW7/B was also recovered at the instance of the appellant containing blood which matched with the blood group of the deceased. The recovery of hacksaw blade and the weapon of offence at the instance of the appellant is yet another factor in the chain of circumstances which points towards the guilt of the appellant. Besides, the silver coins Ex.PW27/D and currency notes were also recovered at the instance of the appellant and for which there was no explanation at his end.
18. The prosecution has also heavily relied upon the call details, *i.e.*, CDR of phone no.9850706740 belonging to Manju, 9775346390 and 999914251 of Chet Ram, land line number 24337977 of which call diversion was permitted developed by SI Sanjay Sharma, (PW45) who

heard the calls of Chet Ram on the mobile of his wife on 03.08.2009. PW-45 has testified that senior police officials had put the mobile phone of Manju on surveillance and his phone number was also connected to hear the talk on the phone of Manju. PW-45 also testified that on 03.08.2009 at about 9:30 p.m., he heard the conversation of one caller with Manju. The caller disclosed his name Chet Ram and stated that he was her husband and further disclosed that on the night of 18.06.2009, he committed the murder of one rickshaw puller in the house of one former Chief Justice where the caller was working as a cook. He disclosed that he had robbed a lot of money(*mall*) from that house and he further disclosed that at present he was residing near her house in Kolkata by concealing his identity and that he would be purchasing some land from the said money. He also followed her and she also visited the Police Station. He has also testified the manner in which he had apprehended the appellant and the manner in which the appellant after opening the lock by key to discover the three silver coins from her drawer.

19. The testimonies on record would show that there is no eye witness to the incident. No witness has been examined by the prosecution who had seen the appellant and the deceased together either entering the building or at the time when the appellant left the building on the date of the incident. The technical evidence, *i.e.*, DNA, finger prints establish that the deceased was one Shivam, a rickshaw puller. By the testimony of PW-17, Om Prakash, it has been established that the deceased was last seen in the company of the appellant by the rickshaw garage owner(OM Prakash, PW-17). In the testimony in Court, Om

Prakash identified the appellant as the person who came along with the deceased on 18.06.2009 to return the rickshaw at 6:00 or 7:00 p.m. An important factor is that body of the deceased was found in the first floor of the premises bearing No.A-165, Defence Colony. Keys of which would be always available with the appellant herein as per the testimony of the owner of the house.

20. In the case of *State of U.P. v. Satish*, reported at 2005 (3) SCC 114, it was held by the Apex Court as under:

“47.Last seen theory comes into play where the time gap between the point of time when the accused and the deceased was last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases...”

21. In the case of *Godabariksh Mishra v. Kuntala Mishra*, reported at AIR 1997 SC 286, the Apex Court took a view that the theory of last seen together evidence is not of universal application and may not always be sufficient to sustain a conviction unless supported by other links in the chain of circumstances.
22. The wife of the appellant identified the dead body as that of her husband as the dead body was found bearing half pant/*nikker* which belonged to the appellant herein. We may note at this stage that the face of the deceased was smashed and upper portion of the body was

charred, yet another clever attempt on the part of the appellant to conceal the real identity of the dead body and to mislead the police. We say this on examination of the post mortem report (Ex.PW7/A) and the testimony of Dr. Adarsh Kumar (PW-7), as per which cause of death was the cut throat injury caused by sharp edged weapon and not on account of smashing of the face or on account of burn injuries. Ex.PW7/B is the second opinion connecting the knife recovered at the instance of the appellant with the cut throat injury.

PW-20, Naresh who was the seller of the mobile phone brought on record that the appellant had purchased a new Nokia mobile handset 5130 and also a SIM Card of Airtel on 13.06.2009. The bill book Ex.PW20/A was proved by the bill as Ex.PW-20/3 and carbon copy of the bill No.971 as Ex.PW20/B-1. Despite there being no bill in the name of appellant, testimony of his connected Naresh the accused to the purchase. PW-15, SI Kali Charan has proved that a request for interception of telephones was made and based upon permission granted by the Principal Secretary(Home) on 14.07.2009, service providers were conveyed the request by letter dated 16.07.2009, copy of which is Ex.PW15/A. The wife of the appellant(PW-47) also testified that her phone was put on surveillance and recording was made when she received the second call from her husband, the appellant herein. The testimony on record proves that the appellant was seen in contact with his wife.

In the present case, the motive is also duly established by the recovery of Rs.1,10,000/- from the possession of the appellant along with three silver coins. A sum of Rs.40,000/- was handed over to the

broker(PW-25) by the appellant. Rs.35,000/- was recovered from the broker. Stay of appellant at Triveni Ghat, West Bengal *w.e.f.* 24.06.2009 to 28.06.2009 in the name of Ajay Singh also stands duly established by the testimony of PW-28 who proved case register, his hand writing in the case register also stands proved. PW-47, the wife of the appellant also proved the extra judicial confession made by the appellant to her.

23. In the case of *State of Rajasthan v. Raja Ram*, reported at (2003) 8 SCC 180, it was held as under:

“An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any Court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.”

24. The testimony of the wife of the appellant would show that the extra judicial confession made was genuine and voluntary.
25. 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.”

26. 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.”

27. 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.
28. 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.

29. In the light of the above discussion, we are satisfied that the State has been able to prove its case beyond any shadow of doubt. There is no infirmity in the judgment of the Trial Court. Applying the law laid down to the facts of the present case, the only conclusion which can be reached is that of guilt of the appellant for the commission of murder of Shiv Ram.
30. The appeal is without any merit, the same is accordingly dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

JANUARY 21, 2016
pst