

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 23.05.2017
Judgment Pronounced On: 01.09.2017

CRL.A. 740/2014

PRAMOD KUMAR JAISWAL

...Appellant

Through: Mr. Ajay Verma, Advocate

Versus

STATE (GOVT. OF NCT OF DELHI)

... Respondent

Through: Ms. Rajni Gupta, APP for
State with Inspector Kusum Lata, P.S.
Dwarka, South.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE MUKTA GUPTA

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present appeal instituted under the provisions of section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'CrPC') assails the judgment dated 19.04.2014 and the order on sentence dated 22.04.2014, rendered by the Ld. Additional Sessions Judge, Dwarka Courts, Delhi. By way of the impugned judgment dated 19.04.2014 and the order on

sentence dated 22.04.2014, the appellant has been convicted for the commission of offences punishable under the provision of section 302, of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC'); and sentenced to undergo rigorous imprisonment for life, alongwith the payment of fine of Rs.10,000/-. In default of the payment of fine, the appellant has been sentenced to undergo simple imprisonment for a period of three months.

2. The fulcrum of the instant case is that, on 10.05.2011, the appellant caused the death of his wife Geeta *alias* Anita *alias* Guddi *alias* Sunita (hereinafter referred to as the 'deceased victim'), by stabbing her with a knife, in their rented room situated at the House No.66, Harijan Basti, Krishna Kunj, Near Primary School, Village Bagdola, Sector-8, Dwarka (hereinafter referred to alternatively as the 'rented room/crime spot/House No.66'); and thereafter, fled from the crime spot after locking the deceased victim inside their rented room.

3. It is the case of the prosecution that on 13.05.2011, pursuant to DD No. 13A, the police officials (PW-3 and PW-4) reached the crime spot to find the decomposed dead body of the deceased victim lying in their rented room. PW-1, the care-taker and a tenant of the said House No.66, informed the police that the deceased victim and her husband/ appellant, were residing

in the rented room, where the decomposed dead body of the deceased victim was found. PW-1 further informed the police that on 10.05.2011, at around 10 P.M., when he met the appellant, to collect the rent for the room; the latter told him that he would pay the rent on 15.05.2011 and would also vacate the rented room on the same day. PW-1 further told the police that the rented room was found locked on 11.05.2011 and 12.05.2011. On 13.05.2011, PW-1 and other tenants found a foul smell emanating from the rented room and consequently, the lock of the rented room was broken open by PW-1 and other tenants, and the decomposed dead body of the deceased victim was found lying therein.

4. The crime team was called to the spot and investigation was conducted. Upon the statement of PW-1, FIR No.119/2014 dated 13.05.2011 was got registered. Articles were lifted from the crime spot and seized by PW-21 [Ex.PW-1/B, Ex.PW-1/C, Ex.PW-1/D, Ex.PW-1/E, Ex.PW-1/F, Ex.PW-1/G, Ex.PW-1/H] and were sent for scientific examination. Chance prints were lifted by the crime team from the crime spot and were also sent for scientific examination.

5. The dead body of the deceased victim was sent for post-mortem on 19.05.2011, and thereafter, the dead body of the deceased victim was handed

over to PW-15 (appellant's cousin) and other relatives of the deceased victim.

6. During the investigation of the case, PW-21 met PW-5, at whose instance the appellant was apprehended [arrest memo exhibited as Ex.PW-8/C] at Bihar. The personal search of the appellant was conducted vide personal search memo [Ex.PW-21/C] and the police recovered a key from the possession of the appellant [seized vide seizure memo Ex.PW-12/B].

7. The disclosure statement of the appellant was recorded [Ex.PW- 21/E] and the appellant was brought to Delhi on 18.05.2011. On the same day, at the instance of the appellant, one broken knife [Ex.PW-12/A] was recovered from the DDA park behind DTC bus depot, Sec-8, Bagdola, Delhi. The said knife was also sent for scientific examination. Further, on the pointing of the appellant, the scene of crime was got verified vide memo Ex.PW-12/C.

8. The finger prints of the appellant were taken and sent to the Finger Prints Bureau, Kamla Market, Delhi, to compare the same with the chance prints lifted by the crime team from the crime spot.

9. Learned counsel appearing on behalf of the appellant would urge firstly that, the prosecution has failed to establish that the appellant was residing with the deceased victim at the said rented room. It would also be

asseverated that the Ld. Trial Court erred in holding that the appellant was last seen together with the deceased victim on the date of the incident.

In this behalf, the learned counsel appearing on behalf of the appellant would draw the attention of this Court to the testimonies of PW-1 and PW-11 (tenants at House No.66).

10. With regard to the testimony of PW-1, it would be asseverated that the same is unreliable, inasmuch as, PW-1 failed to demonstrate that he was the landlord and that he had rented out the said room to the appellant and the deceased victim. It would then be asserted that neither was the landlord of the said plot examined by the prosecution; and nor was his authorisation to PW-1 to collect rent on his behalf, brought on record.

11. In relation to the testimony of PW-11, it would be argued that she did not remember the date on which she saw the appellant in the said room. It would further be argued that the testimony of PW-11 is untrustworthy, inasmuch as, PW-11 initially testified that the appellant was occupying the room for one month before the incident, but later deposed that the appellant was occupying the room 15 days prior to the date of the incident.

12. Secondly, it would be submitted on behalf of the appellant that, the recovery of the key to the house where the body of the deceased victim was found; and the recovery of the weapon of the offence, would amount to an

inadmissible recovery of evidence, since no independent or public witness was joined by the police whilst conducting the personal search of the appellant and whilst making the alleged recovery of the knife.

13. Learned counsel on behalf of the appellant would then asseverate that there is no evidence on record to establish that he was the owner of the SIM Card of the phone number 9958277374.

14. It would also be contended on behalf of the appellant that he has been falsely implicated in the instant case by the prosecution in connivance with his brother on account of a property dispute between the appellant and his brother. In this behalf, it would also be asserted that the appellant in fact, did not know the deceased victim.

15. Lastly, the learned counsel appearing on behalf of the appellant would urge that the prosecution has failed to establish any motive of the appellant to cause death of the deceased victim.

16. Per contra, Ld. Additional Public Prosecutor appearing on behalf of the State, whilst supporting the impugned judgement in its entirety, would urge that the prosecution case has been proved beyond reasonable doubt; and that the same has been corroborated by way of medical and scientific evidence on record.

17. It would then be submitted that the recovery of evidence would not be tainted on account of non- joinder of a public or independent witness at the time of such recovery.

18. It would also be asseverated on behalf of the State that the weapon of crime was recovered at the instance of the appellant and was sent for scientific examination. In this behalf, it would be asserted that the blood found on the recovered knife [Ex.PW-12/A] matched with the blood group found on the clothes of the deceased victim.

19. We have heard the learned counsels appearing on behalf of the parties and perused the entire case record.

20. The present case is one based on circumstantial evidence and at the outset, it would be profitable to refer to the legal position with regard to proving a prosecution case based on circumstantial evidence. In ***Sharad Birdichand Sharda v. State of Maharashtra***, reported as 1984 AIR SC 1622, the Hon'ble Supreme Court whilst placing reliance on the five golden principles enunciated in its decision in ***Hanumant*** (*supra*), elaborated the nature, character and essential proof required in criminal cases which rest on circumstantial evidence. The relevant paragraphs of the report have been extracted hereinbelow:

“152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is *Hanumant v. State of Madhya Pradesh* [AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] . This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of *Tufail (Alias) Simmi v. State of Uttar Pradesh* [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and *Ramgopal v. State of Maharashtra* [(1972) 4 SCC 625 : AIR 1972 SC 656] . It may be useful to extract what Mahajan, J. has laid down in *Hanumant case* [AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

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

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

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Cri

LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

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

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

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

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

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

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

155. It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in *King v. Horry* [1952 NZLR 111] thus:

“Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for.”

156. Lord Goddard slightly modified the expression “morally certain” by “such circumstances as render the commission of the crime certain”.

157. This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. *Horry case* [1952 NZLR 111] was approved by this Court in *Anant Chintaman Lagu v. State of Bombay* [AIR 1960 SC 500 : (1960) 2 SCR 460 : 1960 Cri LJ 682] . *Lagu case* [AIR 1960 SC 500 : (1960) 2 SCR 460 : 1960 Cri LJ 682] as also the principles enunciated by this Court in *Hanumant case* [AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases — *Tufail case* [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] , *Ramgopal case* [(1972) 4 SCC 625 : AIR 1972 SC 656] , *Chandrakant Nyalchand Seth v. State of Bombay* [Criminal Appeal No 120 of 1957, decided on February 19, 1958] , *Dharambir Singh v. State of Punjab* [Criminal Appeal No 98 of 1958, decided on November 4, 1958 printed on green papers in bound volumes] . There are a number of other cases where although *Hanumant case* [AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] has not been expressly noticed but the same principles have been expounded and reiterated, as in *Naseem Ahmed v. Delhi Administration* [(1974) 3 SCC 668, 670 : 1974 SCC (Cri) 198, 200 : (1974) 2 SCR 694, 696] , *Mohan Lal Pangasa v. State of U.P.* [(1974) 4 SCC 607, 609 : 1974 SCC (Cri) 643, 645 : AIR 1974 SC 1144, 1146] , *Shankarlal Gyarsilal Dixit v. State of Maharashtra* [(1981) 2 SCC 35, 39 : 1981 SCC (Cri) 315, 318-19 : (1981) 2 SCR 384, 390 : 1981 Cri LJ 325] and *M.G. Agarwal v. State of Maharashtra* [AIR 1963 SC 200 : (1963) 2 SCR 405, 419 : (1963) 1 Cri LJ 235] — a five-Judge Bench decision.”

(Emphasis supplied.)

21. In view of the dictum of the Hon’ble Supreme Court in *Sharad Birdhichand Sharda* (*supra*), the important circumstances which this Court has to take into consideration for the adjudication of the present appeal are as follows:

- (a) Whether the appellant had the opportunity or occasion to commit the crime?
- (b) Whether the deceased victim died of the injuries caused to her by the weapon of offence?
- (c) Whether the weapon of the offence was recovered from his possession or at his instance?
- (d) Whether the appellant had motive to kill his wife, the deceased?

22. A perusal of the testimony of PW-1 would reveal that the appellant came to the House No.66, on 05.04.2011, for taking a room on rent. The appellant did not furnish any identification to PW-1 but gave him his mobile number (9958277374) on a piece of paper. On 05.05.2011, PW-1 had gone to collect rent from the appellant on instructions of Hoshiyar Singh (the owner of House No.66); and was told by the appellant that he would pay the rent on 10.05.2011. On 10.05.2011 when PW-1 went to the room of the appellant at 10 P.M., he was told by the appellant that the latter would pay the rent on 15.05.2011 and would also vacate the room by that day. It has also been testified by PW-1 that the room of the appellant remained closed on the 11.05.2011 and 12.05.2011. On 12.05.2011, other tenants of House No.66, informed PW-1 of a foul smell coming from the room of the appellant. On 13.05.2011, when the foul smell became unbearable, all the

tenants and PW-1, including the CRPF officials assembled outside the rented room of the appellant and the lock of the door of the rented room was broken open. PW-1 testified that he saw the dead body of the appellant's wife lying on the cot and that thereafter he informed the police.

Whilst the police conducted the search in the room, one photo album was recovered amongst other articles. It has been testified by the PW-1 that the said photo album was shown to him and to other tenants; and that all of them identified the appellant as the husband of the deceased, after seeing the album. The said photo album was also identified by PW-1 before the Ld. Trial Court and same is Ex.P-1. PW-1 also identified 14 loose passport sized and identity card sized photographs which were seized by the police from the room of the appellant. PW-1 also identified 01 gown (maxi) as the one that was recovered by the police [Ex.P-7].

23. A perusal of testimony of PW-11 would reveal that she was also residing in a rented room in house no. 66, Harijan Basti, Baghdola, Delhi. PW-11 has deposed that the appellant was residing in a room on the first floor of the House No.66 with his wife, namely, Geeta. It has also been testified by PW-11 that the appellant has two sons. She also testified that the accused was residing in a room at house No. 66 for 15 days before the date of the incident. PW-11 further testified that, on 10.05.2011, at around 11.30

P.M., her son knocked on the door of the appellant's room and the appellant scolded him and asked him to go away.

24. Although PW-15 turned hostile during cross-examination, it would be relevant to note that PW-15 deposed in his examination-in-chief that the appellant is the son of his paternal uncle. PW-15 has further deposed that the appellant, alongwith his wife, Geeta (deceased victim), came to Delhi and had stayed with him. He also testified that the appellant has two sons with the deceased victim and two sons from his other wife, Munni.

25. The report of the fingerprint bureau [Ex.PW-10/A] concludes that the chance prints taken from the empty half sized bottle of whiskey, recovered from the rented room, which were sent for scientific examination [Ex.PW-9/A] matched the fingerprint of the appellant.

26. Further, the key for the lock on the door of the rented room, where the body of the deceased victim was found; was recovered from the possession of the appellant at the time of his arrest in Bihar. [Seizure Memo]

27. The contention raised on behalf of the appellant that the prosecution has failed to bring on record any proof of rental agreement made by the appellant *qua* the rented room at House No.66; and the proof of rental agreement of PW-11 and *qua* her residency in House No.66, is untenable and thus, cannot be accepted. In this behalf, the Ld. Trial Court has observed

in the impugned judgement that, it is a common practice in Delhi to rent out rooms without entering into any written contract and furthermore, without even issuing a receipt *qua* the rent.

28. The mere fact that there was no written agreement or rent receipt does not *ipso facto* prove that there does not exist any contractual/ rental relationship between the parties, inasmuch as, there is no statutory requirement that for creation of tenancy, any written agreement is pre-requisite. Even oral tenancy can be created. [Ref: Decision of a coordinate bench of this Court in ***Dinesh Kumar v. State of NCT of Delhi***, in Crl. Appeal No. 1234/2010].

29. In light of the aforesaid legal position, and in view of, (i) the testimony of PW-1 and PW-11; (ii) report of the fingerprint bureau, Ex.PW-10/A; (iii) the recovery of key of the lock affixed on the door of the rented room, from the appellant; and (iv) the recovery of photo album with pictures of the appellant and the deceased victim, from the rented room, the inescapable conclusion one arrives at, is that **the appellant rented a room at House No.66, to live with the deceased victim at the relevant time.**

30. In his statement recorded under the provision of section 313 of the CrPC, the appellant has stated that the deceased victim was not his wife.

However this position is evidently negated by the testimony PW-1, PW-11 and PW-15.

31. In this behalf, it is trite to observe that in a case of circumstantial evidence, as the instant case, when the accused offers an explanation and that explanation is found to be untrue, then the same offers an additional link in the chain of circumstances to complete the chain. [Ref: *Swapan Patra v. State of West Bengal*, reported as (1999) 9 SCC 242; *State of Maharashtra v. Suresh*, reported as (2000) 1 SCC 471; *Kuldeep Singh v. State of Rajasthan*] Furthermore, in *Hanumant* (*supra*), the Hon'ble Supreme Court has observed as follows:

“159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier viz. before a false explanation can be used as additional link, the following essential conditions must be satisfied:

- (1) various links in the chain of evidence led by the prosecution have been *satisfactorily proved*,
- (2) the said circumstance points to the guilt of the accused with reasonable definiteness, and
- (3) the circumstance is in proximity to the time and situation.

160. If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise.”

32. The appellant has also contended that he has been falsely implicated in the present case at the behest of his own brother, with whom he is stated to have a property dispute. However, no evidence has been brought on record by the appellant in support of this defence. Furthermore, a perusal of the testimony of PW-15 (Paternal Cousin of the Appellant) would also reveal that, no questions with regard to any property dispute between the appellant and his brother were put to him by the appellant, to elicit the truth behind the appellant's defence.

33. Therefore, in the instant case, the statement of the appellant that, the deceased victim was not his wife and that he has been falsely implicated at the behest of his brother, would serve as an additional link in the chain of circumstances, thus completing the chain. In view thereof, the bald assertions made on behalf of the appellant are outrightly rejected.

34. The appellant has also contended that he did not have ownership of the said mobile number 9958277374. A perusal of the testimony of PW-22, the nodal officer of Bharti Airtel Limited, would reveal that the mobile number- 9958277374 was registered in the name of one, Dileep Kumar Mehto. Although PW-15 (appellant's cousin) resiled from his deposition made during his examination-in-chief, it has been clearly testified by him that, Dileep Kumar Mehto is his friend, whose SIM Card for the said mobile

number was lying with PW-15. PW-15 also deposed that he handed over the SIM Card for the said mobile number to the appellant, since Dileep Kumar Mehto had gone to his village at the relevant time. In this behalf it would also be relevant to note that, PW-1 has deposed that whilst taking the room on rent at House No.66, the appellant wrote his number on a sheet of paper from a notebook to give to PW-1 [Ex.P8]. PW-21 has also testified that after obtaining the Call Details Record with regard to the said mobile number, the appellant's cousin (PW-15) was traced and eventually, the appellant was apprehended in Bihar.

35. In this behalf, it would also be relevant to note that the Ld. Trial Court has observed that merely because the said mobile number did not belong to the appellant, it would not belie the case of the prosecution, inasmuch as, it is possible that whilst taking a premises on rent, one gives a number of his acquaintance.

36. In view of the foregoing, the appellant cannot be heard to say that merely because the said mobile number was not registered in his name, he could not have given the same to PW-1 whilst taking the room on rent at House No.66.

37. Coming now to the challenge to the recovery of the weapon of offence at the instance of the appellant and of the key from his possession. It is a

settled legal position that when recovery is effected pursuant to any statement by the accused, the document prepared by the investigating officer contemporaneous with such recovery need not necessarily be attested by an independent witness. If any such statement leads to the recovery of any article, it is open to the investigating officer to take the signature of any person present at that time, on the document prepared for such recovery. However, if no witness was present, it would not make the document prepared in relation to the recovery, a tainted one and the recovery evidence, unreliable. [Ref: ***State, Govt. of NCT of Delhi v. Sunil and anr.***, reported as **(2001) 1 SCC 652**]

38. It would be trite to observe that it is a common experience that public persons are generally reluctant to join police proceedings. Thus, the Court cannot ignore this handicap with which the investigating agency has to discharge its duties. The Court, therefore, instead of doubting the prosecution case for want of public witnesses, must consider the broad spectrum of the prosecution story and then search for the nugget of truth with regard to probability, if any, suggested by the accused. [Ref: ***Appabhai & Anr. v. State of Gujarat***, reported as **AIR 1998 SC 696**]

39. In the present case, the recovery of a broken knife which was used for the commission of the offence, [Ex PW-12/A] was recovered from the DDA

Park behind DTC Bus Depot, Sec-8, Bagdola, Delhi, at the instance of the appellant. The testimony of PW-21/IO, clearly demonstrates that no public witness joined the investigation during the recovery of the said knife, despite request. The testimony of PW-17 also demonstrates that no public witnesses stopped to join the investigation when the recovery of the said knife was being made at the instance of the appellant. Furthermore, the testimony of PW-12, also makes it evident that despite the efforts of PW-21/IO to join public witnesses during the recovery of the said knife, none joined the investigation.

40. Therefore, in light of the aforesaid position of law, in the present case, the recovery of the knife at the instance of the appellant cannot be considered as unreliable, purely, on account of non-joining of any independent witnesses during the seizure.

41. The Hon'ble Supreme Court, in *Tahir v. State*, reported as **AIR 1996 SC 3079**, with regard to the reliability on the testimony of the police officials in the absence of any public or independent witness has observed that, no infirmity attaches to the testimony of police officials, merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by

some independent evidence. The rule of prudence only requires a more careful scrutiny of their evidence, since they can be said to be interested in the result of the case projected by them. Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the credit worthiness of the prosecution case.

42. A perusal of the testimony of PW-21, PW-12, PW-16 and PW-17 would reveal that a key was recovered from the appellant whilst conducting his personal search at the time of his arrest in Bihar [seizure memo Ex.PW-12/B]. The said key was identified before the Ld. Trial Court by PW-12. The said seizure memo has been signed by PW-21, PW-12, PW-16 and PW-17.

PW-5 (public witness), a resident of Muzaffarpur, Bihar, has testified that he knows the appellant, as the latter used to reside in the neighbourhood of his in-laws. He informed the police on 17.05.2011 that, the appellant had gone to the house of his sister, in Muzaffarpur, Bihar.

The testimony of PW-8 (SI Raman Kumar, P.S. Town, Muzaffarpur, Bihar) would reveal that he joined the investigation conducted by the police team led by PW-21 in Bihar. PW-8 has further deposed that the appellant

was arrested by PW-21, at the instance of PW-5; and that a key was recovered from the possession of the appellant. The testimony of PW-8 further makes it clear that at the time of the arrest of the appellant, PW-5 was present, who also signed the arrest memo [Ex.PW-8/C].

A perusal of the arrest memo of the appellant would show that the same was also signed by PW-5 and PW-8.

43. In view of the critical analysis of the evidence of the aforesaid police officials (PW-12, PW-16, PW-17, PW-21, PW-8), we are of the view that they are trustworthy witnesses and their evidence suffers from no infirmity whatsoever. Nothing has been brought out in their cross-examination which may create any doubt about its veracity. Therefore, merely because the seizure memo of the key was not got signed by PW-5 or any other independent witness, the recovery of the said key cannot be said to be tainted.

44. A perusal of testimony of PW-4 (Dr. Santosh Kumar, Sr. Resident, Department of Forensic Medicine, DDU Hospital, Delhi) would reveal that he conducted the post-mortem examination of the dead body of the deceased victim. In the post mortem report [Ex.PW-4/A], it has been opined that the cause of death was shock caused by penetrating injuries to multiple vital organs caused by a sharp edged pointed weapon like a knife; all the injuries

were ante-mortem in nature. It has further been opined that the injuries were sufficient to cause death in the ordinary course of nature both, individually as well as in combination.

45. A perusal of the subsequent report rendered by PW-4 which is Ex.PW-4/B, would reveal that all the injuries were possibly inflicted by the weapon of offence sent for examination.

46. One broken knife having metallic blade and plastic handle, which was recovered at the instance of the appellant was sent for scientific examination along with other articles, including the blood stained clothes of the deceased victim (maxi). The FSL result Ex.PW-21/L concludes that blood was detected on the maxi of the deceased victim; the weapon of offence recovered at the instance of the appellant; and on one knife recovered from the crime spot. A perusal of the FSL result further reveals that the blood found on the knife recovered at the instance of the appellant and the blood found on the clothes of the deceased victim was of 'B' group.

47. In view of the foregoing, it is manifest that, (i) the injuries found on the body of the deceased victim had caused her death; and (ii) the said injuries were caused by stabbing the deceased victim using the knife which was recovered at the instance of the appellant, inasmuch as the same blood group was found on the knife and the clothes of the deceased.

48. With regard to the last seen theory, it would be relevant to observe that, it is settled law that merely last seen together is not enough to form the basis on which a conviction of an accused can be founded. Therefore, this theory has to be applied whilst taking into consideration the prosecution case in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen. The said theory finds application when the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead, is so small that the possibility of any other person other than the accused being the author of the crime becomes impossible. [Ref: *Sahadevan and anr. v. State of Tamil Nadu*, reported as (2012) 6 SCC 403; *Ramreddy Rajesh Khanna Reddy v. State of A.P.*, reported as (2006) 10 SCC 172]

49. In this behalf, it is relevant to note that the post mortem was conducted on 19.05.2011. The post-mortem report concludes that the death was caused 8.5 days prior to the date on which the post-mortem was conducted, viz. 10/11.05.2011.

50. Further, the testimony of PW-1 and PW-11 establishes that the appellant was last seen together with the deceased victim on 10.05.2011, i.e. the date of the incident, at 10.00 P.M. and 11.30 P.M., respectively.

51. In view of the aforesaid legal position, no fault can be found in the finding of the Ld. Trial Court with regard to the application of the last seen theory whilst convicting the appellant, inasmuch as, the Ld. Trial Court has considered the medical evidence [post mortem report, Ex.PW-4/A] and testimony of PW-1 and PW-11, and concluded that the appellant was last seen with the appellant on 10.05.2011, i.e. the date of the incident.

52. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together, or the offence takes place in the dwelling home where the husband also normally resided; it has been consistently held that, if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. [Ref: *Ganeshlal v. State of Maharashtra*, reported as **1992CriLJ1545**]

53. In this behalf, it would also be relevant to observe that the principle underlying Section 106, Indian Evidence Act, 1872, provides that the burden to establish the facts in the exclusive knowledge of the accused, is cast on the accused person concerned; and if he fails to establish or explain those facts, an adverse inference of facts may arise against him, which coupled

with the presumptive evidence adduced by the prosecution would rebut the presumption of innocence in favour of that person, and in the result, prove him guilty.

54. Therefore, in keeping with the *dictum* of the Hon'ble Supreme Court in ***Ganeshlal v. State of Maharashtra*** (*supra*), a mere denial of the prosecution case, coupled with absence of any explanation, can be concluded to be consistent with the hypothesis that the appellant has committed the murder of his wife/the deceased victim.

55. It is the argument of the appellant that no motive for the crime has been established. In ***Subedar Tewari v. State of U.P.*** reported as **1989 Supp (1) SCC 91**, the Hon'ble Supreme Court observed that the evidence regarding existence of motive which operates in the mind of an assassin is often not within the reach of others. The motive may not even be known to the victim of the crime. The motive may be known to the assassin and no one else may know what gave birth to the evil thought in the mind of the assassin. It is needless to state that where the case of the prosecution has been proved beyond reasonable doubt on the basis of the material produced before the Court, the motive loses its significance. But in cases based on circumstantial evidence, motive for committing the crime does assume importance. In such circumstances, absence of motive would put the Court

on its guard and receive it to scrutinize the evidence very closely in order to ensure that suspicion, emotion or conjecture, do not take the place of proof.

[Ref: ***Surinder Pal Jain v. Delhi Administration***, reported as **1993 Supp (3) SCC 681**; ***Tarseem Kumar v. Delhi Administration*** reported as **1994 Supp (3) SCC 367**]

56. In the instant case, in view of the elaborate discussion hereinabove, it is manifestly clear that the appellant had occasion to commit the crime, inasmuch as, the deceased victim was residing with him at the House No.66 and he was last seen with the latter before the crime was committed. Secondly, the medical and scientific evidence adduced by the prosecution in this case clearly establishes that the death of the deceased victim was caused due to the stab injuries suffered from the knife that was recovered at the instance of the appellant. Therefore, in our view the case of the prosecution has been established beyond all reasonable doubt and has been completely corroborated by way of medical as well as scientific evidence, as discussed hereinabove. Absence of a motive by itself cannot form the basis for our holding otherwise.

57. The five golden principles expounded by the Hon'ble Supreme Court in ***Hanumant*** (*supra*) have been duly satisfied in the instant case. As a logical corollary, it follows that the murder of the victim cannot be explained

on any other hypothesis except the appellant's guilt. In other words, the prosecution has fulfilled all the essential requirements of a criminal case which rests purely on circumstantial evidence.

58. In view of the foregoing, there appears to be no circumstance that warrants an interference with the decision of the Ld. Trial Court.

59. Consequently, the conviction of the appellant as recorded in the impugned judgment as well as the sentence awarded to him by way of the order on sentence, are upheld.

60. The present appeal is accordingly dismissed, with no order as to costs.

61. Copy of the judgment be supplied to the appellant through the Superintendent, Central Jail, Tihar and also be sent for updation of the records.

SIDDHARTH MRIDUL, J.

MUKTA GUPTA, J.

SEPTEMBER 01, 2017

dn/mk/sb/ap