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

% *Date of Judgment: 23rd August, 2017*

+ CRL.A. 628/2016

SACHIN

..... Appellant

Through: Mr.Subodh Kumar and Ms.Himadri
Sharma, Advocates

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms.Radhika Kolluru, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

G.S.SISTANI, J. (ORAL)

1. This is an appeal under Section 374 (2) of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C. ') against the impugned judgment dated 09.05.2016 by which the appellant has been convicted for the offence punishable under Sections 302 and 201 of the Indian Penal Code (hereinafter referred to as 'IPC'). The challenge is also laid to the order on sentence dated 11.05.2016 by which the appellant has been sentenced to life imprisonment for the offence punishable under Section 302 of IPC with a fine of Rs.10,000/- and in default of payment of fine, to undergo simple imprisonment for six months. For the offence punishable under Section 201 of IPC, the appellant has been sentenced to undergo rigorous imprisonment for two years with a fine of Rs.10,000/- and in default of payment of fine, to undergo simple imprisonment for four months. Both the sentences were ordered to run concurrently.

2. Before the rival submissions of the learned counsel of the appellant can be considered, we deem it appropriate to state the case of the prosecution, as noticed by the learned Trial Court, reads as under:

“1.0 Murder in question came to fore on 11/02/2012 when information was flashed to PS Bhalswa Dairy regarding recovery of a dead body contained in a gunny bag, near Videocon factory, JJ Colony Bhalswa Dairy.

1.1 SI Ravinder Solanki (PW24) reached the spot. He saw one plastic gunny bag (bori) lying in a closed street situated on the backside of H.No. C6/68 JJ Colony, Bhalswa Dairy. Such bag was found tied from the mouth. When opened up, it was found containing headless and handless body dead body of a woman.

1.2 First endeavour was to ascertain the identity of such headless and handless dead body. When neighbours of C6/68 were contacted by I.O., it was learnt that one Bishno Devi had been staying at said house along with accused Sachin, his wife i.e. accused Anju and their baby. Said house was found locked.

1.3 One Mohd. Yusuf (PW17), occupant of the adjacent House No. C6/67, revealed that Bishno Devi was residing in H.No. C6/68 and was its owner. He also divulged that both the accused started residing with her as tenants from August 2011 onwards. He also revealed that on 08/02/2012, at around 12.30 a.m., when he had come out of his house after taking dinner, he saw smoke coming out of said house of Bishno Devi and accused Sachin was present outside the house and when he (PW17) questioned about the reason of such smoke, accused Sachin replied that smoke was to ward off the mosquitoes.

1.4 Lock of said house was broken open. Blood was found lying on the floor of room of such house. Three blood stained knives were also found inside the house besides huge stack of burnt material. Crime team also inspected the spot and photographs were taken. One red colour diary and various other documents including identification documents of accused person were also recovered from said house. Mobile number

of accused Sachin was also found mentioned as 9999715834 on one small diary.

1.5 FIR for commission of offences u/s. 302/201 IPC was registered and further investigation was handed over to Inspector A.K. Singh (PW26). Dead body was sent to BJRM hospital for postmortem, preservation and identification.

1.6 Head and both the hands of the same dead body were recovered on 12/02/2012 from open place situated opposite C6 block, JJ colony, Bhalswa Dairy at a short distance from said house of victim and accused.

1.7 Then it was learnt that dead body was of none other than said Bishno Devi. It was also identified by her daughter Poonam and son-in-law Krishan.

1.8 Autopsy report indicated that death was due to asphyxia as a result of compression of neck by manual strangulation and all the other injuries were post-mortem and the time since death was around 7 to 8 days.

1.9 Call details record of accused Sachin were analyzed which revealed that both the accused had fled to Kanpur. Raid was conducted at Kanpur and one Anil Balmiki (PW2) (Uncle of accused Anju) was contacted who disclosed that he had received a call from accused Sachin. Anil Balmiki also informed the police that accused Sachin had confessed to him having committed a murder. He revealed that both the accused along with their child had come to Kanpur also and when he confronted him, face to face, accused Sachin again admitted that he had committed murder. When he asked his niece Anju about the same, she also told him that Sachin had committed murder of nanad of her nanad. (sister-in-law of her sister-in-law).

1.10 Both the accused person were subsequently apprehended from Delhi and interrogated. Accused Sachin admitted his involvement in the murder in question. Accused Sachin claimed that Bishno Devi used to abuse and taunt them and in particular to his wife accused Anju and, therefore, he thought of finishing her.

1.11 Thus, investigating agency concluded that the murder had been committed by accused Sachin by strangulation and thereafter, he had cut her head and hands. He informed his wife Anju about the murder subsequently and she then conspired with him in disposing of the dead body from the spot. Thus, she was a consenting partner for the purpose of destruction of evidence.”

3. After investigation, charge sheet was filed under Section 302/201/202/120B of IPC against the appellant. On 06.06.2012, charges under Section 302/201/202 read with Section 120B of IPC and a separate charge under Section 120B of IPC were framed against the appellant, to which he pleaded not guilty and claimed to be tried.
4. In order to substantiate the charges against the appellant, the prosecution examined 28 witnesses in all. No witness was examined by the appellant in his defence. The statement of the appellant was recorded under Section 313 of Cr.P.C. wherein he stated that he used to reside along with his wife at H.No. C-6/68, JJ Colony, Bhalswa. The appellant further stated that he had gone to the hospital on 12.01.2012 as his wife was blessed with a daughter on 13.01.2012 and from there they shifted to the home of his in-laws at Madipur and, thereafter, did not return to JJ Colony, Bhalswa. He pleaded ignorance with regard to the dead body found at the above said place. The appellant admitted that PW17 Mohd. Yusuf was his neighbour when he was residing at the said house of the deceased Bishno Devi. As Mohd. Yusuf had taken a loan of Rs. 20,000/- from him, and was not returning the same resulted in his false implication in the present case. As to the red/brown diary and Aadhar receipts seized from the above mentioned home, the appellant admitted that the same belonged to him. The appellant pleaded innocence and claimed to be falsely implicated in the present case.

5. Mr. Subodh Kumar, learned counsel for the appellant submits that the judgment of the Trial Court and order on sentence are bad in law. The same is based on surmises and conjectures. Counsel contends that there is no eye-witness in this case. The case of the prosecution is based on circumstantial evidence. However, the Trial Court has failed to apply the law as laid down in the case of *Munish Mubar v. State of Haryana*, reported at **2012 (10) SCC 464**. It is contended that while the principles sought to be laid in the aforesaid judgment have been relied upon but the judgment is not applicable to the facts of the present case and the Trial Court has wrongly applied the ratio of the judgment to the facts of the present case. It is contended that as per the law laid down in a case of circumstantial evidence, the facts so established should be consistent only with the hypothesis of guilt of an accused. However, in the present case, there is not an iota of evidence proved against the appellant and the entire story of the prosecution is based on hearsay evidence. Merely because the appellant was a tenant in the house of the deceased, that alone cannot be the basis to draw the conclusion of guilt of the appellant. There is no evidence on record to show that at the time of the murder, the appellant was present at the place of incident.
6. It is contended that the appellant has been falsely implicated in the present case as the prosecution has relied upon electronic evidence i.e. CDR to establish presence of the appellant at Kanpur at a later stage but no evidence has been led with regard to the location of the appellant at the time of the incident which has been intentionally suppressed with a view to solve a blind murder case. Counsel contends that undue weightage has been given to the testimony of PW-17 Mohd. Yusuf by which the prosecution has tried to establish

the presence of the appellant, whereas even as per the testimony of PW-17 he had seen the appellant in the night of 08.02.2012.

7. While relying on the postmortem report and the testimony of PW-26 Insp. Ajay Kumar Singh, counsel contends that the lady had died 6-7 days prior to 11.02.2012, which would establish that the murder took place on 4th or 5th of February, 2012, proposing a theory contrary to the story of the prosecution. Counsel contends that the chain of evidence is not complete pointing towards the innocence of the appellant. Counsel contends that merely because the appellant was a tenant in the house of the deceased and part of the dead body was recovered from the backside of the house that by itself would not be a ground for conviction of the appellant. It is also the stand of the appellant that he alongwith his family had left his house on 12.01.2012; a daughter was born on 13.01.2012 and thereafter they never returned to the said house.
8. Counsel has also submitted that the extra-judicial confession sought to be relied upon is not admissible in the eyes of law as both the witnesses i.e. PW2 and PW3 were in police custody for four days and thus it is tainted and made under coercion and pressure. It is also contended that merely because the appellant and his family fled from Delhi and was arrested on 27.02.2012, the same cannot be a ground alone to convict the appellant, as the appellant and his family had gone to Kanpur to visit a distant relation with their newly born child. Counsel further submits that assuming, without admitting, that PW17 Mohd. Yusuf had seen the appellant on 08.02.2012 and saw smoke coming out of his house but that by itself cannot be a ground of conviction and at best, the appellant can be held guilty for destruction of evidence.

9. It is contended that PW17 Mohd. Yusuf is a planted witness as his statement was not recorded on the same day. Counsel explains that the seizure of the documents and the keys of the house of the deceased have not been witnessed by any public witness and hence, the documents as also the keys have been planted on the appellant. Counsel further submits that merely because the keys were recovered from the possession of the appellant, it cannot be treated as an incriminating circumstance, for the reason that the appellant was a tenant of the premises and he was entitled to be in possession of the keys of the house.
10. Counsel for the appellant has submitted that the stand of the prosecution has been shifting as initially it was the case of the prosecution that the wife of the appellant was abused and ridiculed by the landlady (the deceased) but thereafter motive stands shifted to lust for property which was alleged by the prosecution as there was recovery of title documents of the house from the possession of the appellant.
11. *Per contra*, learned counsel for the State submits that the State has been able to establish its case beyond any shadow of doubt. Strong reliance is placed on the testimony of PW17 Mohd. Yusuf who was a neighbour and thus, a natural witness who had seen the appellant at the place of the incident and noticed smoke coming out from the house. It is further contended that in this case, a headless body was recovered on 11.02.2012 and on the subsequent date, the head and hands of the body were found. Counsel contends that as per the postmortem report dated 13.02.2012, death had occurred seven or eight days prior to the examination by autopsy surgeon. In effect, the deceased would have died prior to 08.02.2012 which would, in fact,

show that the evidence of murder was being destructed on 08.02.2012 when the appellant was questioned by PW17 with regard to the smoke coming out from the house.

12. Counsel also submits that it is wrong to submit that the statement of PW17 was not recorded on the same day. While placing reliance on the statement itself, counsel submits that his statement was recorded on 11.02.2012, the day when the headless body was found. Counsel also relies on the testimony of PW17 to show that the blood stains were found in the house of the deceased. House was found locked and three knives with blood were found at the spot. Strong reliance is placed on the testimony of PW2 to show that an extra judicial confession was made before him. Reliance is placed on the CDR record to show that the appellant was at Kanpur on the relevant dates which would show that he fled away from the scene of crime. Reliance is placed on the testimony of PW9 Azad Singh who has testified that the appellant has borrowed his phone on 12.02.2012 as also the testimony of PW3 who corroborated the statement made by PW2.
13. Counsel also submits that CDR available on record proved that phone calls were made by the appellant to PW2. It is also submitted that the keys recovered from the possession of the appellant matched with the lock which was produced in Court and the same would also connect the appellant to the crime so committed. CDR also shows presence of the appellant at Gurgaon from where the phone of PW9 Azad Singh was borrowed in a marriage function. The defence taken by the appellant was that post 12.01.2012 he remained at Madipur but the CDR record would show that he returned back and forth to Bhalswa,

Delhi which would not match with the stand taken by the appellant in his statement recorded under Section 313 of Cr.P.C.

14. We have heard the learned counsel for the parties, considered their rival submissions and given our thoughtful consideration to the matter. The Trial Court has convicted the appellant Sachin on the basis of the following eight incriminating circumstances which were proved against him:

- i) The deceased was residing at House No. C6/68, JJ Colony, Bhalswa Dairy and the appellant alongwith his wife was residing at the said house as tenants;
- ii) On 08.02.2012, the appellant was last seen by PW17 Mohd. Yusuf in the late night and noticed smoke coming out of the said house. Thereafter, no occupant of the said house was noticed by anyone;
- iii) On 11.02.2012, one headless and handless dead body was recovered from the back side of the abovesaid house; from a closed street;
- iv) The house was found locked and when it was broke open, blood stained knives and burnt material were found inside the house which duly corroborated the version of smoke coming out of the said house on 08.02.2012;
- v) The appellant fled away from Delhi and reached Kanpur;
- vi) Extra judicial confession was made by the appellant to PW2 Anil Balmiki @ Kallu with regard to the offence committed by him. Also, the wife of the appellant informed PW2 that the appellant had committed murder;

- vii) On 27.02.2012, the appellant was arrested from the house of his sister at Tilak Nagar and was also found in the possession of the title documents of the house of the deceased;
- viii) The appellant was also found in possession of the keys of the house which would show that he had never left the abovesaid house.

15. We deem it appropriate to analyse all the circumstances under separate heads:

IMPACT OF THE TESTIMONY OF PW17:

16. PW17 Mohd. Yusuf in his examination-in-chief deposed that he was a resident of House No. C6/67 JJ Colony, Bhalswa, Delhi. PW17 further deposed that the appellant was residing alongwith his wife and a small child as a tenant since August, 2011 at the house of Bishno Devi. On 08.02.2012, at about 12:30 in the night, PW17 came out of his house and saw smoke coming out from his neighbouring House No. C6/68. When he went near the house, he found the appellant Sachin standing outside that house. On being asked about the reason for smoke, the appellant told PW17 that he was creating smoke to kill the mosquitoes. PW17 further deposed that he had not seen the appellant since that night. After 2-3 days, police met him and after making enquiries recorded his statement, wherein he stated all the aforementioned facts.
17. PW17 in his cross-examination denied the suggestion that there was any enmity between him and the appellant and that he was deposing falsely at the instance of relatives of the deceased. He further denied the suggestion that he did not meet the appellant on the night of 08.02.2012. He categorically admitted that he had seen fire and smoke on the night of the incident. PW17 further admitted that he did not

meet anyone except the appellant. The statement of PW17 was recorded in the police station.

18. We may note that the post-mortem of the deceased was conducted on 13.02.2012 at 11.30 AM by PW12 Dr. Bhim Singh. His detailed report is Ex.PW12/A and found the following external injuries on the body of the deceased:

“1. Postmortem burns were present all over the body with peeling of skin, singeing of hairs, underlying skin was yellowish pale.

2. Amputation of head at the level of thyroid, C3 cervical, vertebra was present cutting all the structures.

3. Amputation of both upper limbs at the level of shoulder.

No visible antemortem injuries on the body was found.”

19. PW12 Dr. Bhim Singh opined that the cause of death of the deceased was due to asphyxia as a result of compression of neck by manual strangulation. It is also evident from the post-mortem report that there were post-mortem burns present all over the dead body of the deceased. The post-mortem report and the testimony of the doctor states that the deceased died 7 to 8 days prior to the examination of the dead body. Having regard to the fact that the autopsy was conducted on 13.02.2012 at 11.30 AM, it is safe to conclude that the death of the deceased was caused between 05.02.2012 to 06.02.2012. This makes it clear that the deceased had died prior to 08.02.2012 and the evidence of murder was destructed on 08.02.2012, when PW17 noticed smoke emanating from the house of the deceased. It is also noteworthy that after 08.02.2012, no person was seen in the house of the deceased. On a conjoint reading of the evidence of PW17 along with the post-mortem report which shows presence of post-mortem burns on the body of deceased strengthens the case of prosecution.

Therefore, we do not find merit in the argument raised by the counsel for the appellant that PW17 is a planted witness. PW17 in fact, is a natural witness whose statement was recorded soon after the recovery of dead body i.e. on 11.02.2012. As far as the argument of the counsel for the appellant that the seizure memo of the documents and the keys of the house of the deceased was not witnessed by any public witness, we rely upon the judgment of the Hon'ble Supreme Court in the case of *State (Govt. of NCT of Delhi) v. Sunil* reported at (2001) 1 SCC 652 and reject the argument raised by the counsel. The relevant para 20 and 21 of the judgment reads as under:

“20....But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The court has to consider the evidence of the investigating officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth.

21. We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust. ... At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of

recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.”

(Emphasis Supplied)

EXTRA JUDICIAL CONFESSION:

20. One of the primary incriminating circumstance relied upon by the Trial Court against the appellant was that he made an extra judicial confession to PW2 Anil Balimiki @ Kallu who happens to be the uncle of Anju (wife of the appellant). In this regard, it will be useful to examine the testimonies of PW2 and PW3 Rajkumar (friend of PW2).
21. PW2 Anil Balimiki @ Kallu deposed in his examination-in-chief that he was a resident of H. No. 9, Block-2, ESI Hospital Colony, Pandav Nagar, Kanpur, Uttar Pradesh. In the month of May/June of 2011, there was ‘teharvi’ of brother-in-law of his brother Babban (father of Anju). He had also gone to attend the same at village Sitmara, Kanpur Dehat, where he met the appellant Sachin and was introduced by his brother Babban as his son-in-law. On 13.02.2012, at about 4.30 PM, he received a phone call from the appellant stating ‘*chachaji mein Kanpur aa raha hun*’. On being asked as to why he was coming to Kanpur, the appellant informed him about a quarrel and told him that he had to go village Sitmara. At about 11:30 PM, the appellant called him again and told him that he was on his way and had reached near Eta. PW2 again enquired from the appellant about the reason for his arrival. The appellant informed him ‘*mere se katal ho gaya hai*’. On hearing this, PW2 told him not to come to his house and instructed him to reach the house of his friend Rajkumar (PW3) at Sarvodaya Nagar, Bima Hospital Colony and thereafter PW2 had gone to the

house of his friend Rajkumar. After reaching there, he along with Rajkumar slept there. At about 02:30 AM in the night, PW2 again received a phone call from the appellant who told him that he had reached Jhakkarkati bus stop and boarded an auto. At that time, PW2 instructed him to reach at Sarvodaya Nagar, Bima Hospital near Kakadev Police Station and thereafter PW2 alongwith Rajkumar reached the said hospital and waited for the appellant. At around 02:30 AM, which was again clarified to 2.45 AM, the appellant reached the hospital along with his wife and a child. PW2 and Rajkumar took the appellant and his family to the house of Rajkumar where they slept. At 05:00 AM, when PW2 got up to ease himself, he asked the wife of the appellant as to what had happened and she told as '*nanand ki nanand ka katal ho gaya hai*'. Thereafter, PW2 alongwith Rajkumar left for his house and on the way he met with the *chowkidar* of Pandav Nagar Police Chowki who informed him that the police had come to his house. Due to fear, he alongwith Rajkumar ran away from there. After some time, Rajkumar made a telephone call to his wife and asked her to remove the appellant and his family from there. At that time, the appellant asked Rajkumar as to where they would go to which PW2 instructed the appellant to go to Kalyanpur where he will also meet him. However, PW2 could not meet him in Kalyanpur as his phone was switched off for the reason that the conversation might be recorded by the police. At about 09:00 AM, the appellant again came back to the house of Rajkumar to which wife of Rajkumar made a call to him and told him that the appellant had returned alongwith his wife and child. At that time, Rajkumar handed over phone to PW2 and he instructed him to reach his house at Pandav Nagar, Bima Hospital. PW2 kept his mobile phone switched off due to fear of police and did

not go to his house and remained at the railway station and bus stand. On 24.02.2012, police met him and enquired about the whereabouts of the appellant Sachin. The statement of PW2 was recorded by the police on the basis of the facts disclosed by him. Thereafter, police brought him to Delhi and his statement was recorded under Section 164 of Cr.P.C by then Metropolitan Magistrate on 28.02.2012. The appellant was duly identified by PW2 in Court.

22. In his cross-examination, PW2 categorically stated that Anju (wife of the appellant) was his niece and also the daughter of Babban (brother of PW2). PW2 denied the suggestion that the appellant had not made a call to him on 13.02.2012 at about 04:30 PM. PW2 further denied that the appellant along with his family did not stay with him or with Rajkumar on 13.02.2012. It was further denied that the appellant had not disclosed to him or to Rajkumar that the appellant had committed murder of *Nanad* of *Nanad*. PW2 along with Rajkumar did not report the matter to the local police in Kanpur about the murder as they were in fear. On 14.02.2012, Delhi Police came to his house in Kanpur and there was no occasion to report the matter to the local police on 14.02.2012 or thereafter. PW2 further stated that on 24.02.2012, one local police official came to his house alongwith Delhi Police officials. Thereafter on 26.02.2012, Delhi Police brought him to Delhi.
23. Another important witness who corroborated the version of PW2 is Rajkumar (PW3). In his examination-in-chief, PW3 deposed that he was working as a *safai karamchari* in Bima Hospital, Pandav Nagar, Kanpur. On 13.02.2012 at about 10:30-10:45 PM, he was with his friend Anil Balmiki @ Kallu. Kallu received a call on his mobile phone and asked the caller as to where he had reached and instructed the caller to call him after reaching Kanpur. Thereafter, PW3

alongwith Kallu came to his house and Kallu informed him that a quarrel had taken place and thus he would not go to his home. Kallu slept at his house. At about 02:30 AM, Kallu woke him and told that his relatives had come and they had to go to receive them. PW3 further deposed that his niece, her husband and their small child were coming. Subsequently, he alongwith Kallu reached at the gate of the Hospital and brought them to his house. At about 06:00 AM, Kallu asked the appellant as to why they had come there, on which, the appellant replied '*humse murder ho gaya hai*'. On hearing this, PW3 and Kallu became upset after which he alongwith Kallu came down and PW3 asked Kallu to take the appellant away from his house. Thereafter, PW3 and Kallu went towards Rawatpur and on the way they met the *chowkidar* who told Kallu that the police had come to Kallu's house. Afterwards PW3 and Kallu reached Rawatpur and from there they reached Kalyanpur. PW3 further deposed that from Kalyanpur he alongwith Kallu boarded TSR and reached Sachendi at the house of Babulal, who was a relative of Kallu. After taking their meal at about 1:00 PM, they came back to Vijay Nagar, Kanpur. PW3 further deposed that while he was at Sachendi, at the house of Babulal he asked Kallu to remove the appellant from his home. PW3 asked Kallu to talk to the appellant and during the conversation with the appellant; Kallu had asked the appellant to reach at Kalyanpur where he would join him. However, PW3 and Kallu did not go to Kalyanpur as they simply wanted to remove the appellant from his house. When PW3 and Kallu did not meet the appellant at Kalyanpur, the appellant alongwith his family returned back to PW3's home. The wife of PW3 informed him of the same. At which, PW3 again asked Kallu to talk to the appellant and Kallu instructed him to reach at Pandav Nagar.

Thereafter, the appellant left his home. On 24.02.2012, police made inquiries from him and recorded his statement. The wife of the appellant and his child were duly identified by PW3 in the Court. As the appellant was not identified by PW3 in Court, he was re-examined by counsel for the State and it was deposed by him that the appellant Sachin along with his wife and child were brought by him and Kallu to his house and slept at his place.

24. It is evident from the testimony of PW2 Anil Balmiki @ Kallu who was in fact relative of the wife of the appellant and is a witness of the extra judicial confession made by the appellant. The testimony of PW2 is duly corroborated with the testimony of PW3. It is hard to believe as to why his own relative would depose against him, especially when he stated in his statement under Section 313 of Cr.P.C that when his wife was blessed with a daughter on 13.01.2012, and since then he shifted to the house of his in-laws at Madipur. After reading the evidence available on record, it has not been established that there was enmity between the appellant and PW2.
25. Further, the Call Detail Records also corroborate the factum of the appellant having called PW2 Anil Balmiki showing his desire to reach Kanpur, Uttar Pradesh and subsequently the appellant confessed about the commission of murder by him. It is the case of the prosecution that the mobile phone bearing number 991 125 1863 belonged to PW9 Azad Singh which was borrowed by the appellant but did not return the same. As per the testimony of PW9 Azad Singh, on 12.02.2012, he had gone to attend one marriage in Gurgaon and was accompanied by his brother-in-law Jogi. Jogi was further accompanied by his brother-in-law. PW9 further deposed that at that time, he was using a mobile hand set having number 9911251863 and the said brother-in-law of

Jogi had demanded his mobile phone which was handed over to him. PW9 forgot to take back his mobile phone. All the facts were duly revealed to the Police by him. It is noteworthy to mention that PW9 did not identify the appellant in the beginning due to which he was cross-examined by the APP for the State in the Trial Court. Although in his cross-examination by the APP, PW9 was not sure about the identity of the appellant. However, he deposed that it was the appellant who took the mobile phone from him.

26. PW13 Rajeev Sharda, Nodal Officer, Reliance Communications Ltd., proved the CDR of mobile phone 9911251863 of PW9 Azad Singh which was used by the appellant proves that the following calls took place between the appellant and PW2. PW13 proved the CDR which is available on record from 01.02.2012 to 27.02.2012 of the said number and proved the same as Ex. 13/C The relevant portion from the CDR have been provided as follows:

<u>CALLING PARTY NO.</u>	<u>CALLED PARTY NO.</u>	<u>START DATE</u>	<u>CALL TIME</u>	<u>BILL DURATION</u>	<u>CALL DIRECTION</u>
9911251863	9696760470	13-Feb-12	15:17:12	27	IN_CALL
9911251863	9696760470	13-Feb-12	15:21:7	9	IN_CALL
9911251863	9696760470	13-Feb-12	15:42:21	31	IN_CALL
9911251863	9696760470	13-Feb-12	15:43:37	62	IN_CALL
9911251863	9696760470	13-Feb-12	17:14:46	149	IN_CALL
9696760470	9911251863	13-Feb-12	17:18:28	52	OUT_CALL
9911251863	9696760470	13-Feb-12	21:22:1	289	IN_CALL
9911251863	9696760470	14-Feb-12	2:12:48	30	IN_CALL
9696760470	9911251863	14-Feb-12	2:14:23	10	OUT_CALL
9696760470	9911251863	14-Feb-12	2:15:9	48	OUT_CALL
9696760470	9911251863	14-Feb-12	2:17:7	2	OUT_CALL
9696760470	9911251863	14-Feb-12	2:17:46	10	OUT_CALL
9696760470	9911251863	14-Feb-12	2:18:16	11	OUT_CALL

9911251863	9696760470	14-Feb-12	2:18:54	95	IN_CALL
9696760470	9911251863	14-Feb-12	2:22:19	11	OUT_CALL
9911251863	9696760470	14-Feb-12	2:23:36	86	IN_CALL
9696760470	9911251863	14-Feb-12	2:37:52	59	OUT_CALL
9696760470	9911251863	14-Feb-12	2:41:1	39	OUT_CALL
9696760470	9911251863	14-Feb-12	2:42:23	31	OUT_CALL
9696760470	9911251863	14-Feb-12	2:43:59	8	OUT_CALL
RM-615188	9696760470	23-Feb-12	15:42:59		IN_SMS

27. Reading of the above mentioned CDR establishes that the calls were made by the appellant from number 9911251863 to 9696760470 (which belonged to PW2) at different timings showing that the appellant was in constant touch with him. It is also relevant to note that after 14.02.2012, the mobile phone of PW2 Anil Balmiki was switched off and become functional only on 23.02.2012 which finds duly corroborated from his testimony that due to fear he had switched off his mobile phone in a fear of being caught. Having regard to the testimony of PW2, PW3 and CDR, we are of the view that the appellant fled away to Kanpur after committing the charged offence and made an extra judicial confession before PW2. Reading of the testimony of PW9 further strengthens our view that the appellant borrowed his mobile phone on 12.02.2012 and never returned it back. So far as the argument raised by the learned counsel for the appellant that the testimony of PW2 and PW3 is doubtful as they both were in police custody for four days. As the statement of PW2 Anil Balmiki was recorded by then Metropolitan Magistrate under Section 164 of Cr.P.C immediately on 28.02.2012 detailing all the events as deposed in Court. In this background, we reject the contention raised by the counsel for the appellant.

28. All the material available on record duly corroborates the case of prosecution pointing towards the guilt of the appellant. From the totality of all the circumstances, the only inference which can be drawn is that it is none other than the appellant who is found to be the author of the crime. We may profit with the following judgments of the Apex Court discussing the law on extra-judicial confessions and cases based on circumstantial evidence.
29. In the case of ***Mohd. Azad @ Samin vs. State of West Bengal*** reported at (2008) 15 SCC 449, the Hon'ble Supreme Court while interpreting the law regarding Confessions, extensively dealt with it and made the following observations:

“...19. 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 of 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. [Ed.: As observed in State of Rajasthan v. Raja Ram, (2003) 8 SCC 180, at pp. 190-92, paras 18-19.]”
(Emphasis Supplied)

30. In the case of ***Rukia Begum vs. State of Karnataka*** reported at (2011) 4 SCC 779, the Hon’ble Supreme Court while discussing the circumstantial evidence observed that for bringing home the guilt of the accused, the prosecution has to establish that all the circumstances should lead to one and the only conclusion towards the guilt of the accused. The relevant para 16, 17 and 18 read as under:

“16. No doubt it is true that for bringing home the guilt on the basis of the circumstantial evidence the prosecution has to establish that the circumstances proved lead to one and the only conclusion towards the guilt of the accused. In a case based on circumstantial evidence the circumstances from which an inference of guilt is sought to be drawn are to be cogently and firmly established. The circumstances so proved must unerringly point towards the guilt of the accused. It should form a chain so complete that there is no escape from the conclusion that the crime was committed by the accused and none else. It has to be considered within all human probability and not in fanciful manner.

17. In order to sustain conviction, circumstantial evidence must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. Such evidence should not only be consistent with the guilt of the accused but inconsistent with his innocence. No hard-and-fast rule can be laid to say that particular circumstances are conclusive to establish guilt. It is basically a question of appreciation of evidence which exercise is to be done in the facts and circumstances of each case.

18. Here in the present case the motive, the recoveries and abscondence of these appellants immediately after the occurrence point out towards their guilt. In our opinion, the trial court as also the High Court on the basis of the circumstantial evidence rightly came to the conclusion that the

prosecution has been able to prove its case beyond all reasonable doubt so far as these appellants are concerned.”
(Emphasis Supplied)

SUFFICIENCY OF CIRCUMSTANTIAL EVIDENCE:

31. The learned counsel for the appellant contended that the judgment of ***Munish Mubar’s*** case (*supra*) is not applicable to the facts of the present case and the Trial Court has wrongly applied the ratio of the said judgment to the instant case.
32. On reading of the said case, we have found that the Hon’ble Supreme Court while maintaining the conviction of the appellant under Sections 302/201/34/120-B/404 of IPC, discussed the law on circumstantial evidence and had relied upon various circumstances including CDR of the accused showing his presence at a place, from where the dead body of the deceased was recovered. The Apex Court held that it is obligatory on part of the accused while being examined under Section 313 of Cr.P.C to furnish some explanation with respect to the incriminating circumstances associated with him. It was further held that the factum of abscondence of the appellant also pointed towards his guilt. With regard to motive, the relevant para 30 reads as under:

“30. In a case of circumstantial evidence motive assumes great significance and importance for the reason that the absence of motive would put the court on its guard and cause it to scrutinise each piece of evidence very closely in order to ensure that suspicion, emotion or conjecture do not take the place of proof. However, the evidence regarding existence of motive which operates in the mind of an assassin is very often not within the reach of others. The said 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 such evil thought in the mind of the assassin. In a case of circumstantial evidence, the evidence indicating the guilt of the accused becomes untrustworthy and unreliable, because

most often it is only the perpetrator of the crime alone, who has knowledge of the circumstances that prompted him to adopt a certain course of action, leading to the commission of the crime. Therefore, if the evidence on record suggests sufficient/necessary motive to commit a crime, it may be conceived that the accused has committed the same. (See Subedar Tewari v. State of U.P. [1989 Supp (1) SCC 91 : 1989 SCC (Cri) 218] , Suresh Chandra Bahri v. State of Bihar [1995 Supp (1) SCC 80 : 1995 SCC (Cri) 60 : AIR 1994 SC 2420] and Sunil Clifford Daniel v. State of Punjab [(2012) 11 SCC 205].)

(Emphasis Supplied)

33. After careful reading of the said case, we are of the view that the learned Trial Court has rightly relied upon the same. The Apex Court in the afore mentioned judgment cautioned that the Courts must take note of the explanation rendered by the accused in his statement under Section 313 of Cr.P.C to decide whether the chain of circumstances is complete in a case based on circumstantial evidence.

BURDEN OF PROOF AND CONDUCT OF THE APPELLANT:

34. As per Section 106 of the Evidence Act, when a particular fact is especially within the knowledge of a particular person, the burden is upon him to prove the same. We need not burden our opinion by reproducing numerous judicial pronouncements; one may only take note of the following observations of a coordinate bench of this Court, of which one of us (G.S. Sistani, J.) was a member, in ***Md. Shakeel v. The State NCT of Delhi***, MANU/DE/1334/2016:

“29. In the case of State of Rajasthan v. Kashi Ram, reported at 2006 AIR SCW 5768 [sic: AIR 2007 SC 144], it was held that accused is duty bound to show as to when he left the company of the deceased as it was only in the knowledge of the accused and Section 106 of the Evidence Act applies in such circumstances. Same was held in the case of Joseph v. State of Kerala, reported at (2000) 5 SCC 197. In the case of Ram Gulam Chaudhary and Ors. v. State

of Bihar, reported at (2001) 8 SCC 311 the facts proved at the trial were that the appellants gave no explanation as to what they did after they took away the boy. The question arose whether in such facts Section 106 of the Evidence Act applied. It was held:

"When the abductors withheld that information from the court, there is every justification for drawing the inference that they had murdered the boy. Even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The appellants by virtue of their special knowledge must offer an explanation which might lead the Court to draw a different inference".

30. In the case of Sahadevan alias Sagadevan v. State represented by Inspector of Police, Chennai, reported at 2003 (1) SCC 534, the prosecution established the fact that the deceased was seen in the company of the appellants from the morning of March 5, 1985 till at least 5 p.m. on that day when he was brought to his house, and thereafter his dead body was found in the morning of March 6, 1985. In the background of such facts the Court observed:

"Therefore, it has become obligatory on the appellants to satisfy the court as to how, where and in what manner Vadivelu parted company with them. This is on the principle that a person who is last found in the company of another, if later found missing, then the person with whom he was last found has to explain the circumstances in which they parted company. In the instant case the appellants have failed to discharge this onus. In their statement under Section 313 CrPC they have not taken any specific stand whatsoever.

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 categoric 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 *Re. Naina Mohd.* AIR 1960 Madras 218. 24. There is considerable force in the argument of counsel for the State that in the facts of this case as well it should be held that the respondent having been seen last with the deceased, the burden was upon him to prove what happened thereafter, since those facts were within his special knowledge. Since, the respondent failed to do so, it must be held that he failed to discharge the burden cast upon him by Section 106 of the Evidence Act. This circumstance, therefore, provides the missing link in the chain of circumstances which prove his guilt beyond reasonable doubt.”

31. In the absence of any explanation rendered by the appellant, the prosecution has been able to establish an additional link in the chain of circumstances to prove the guilt of the appellant. We may, however, hasten to add that Section 106 of the Evidence Act would in no way shift the proof of burden which rests solely on the prosecution. But, in terms of Section 106 of the Evidence Act, an accused must render an explanation on facts which are within the special knowledge.”

(Emphasis Supplied)

35. We are persuaded with the reasoning adopted by the learned Trial Court while convicting the appellant. The relevant para 11.4 to 11.7 read as under:

“11.4 Here, it becomes very much evident that accused were residing as tenants in the house of Bishno Devi. They were also found in possession of keys of said house when they were arrested. Both the accused have baldly claimed that they had left said house of Bhalswa Dairy on 12/01/2012 and thereafter, they never returned to said house. According to them, a baby was born to them on 13/01/2012 and thereafter, they started living at Madipur where father-in-law of accused Sachin used to reside. In order to prove such fact, either accused should have entered into witness box u/s 315 Cr.P.C. or they should have examined any occupant of said house of Madipur including father of accused Anju in order to substantiate that they were all along residing in Madipur after the alleged delivery of child on 13/01/2002.

11.5 However, no effort was made in this regard and no witness has been examined in order to authenticate such important aspect. Non-examination of any defence witness on this crucial point coupled with the testimony of PW17 Md. Yusuf compels me to hold that accused had never left that house of Bhalswa Dairy at all. Interestingly, if both the accused did not reside in the house of Bhalswa Dairy after delivery of their child, even PW17 Md. Yusuf would not have in any position to tell about such baby whereas PW17 Mohd. Yusuf has categorically claimed that both the accused were residing there along with their small child. This belies the defence version and, therefore, it cannot be believed that after the alleged delivery of child, accused never returned to their house of Bhalswa Dairy. I have already made reference to the investigation made by Inspector Ajay Kumar Singh. He also contacted father of accused Anju who rather told him that accused along with their 6-7 months old baby had been residing at the house of Bishno Devi situated at Bhalswa Dairy and he had not seen them. In such a peculiar background, it was incumbent on the part of the accused to have placed on record compelling evidence to substantiate their version regarding delivery of child and their stay at Madipur after

such delivery and also to contradict the version brought on record by the prosecution. Nothing of that sort had been done.

11.6 As per Section 8 of Indian Evidence Act, besides the motive, the previous or subsequent conduct also becomes relevant in reference to any fact in issue. Here, subsequent conduct of the accused is very significant and imperative in nature. The moment accused Sachin sensed that the conversation which he had with PW17 Md. Yusuf on 08/02/2012 would have given some hint of his complicity, he never ever returned to the spot again as he was not seen there by his neighbours thereafter. His deserting his house while leaving his various personal documents including his personal diary and are clear pointor towards the fact that he had never shifted from his such house and rather in order to evade his arrest kept on moving from one place to the other. If at all, he was innocent and had no hand in the murder in question, there was no reason for him to have not returned to his house and going to Kanpur and then eventually taking shelter in the house of his sister. Thus, his such conduct is clearly connected with the incident in question and, therefore, can be said to be relevant in the present context.

11.7 Moreover, accused Sachin is found blowing hot and cold. In one breath, he has claimed that their family members were annoyed with them as they (Sachin and Anju) had married against their wishes and in the next breath, Sachin has also claimed that after delivery of their child, they started living at Madipur house of his father-in-law. He and his wife visited their relative in Kanpur and accused Sachin even confided in them. He was eventually apprehended from the house of his real sister and, therefore, the stand of accused is found to be incorrect and irreconcilable.”

(Emphasis Supplied)

36. In the present case, the appellant was residing as a tenant in the house of the deceased Bishno Devi. As per his statement under Section 313 of Cr.P.C, the appellant vacated the tenanted house on 12.01.2012 and did not return thereafter. However, the appellant was found in possession of the keys of the said house at the time of his arrest.

Additionally, the personal articles of the appellant such as red/brown diary and Aadhar receipts which were seized from the house of the deceased and his categorical admission with regard to the ownership of these articles shows that the appellant never vacated the said house. Furthermore, the circumstance that the appellant was seen on the night of 08.02.2002 by PW17 and thereafter the appellant was found missing from the said house is another link in the chain of circumstances pointing towards his guilt. Also, the appellant had absconded to Kanpur, Uttar Pradesh after the commission of the offence and made extra-judicial confession to PW2. Applying the ratio of the *Munish Mubar's* case (*supra*) to the instant case, we are of the view that the appellant did not furnish any explanation with respect to the incriminating circumstances associated with him in his statement under Section 313 of Cr.P.C., especially regarding his presence on 08.02.2002, in the house of the deceased and CDR showing that various calls were made by the appellant to PW2 at different timings showing that the appellant was telephonically connected with him and reached Kanpur and thereafter made extra judicial confession to him. There is no satisfactory evidence brought by the defence to rebut all these circumstances adduced by the prosecution.

37. After a careful scrutiny of the evidence available on record, we are of the considered view that all the above mentioned circumstances clearly establish that it was the appellant alone who would have been in a position to have committed murder of the deceased Bishno Devi. The cumulative effect of the complete evidence which has been gathered i.e. the extra-judicial confession of the appellant, testimony of PW17 Mohd. Yusuf; coupled with the medical and the electronic evidence including CDR clearly points finger of guilt towards the

appellant; he has no escape route. Therefore, the conviction of the appellant calls for no interference under Section 302 of IPC.

38. Additionally, the appellant was also charged and convicted under Section 201 of IPC under the same judgment which is impugned before us. In the light of the testimony of PW17 Mohd. Yusuf, we have found that there is ample evidence against the appellant for the destruction of evidence. Thus, we are of the view that the Trial Court has rightly convicted the appellant under Section 202 of IPC.
39. To conclude, the entire evidence brought on record and the circumstances proved by the prosecution conclusively point towards the guilt of the appellant and no other inference can be drawn. There is no break in the chain of circumstances established by the prosecution. Hence, we find no infirmity in the judgment of the Trial Court convicting the appellant herein.
40. In our view, the appeal is without merit and the same is dismissed accordingly.
41. Trial Court record be sent back.

G.S.SISTANI, J

CHANDER SHEKHAR, J

AUGUST 23, 2017

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