

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Criminal Appeal No.D-857-DB of 2010 (O&M)

Hanuman

..... Appellant

Versus

State of Haryana

..... Respondent

Criminal Appeal No.D-1073-DB of 2011(O&M)

Mahender Singh and another

..... Appellants

Versus

State of Haryana

..... Respondent

Date of Decision : 6th December, 2017

**CORAM : HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI**

Present : Mr. P.S.Ahluwalia, Advocate
and Mr. Sanjive Sharma Advocate as Legal Aid Counsel
for the appellant.

Mr. Vivek Saini, DAG, Haryana.

RAJ SHEKHAR ATTRI, J.

The prosecution has come with a case where appellant Smt.Rajwanti in connivance with her paramour Mahender Singh and his friend Hanuman had committed murder of Jai Bhagwan, who was none else but her own husband.

This case is based on circumstantial evidence. Deceased-Jai Bhagwan was residing in a house in Bharat Colony, Faridabad alongwith

his wife Smt. Rajwanti and the children. The FIR was lodged by Satyawan, who is the real brother of deceased-Jai Bhagwan. According to him on 26.02.2010, he received a telephonic message from his cousin-Azad to the effect that his brother Jai Bhagwan had been murdered by someone. Therefore, Satyawan accompanied by Azad and his another brother-Bijender as well as some other villagers proceeded to the place of occurrence. He found that the dead body of Jai Bhagwan was lying at some distance from the house of deceased which was wrapped with a bed sheet. He immediately identified the dead body and suffered the statement before the Investigating Officer. After recording the statement, police made endorsement Ex.PE/1 on the basis of which formal FIR was registered under Sections 302, 201, 120-B/34 Indian Penal Code (in short 'the Code') and the investigation was initiated. Police visited the spot where dead body was lying and from near the dead body, the police recovered one electric wire which was about three feet in length, blood stained earth, plastic bag in which the dead body was kept and all these articles were taken into possession vide memo Ex.PK. The photographer was called at the spot who clicked the photographs Ex.P1 to Ex.P6 of the place from where the dead body was recovered. The inquest report was prepared and the dead body was sent to the hospital for conduct of post-mortum examination. On the search of house of the deceased, some pieces of bones, blood and human flesh were found. These articles were also collected from the spot. On the further search of the house one blood-stained *kulhari* (axe), blood-stained pillow cover of white and blue colour were also recovered and the same were put into parcel and duly sealed at the spot. The said sealed

parcel was taken into possession vide memo Ex.PS.

During the investigation, it has come to the notice of the Investigating Officer that apellant Smt.Rajwanti had extra marital relations with her co-appellant Mohinder Singh. Deceased Jai Bhagwan was desisting her for keeping illicit relationship with him, and advised to mend her ways but she did not act upon this rather continued her affairs with her paramour.

Thus, under these circumstances, she alongwith Mahender Singh was arrested in this case on 27.02.2010. While in police custody, she suffered disclosure statement Ex.PG and disclosed that she kept concealed her wearing clothes which were stained with blood and her mobile phone in her paternal house in Village Bhathgaon, District Sonapat. She also disclosed vide memo Ex.PJ the place where deceased was murdered.

However, on 01.03.2010, she suffered another disclosure statement Ex.PO and changed the version with regard to disclosure of abovesaid articles. This time she disclosed that mobile phone was given to Hanuman. Her worn clothes i.e. shirt and salwar stained with blood were put in a polythene bag and those were recovered concealed near a sewage drain near Kisan-Mazdoor Colony, Faridabad on her statement Ex.PO. These clothes were put in a parcel and duly sealed at the spot. She also got recovered one electric wife about 6½ feet long, which was also taken into possession from the spot.

Mahender Singh while in police custody, firstly disclosed the place of occurrence and then described the manner in which the crime was committed. He also suffered disclosure statement Ex.PM to the effect that

the clothes worn by him alongwith chunni with which deceased was strangled as well as his mobile phone had been kept concealed by him in his old house and he has specific knowledge of the same. His statement Ex.PM was recorded on 27.02.2010. However, Mahender Singh suffered another statement on 01.03.2010 and disclosed that infact all those articles were kept concealed near a sewage drain on Bye Pass Road, Faridabad. In pursuance of said disclosure statement, he got recovered one plastic polythene bag by removing the soil underneath the bush and from the said bag one *chunni* of light yellow colour, one mobile phone model 'Nokia 7610' having sim No.9024291570 were recovered. Those were put in the parcel and sealed vide memo Ex.PQ. Rough site plan was also prepared.

Appellant-Hanuman was arrested on 20.03.2010. While in police custody, he suffered disclosure statement and disclosed the place of occurrence as well as the place where the dead body of Jai Bhagwan was thrown. However, in pursuance of his statement, he got recovered the intoxicating tablets make RIVOTRIL USP, containing six tablets and those were taken into possession vide memo Ex.PX.

After conduct of postmortem examination, the viscra, blood stained earth, sample of blood and some bones alongwith *kulhari*, clothes worn by Rajwanti and those of Mahender were sent to chemical examiner, who after analysis of the same submitted his separate reports Ex.PA, Ex.P/A1 and Ex.P/A2 which are as under:-

Ex.PA-- Report of Forensic Science Laboratory for chemical tests and technics to detect alcohol from viscera in stomach, intestines, lungs, liver, spleen, kidneys and blood from heart. After conducting the chemical tests, it has been opined that

ethyl alcohol was detected and blood was found to contain ethyl alcohol in strength of 40.25 mg%.

***Ex.PA/1**—Report of Forensic Science Laboratory with regard to pieces of bones, recovered from the spot. However, no opinion regarding species of origin, age and sex in two pieces of bones recovered from the spot and other parts of bones. However, DNA test was recommended. No opinion was given.*

***Ex.PA/2** -Report of Senior Scientific Officer (Serology) wherein human blood was found on the garments i.e. lower, lady shirt, salwar and sample of blood collected from the spot. However, blood was detected on kulhari, blood stained earth, pillow cover, katta (plastic bag), baniyan (waist), underwear, bed sheet, lower, lady shirt salwar.*

After completion of investigation, challan was presented before the Magistrate who opined that the case is exclusively triable by the Court of Sessions. Consequently, the case was committed.

In order to prove its case, the prosecution examined Dr. Ram Bhagat (**PW1**), Head Constable Sarwan Kumar, Draftsman (**PW2**), Head Constable Ishwar Singh (**PW3**), ASI Satbir Singh (**PW4**), EHC Ramesh Kumar (**PW5**), Sunil Kumar, photographer (**PW6**), Constable Anju Kumari (**PW7**), Head Constable Satpal (**PW8**), Satyavan, complainant (**PW9**), Azad (**PW10**) and Sub Inspector Om Parkash (**PW11**).

After closure of the prosecution evidence accused were examined under Section 313 Cr. P. C. in order to afford them an opportunity to explain the incriminating circumstances appearing against them in the prosecution evidence but all of them took the plea of innocence and false implication.

After hearing the learned counsel for the parties, each of them

were convicted and sentenced as under:-

<i>Offence</i>	<i>Sentence</i>
<i>302 read with Section 34 IPC</i>	<i>Imprisonment for life with fine of Rs.50,000/-. In default of payment of fine, the defaulter convict would further undergo R.I. for one year.</i>
<i>201 read with Section 120-B IPC</i>	<i>Rigorous Imprisonment for seven years with fine of Rs.7,000/- each. In default of payment of fine, the defaulter convict would further undergo R.I. for seven months</i>
<i>120-B IPC</i>	<i>Rigorous Imprisonment for seven years with fine of Rs.7,000/-. In default of payment of fine, the convict would further undergo R.I. for seven months.</i>

We have heard the learned counsel for the appellants as well as learned State counsel and analysis the evidence available on the record.

It has been argued on behalf of the appellants that none of the appellants was present at the spot; that the prosecution failed to connect the circumstances leading to the guilt of the appellants; that the place of recovery, the place of occurrence as well as recovery of dead body were already within the knowledge of the investigating agency, therefore, the

witness was joined at the time of recording the disclosure statements as well as recovery of alleged articles; that nothing was recovered from the appellants; rather the investigating agency had manufactured another disclosure statement after three days i.e. on 01.03.2010; that no independent witness was joined at the time of recording of disclosure statements of the appellants as well as at the time of recovery and that the trial Court has wrongly applied the provision of Section 106 of the Evidence Act. According to them, there is no evidence at all against any of the appellants but the trial court failed to appreciate the evidence properly.

On the other hand, learned State counsel vehemently contended that so far as appellant Rajwanti is concerned, it is well proved that she had extra marital relationship with Mahender Singh but her husband was not accepting the same therefore she inconnivance with her said paramour wanted to kill her husband and this was cogent motive; that she had been residing with Jai Bhagwan in the same house where murder was committed, from where pieces of human bones, flesh, blood stained pillow cover were recovered; that the blood stained clothes of appellant Rajwanti establishes that she had also participated in the crime and all these circumstances are incriminating and sufficient to convict Rajwanti. Apart from it, she failed to furnish any explanation how her clothes were stained with blood and how the pieces of human bones were found lying in her house and in what manner *kulhari* recovered from her house was stained with human blood. According to him, the learned trial Court correctly drew adverse inference against her under the provision of Section 106 of the

appellants can be used against them and in pursuance of disclosure statement of Mahender Singh, mobile phone, chunni were recovered whereas from the possession of appellant Hanuman, the intoxicating tablets were recovered which also corroborated the prosecution case against them. He endorsed the findings of learned trial Court and urged for dismissing the appeals.

We have thoughtfully considered the rival contentions and critically examined the evidence available on the record.

This case is based on circumstantial evidence. It is settled proposition of law that conviction can be based on circumstantial evidence provided certain factors are fulfilled. In case **State of U.P. Versus Satish 2005 Supreme Court Cases 114**, Hon'ble Apex Court has summarized the factors which must be satisfied before a conviction can be recorded on the basis of circumstantial evidence. Firstly, the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; secondly those circumstances should be of definite tendency unerringly pointing towards guilt of the accused; thirdly, the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; fourthly, the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

Hon'ble Supreme Court in case **Kulvinder Singh versus State of Haryana 2011 AIR (SC) 1777** has observed in para no.16 as under:-

*“16. It is settled legal proposition that conviction of a person in an offence is generally based solely on evidence that is either oral or documentary, but in exceptional circumstances conviction may also be based solely on circumstantial evidence. The prosecution has to establish its case beyond reasonable doubt and cannot derive any strength from the weakness of the defence put up by the accused. However, a false defence may be called into aid only to lend assurance to the court where various links in the chain of circumstantial evidence are in themselves complete. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The same should be of a conclusive nature and exclude all possible hypothesis except the one to be proved. Facts so established must be consistent with the hypothesis of the guilt of the accused and the chain of evidence must be so complete as not to leave any reasonable ground for a 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. (vide: **Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 Supreme Court 1622 and Paramjeet Singh @ Pamma v. State of Uttarakhand, AIR 2011 Supreme Court 2000**)”.*

Now adverting to the facts of the case, first of all, coming to the cause of death of deceased-Jai Bhagwan. Undisputedly, the death was caused by homicidal act in a cruel manner. The medical board was consisted of doctors, Dr. Ram Bhagat, Dr. Ramesh Chander and Dr. Rajesh Dhiman. Out of them prosecution examined Dr. Ram Bhagat as PW-1.

The Medical Board observed the dead body of a well built and moderately

nourished adult male wearing white baniyan, dark blue coloured track lower, creamish coloured underwear with three strips of blue colour in the center and red coloured on sides on both lateral sides; that a saffron coloured torn bed-sheet with big blue flowers and blood stained in middle was wrapped around the dead body. PW1 found the following injuries on the body of deceased Jai Bhagwan:-

A dark red ligature mark was present around the neck except on left lateral side of neck at thyroid and cartilage level. The length of the ligature mark was 10" and breadth was 1½", no ligature material was present around the neck. Multiple abrasions of variable sizes were present on anterior and anterio lateral sides of neck over clavicular and both shoulders and below chin on right side. On dissection multiple haemorrhages and injury to musculature of neck seen below and around the ligature mark with fracture of thyroid cartilage. Beside ligature mark, following injuries were present on the body of deceased:-

- 1. A badly disfigured wound over upper part of the face and forehead with fracture left frontal, parietal and temporal bone with evisceration of brain tissue and depression of upper part of face due to fracture of left orbit bone and left cheek bone seen. On dissection no extravasation of blood seen in surrounding tissue of the scalp.*
- 2. Four burn marks punctuate shaped present over. 1. Right ring figure proximal phalanx dorsal side size .5x.5 cm. 2. Lateral side of right middle figure proximal phalanx .5x.3 cm in size. 3. Lower lip near left side size .75x.75 cm. 4. 1.5x.5 cm over palms all burn marks shows no subcutaneous line of redness.*
- 3. Four lacerations of size 5cm to 3cm in length and 1 to 2*

cm breadth present on anterior side of right thigh below inguinal area with fracture of femur seen.

4. Three incised wound of size 3x2.5", 3x1½" and 2x1" present were on lateral side of left side thigh. Below hip area with under line fracture femur seen.

- Pleurae was pale, larynx, trachea and both lungs were pale. A piece of lung tissue sent for chemical examination.*
- Right side of heart contained dark fluid blood and left side was empty blood from heart sent for chemical examination.*
- Mouth pharynx and oesophagus showed pale mucosa*
- Peritoneum was pale, stomach was pale and sent for chemical examination.*
- Small intestine, large intestine, liver spleen and kidneys were all pale and piece of each sent for chemical examination.*
- Bladder was congested and contained about 10cc of urine.*
- Organs of generation, Internal pale.*

Opinion:- *The cause of death in this case in the opinion of board was asphyxia due to strangulation which was antemortem in nature and sufficient to cause death in ordinary course of nature. All other injuries (other than those over neck and surrounding area) were postmortem in nature. However viscerae were sent to rule out sedative poisoning.*

From the medical evidence, it is well established that cause of death was asphyxia due to strangulation in nature and sufficient to cause death in ordinary course of nature.

Now coming to the role of Rajwanti. The prosecution has produced following circumstances against her:-

- (a) That she and deceased were residing together in the house in question from where blood stained *kulhari*, electric wire, pieces of human bones, blood stained pillow cover were recovered;
- (b) That she had illicit relations with accused Mohinder Singh;
- (c) That the dead body was lying near the said house where Rajwanti with her husband was residing.
- (d) That she had demarcated the place of occurrence.
- (e) She absconded from the spot. Her wearing clothes were stained with blood and she had concealed those clothes on the bank of sewerage drain;
- (f) She failed to furnish any explanation as to how her husband had died, why she had left the company of her husband or under what circumstances his dead body was lying near her house;

We have considered all these contentions and would like to discuss in seriatim.

Regarding illicit relations:

First of all coming to the circumstance of illicit relations between appellants-Mahender Singh and Rajwanti. To prove this fact, prosecution has produced PW10 Azad who has categorically stated that both accused Rajwanti and Mahender Singh had been maintaining illicit liason and deceased Jai Bhagwan had been objecting to the same; that

and in January, 2010 he had pacified the matter. He has been cross-examined at length and his evidence inspire confidence. Thus, it is well established that Rajwanti had extra marital relations with her co-appellant Mahender Singh and Jai Bhagwan was objecting to their relations. This fact establishes a cogent motive to commit the crime.

Regarding joint residence:

Now coming to the fact with regard to joint residence of deceased Jai Bhagwan and Smt. Rajwanti, PW9 Satyawan, who is the real brother of deceased, has categorically stated that deceased Jai Bhagwan alongwith his wife Rajwanti and children was residing in Bharat Colony, Faridabad for the last 20 years. Even PW10 Azad has also corroborated this fact. Both of them has been cross-examined on this point but this fact remained unchallenged. Thus, evidence of PW9 Satyawan and PW10 Azad establishes that both deceased-Jai Bhagwan and appellant-Rajwanti were residing together in the said house at Faridabad. Evidence has been produced by the prosecution that from this house pieces of human bones and *kulhari*, piece of wire, human flesh and blood stained pillow cover were recovered which were taken to the possession vide memo Ex. PS on 26.02.2010. All the articles alongwith the wearing cloths of Smt. Rajwanti as well as of the deceased were sent to the forensic science laboratory. The chemical report Ex.P/2 establishes that pillow cover, *kulhari* were stained with human blood. It has also been established that deceased was having blood group 'A' and even similar blood group was detected on the lower of track suit of deceased as well as on the lady shirt and salwar of the appellant-Rajwanti. Thus, the wearing clothes of appellant Rajwanti which

were recovered on her disclosure statement were found to be stained with blood group 'A' which group of blood is similar to that of the deceased.

Recovery of dead body:

At this spot the investigation officer had prepared the inquest report alongwith the site plan Ex.PT from where the dead body of the deceased was recovered and the spot is at a distance of 78 steps from the house of deceased-Jai Bhagwan. This is also the spot from where one electric wire of having 3 feet length, blood stained soil and plastic bag were recovered by memo Ex.PK.

Disclosure statements:

It was vehemently contended that on 27.02.2010, Rajwanti had suffered disclosure statement Ex.PG but nothing was recovered, on the basis of same; that her second statement Ex.PO was recorded on 01.03.2010 which is not believable. However, in pursuance of her disclosure statement she got demarcated vide Memo Ex.PJ the place which is in her house where the murder of Jaibhagwan was committed. We have considered this contention but the same does not carry weight. In her first statement Ex.PG, Smt. Rajwanti disclosed that she had kept concealed the clothes in Village Bhatgaon, but in her second statement recorded on 01.03.2010, she changed her version and disclosed the fact that infact those articles had been kept concealed by her in a sewage drain after putting the same in a polythene bag and in pursuance thereof she got recovered the polythene bag. From the disclosed place she got produced suit worn by her which included one *shirt-salwar* as well as one electric wire. It seems that

27.02.2010 with regard to concealing all these articles in the area of Village Bhatgaon, due to which no adverse inference can be drawn against the prosecution. However, in pursuance of disclosure statement, these articles were recovered successfully on 01.03.2010 vide recovery memo Ex.PP, out of which, her wearing clothes i.e. shirt and salwar were stained with human blood.

Absconding:

It has come into evidence that Rajwanti was residing in the same house. But when police officials and her relatives came there she had gone missing. She had absconded and was arrested on 27.02.2010. She failed to take an acceptable explanation regarding the same.

On the careful examination of the evidence, it has been established that she had been residing with her husband in the same house from where blood stained pillow cover, *Kullhari*, pieces of human flesh and bones were recovered. She also absconded from her house which itself requires an explanation from her. Clothes worn by her were stained with human blood of group 'A' which is the blood group of the deceased.

Thus, from the analysis of evidence, all the above enumerated circumstances have been duly established and those were within the special knowledge of appellant Rajwanti but she failed to submit a cogent or acceptable explanation. We are not oblivious to the fact that in criminal law the burden of proof is always upon the prosecution and never shifts, whatever the evidence may be during the process of the trial. But there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These

facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts.

Section 106 of Evidence Act which states that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. It is true that this Section cannot be used to shift the onus of proving the offence from the prosecution to the accused. But in the present case there is satisfactory evidence which fastens or conclusively fixes the liability for the death of accused on the inmate of the house present there at the relevant time. So in the absence of any other explanation the only possible inference is that the person present in the house had participated in the act. If any of the inmates claims contrary under Section 106 of the evidence Act the burden of proving that fact is upon him since that is within his/her special knowledge. In **Shambho Nath v. State of Ajmer, AIR 1956 Supreme Court 104 : (1956 Cri LJ 794)** the scope and object of Section 106 of the Evidence Act came to be considered by the Hon'ble Supreme Court. It was held as under:-

"Section 106 is an exception to Section 101. Section 101 lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are 'especially' within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that it means facts that are pre-eminently or exceptionally within his knowledge."

In (2006) 10 SCC 681, *Trimukh Maroti Kirkan v. State of Maharashtra*, it was observed as follows :-

"15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act, there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation."

Similar view has been taken in case of *State of Rajasthan v.*

Kashi Ram AIR 2007 SC 144 as follows :-

"23. It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so, he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in

*discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation, as an additional link which completes the chain. The principle has been succinctly stated in **Naina Mohd., Re. (AIR 1960 Mad 218).**"*

In the circumstances of the case, when prosecution proved abovesaid circumstances of the facts, the burden of proof shifted upon her to explain or to disprove the abovesaid incriminating circumstances appearing against her but she kept mum. She failed to explain as to why (i) she had absconded from her house; (2) in what circumstances the dead body of her husband was found near her house (3) how her clothes i.e. *slawar* and *kameej* were stained with blood of group 'A' which was the blood group of her husband and (4) under what circumstances, pieces of human bones/flesh as well as blood stained *kulhari* was recovered from her house. She failed to submit a reasonable and acceptable explanation. Thus, an inference can safely be drawn against her that she is concealing the truth and she is very well knowing the circumstances leading to death of her husband. Thus to the mind of the Court, the prosecution has successfully proved her role in the crime and establishes that she had committed murder of her husband.

So far as appellants Mahender Singh is concerned, the

- (i) He had illicit relations with his co-appellant Rajwanti which were always opposed and objected by the deceased;
- (ii) Vide his disclosure statement Ex.PH, he has disclosed and demarcated the crime scene;
- (iii) Recovery of mobile phone and *chunni* vide memo Ex.PN and the doctor who conducted postmortem examination on the legature marks on the neck of the deceased and in the cross-examination he has categorically stated that those may occur with a cloth.

Police recorded statement of Mahender Singh on 01.03.2010 wherein Mahender Singh disclosed about concealing of one mobile phone and one *chunni* in the area of Kissan Mazdoor Colony, Bye Pass Road, Faridabad. These articles were recovered in pursuance of disclosure statement. However, no recovery of his wearing clothes was effected as he has stated that infact he had thrown the clothes in a canal. It seems that he tried to mislead the investigating agency firstly he suffered disclosure statement Ex.PM on 27.02.2010 whereby he disclosed for kept concealing his clothes and other articles in a old house in the area of Kahanour but on 01.03.2010, he changed this version and took the police party to the area of Kissan Mazdoor Colony and got recovered these articles except the wearing clothes.

It is the case of the prosecution as made out through disclosure statements of all the appellants that all of them had murdered the deceased by strangulation with the help of *chunni*.

As per the postmortem report, the cause of death is also asphyxia which is due to strangulation.

It has come into evidence that both Mahender Singh and Smt. Rajwanti were having extra marital affairs. To the mind of this Court this was strong motive behind the murder of Jai Bhagwan. Thus the recovery of '*chunni*' is a strong circumstance. Chunni is not meant for this appellant nor he has taken a plea if it belongs to any of the ladies known to him. No reason has been assigned as to why he had kept concealed the *chunni* at a specified place. The doctor has categorically stated in the cross-examination that the strangulation may be effected with the help of a cloth and, thus, chunni can be used for this purpose. It seems that appellant Mahender Singh made an unsuccessful endeavour to misguide the Investigating Officer by suffering a confusing statement Ex.PM. This fact itself is an incriminating circumstance against this appellant. There is one more incriminating circumstance against appellant Mahender Singh that he had shown a place where the crime was committed. Although, the Investigating Officer had inspected the house of deceased, but he had no knowledge where infact the murder was committed. On 26.02.2010, he prepared rough site plan Ex.PQ wherein he had shown point A as the place where the persons present had stated that deceased was sleeping on a cot in the room, which is the eastern/southern side and point B in the site plan is the place where blood stained cot was lying. Upto this stage, the investigating agency was not in the knowledge that infact which part of the house was used to commit murder. It was Mahender Singh who firstly, by

deceased was murdered. He has categorically stated in Ex.PH that deceased was murdered in the room which is in the eastern side of the house where he was sleeping on a cot. He also disclosed the place where the dead body was thrown after committing the murder. This fact was also corroborated by appellant Rajwanti.

Appellant Mahender Singh did not explain as to how he had specific knowledge about particular place in the house of deceased. He failed to submit any explanation during the trial about this. Similarly, he failed to explain under what circumstances he himself kept concealed the *chunni* which does not belong to him. Thus, both these circumstances are strong evidence against Mahender Singh and he failed to explain the same. To the mind of this Court, the prosecution has also been able to prove the charge against accused Mahender Singh beyond reasonable shadow of doubt.

Now coming to the case against appellant Hanuman. He was arrested on 20.03.2010. The prosecution had relied upon following circumstances to prove his guilt:-

- (a) that after his arrest he had taken the police party to the place of occurrence and shown the spot where crime was committed;
- (b) that he had supplied intoxicating tablets to his co-appellants.
- (c) that he participated in the act of strangulation.

We have considered these circumstances in detail but those

of the spot of crime is concerned, the same has already been demarcated on 01.03.2010 by his co-appellants. Thus, the same spot alleged to be demarcated by him after three weeks therefrom loses its significance and the same cannot be taken as an incriminating circumstance against him.

The next circumstance with regard to supply of intoxicating tablets make RIVOTRIL USP and from his possession these tablets were recovered on 21.03.2010 but there is no evidence if the deceased had consumed these tablets. From postmortem report, it transpires that the deceased had consumed alcohol before his death. The visra was sent to the Forensic Science Laboratory and vide report Ex.PA, it has been specifically opined that only ethyl alcohol was detected from the same and from the 2ml sample of the blood taken from the heart, it was found that it contained 40.25 mg% strength of the ethyl alcohol. However, no common poison was detected. There is no other evidence, if he had participated in the crime or hatched criminal conspiracy. Thus, appellant Hanuman is entitled to benefit of doubt.

Prosecution made a feeble endeavour to establish that appellant Hanuman was associated with appellants Mahender Singh and Rajwanti at the time of strangulating deceased. But there is no evidence to prove this fact except the self-inculpatory part of disclosure statements recorded under Section 27 of the Evidence Act which cannot be used against the appellant as the same amounts to a confession before the police. The prosecution case is not supported by any other circumstance pointing towards the guilt of appellant Hanuman. Thus, he is entitled to benefit of doubt which is

order qua him deserve reversal.

As a result of above discussion, this appeal is partly accepted qua appellant Hanuman, as such, he stands acquitted of the charges framed against him. If he is in jail, he be set at liberty forthwith.

However, this appeal stands dismissed against appellants Smt. Rajwanti and Mahender Singh. The judgment of conviction qua them stands upheld and sentenced imposed upon them is maintained.

(MAHESH GROVER)
JUDGE

(RAJ SHEKHAR ATTRI)
JUDGE

06th December, 2017

mamta-M

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No