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

+ CRL.A. No. 921/2015 & CRL. M.B. 1607/2017

LALU PASI

.... Appellant

Through: Ms.Saahila Lamba, Advocate

Versus

STATE

.....Respondent

Through: Ms. Aashaa Tiwari, Addl. PP
for State with SI Sumit Kataria,
PS Nihal Vihar, Delhi.

CORAM:-

HON'BLE MR. JUSTICE S. P. GARG

HON'BLE MR. JUSTICE C. HARI SHANKAR

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(JUDGMENT)

28.10.2017

C. HARI SHANKAR, J. (ORAL)

1. This appeal, at the instance of the accused Lalu Pasi, challenges the judgment, dated 13th July 2015, passed by the learned Additional Sessions Judge (West)-04, Tis Hazari (hereinafter referred to as “the learned ASJ”), whereby and whereunder the learned ASJ has held the appellant guilty of murdering his father-in-law Hira Lal and convicted him, accordingly, under Sections 302/201 of the Indian Penal Code, while acquitting him under Section 404 thereof. Also under challenge is the subsequent order on sentence, dated 16th July 2015, whereby the learned ASJ has sentenced the appellant to imprisonment for life and fine of Rs.5,000/- for the offence under Section 302 IPC, with default sentence of one year, along with a sentence of rigorous imprisonment for 3 years and fine of Rs.2,000/- for the offence under Section 201

IPC with default SI for six months. The sentences have been directed to run concurrently.

2. The facts, as alleged by the prosecution, do not admit of any complexity. They may be stated as follows.

3. On 11th February 2011, at about 9 pm, Hira Lal went to visit his daughter Rekha, i.e. the wife of the appellant. On his failing to return even by the next day i.e. 12th February 2011, enquiry was made from the appellant, who stated that his father-in-law had left the house at about 10.30 pm on 11th February, 2011, after dinner. Hira Lal could not be located on 12th February, 2011; however, on 13th February 2011, his dead body was found, hidden amongst stones near the drain (Ganda Nala). The dead body bore several injury marks, primarily on the face.

4. As he was the last person who had seen Hira Lal alive, the appellant was treated as the main suspect. He, initially, absconded but was subsequently arrested on 05th May 2011. The prosecution alleged that, during investigation, it was found that the appellant had murdered his father-in-law, Hira Lal for two reasons, firstly, because he had been scolded/beaten by Hira Lal owing to his misbehaviour towards his wife, i.e. Rekha, and, secondly, because the appellant had seen, in the pocket of Hira Lal, some currency notes of Rs.500/- each, which he wanted to purloin.

5. Consequent to completion of investigation, charge sheet was filed against the appellant u/S 302/404 and 201 IPC. The matter was committed to the Court of Sessions, and was received by the said Court on 30th August 2011.

6. Subsequently, charges were framed against the appellant under Sections 302/404 and 201 IPC. The appellant pleaded not guilty and was, therefore, set up for trial.

7. The following witnesses were examined by the prosecution:

	Name	Role
PW-1	Badku	Son of Hira Lal
PW-2	Rekha	Wife of appellant
PW-3	Subhash Chand	Head Constable
PW-4	Ram Swarup	Neighbour
PW-5	Jai Singh	Initial Investigating Officer
PW-6	Manoj Dhingra	Doctor who conducted <i>post mortem</i>
PW-6A	Surat Singh	SI (retd) who arrived at the spot
PW-7	Rakesh	IO who later joined investigation
PW-8	Ajeet Singh	In-charge Mobile Crime team
PW-9	Anil Kumar	Member/photographer with Crime team
PW-10	Ram Avtar	MHC (M)
PW-11	Sunil Kumar	IO who later joined investigation
PW-12	Mahesh Kumar	Draftsman
PW-13	Sunil Kumar	Delivered Special Report
PW-14	Jai Bhagwan	HC who later entered investigation

8. Consequent to the completion of prosecution evidence, the statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”) on 4th April 2015. While denying the case of the prosecution, the appellant opted not to lead any evidence in his defence.

9. Before the ASJ, the learned Additional PP appearing for the State, submitted that sufficient evidence, in the form of (i) the appellant being the last person to have seen Hira Lal alive, (ii) the recovery of the dead body at the appellant’s instance, (iii) the appellant’s extra judicial confession to his wife, (iv) the statement of the appellant’s wife, (v) the appellant’s conduct and (vi) existence of motive, was available, for establishing the guilt of the appellant beyond reasonable doubt. Discrepancies/contradictions, if any, it was submitted, were minor and insignificant.

10. *Per contra*, the learned counsel for the appellant submitted, before the learned ASJ, that there was no reliable evidence to show that the appellant was the last person to have seen Hira Lal alive. Neither, it was submitted, was there any incriminating extra-judicial confession or other evidence, regarding motive and conduct of the appellant, as would justify connecting the appellant with the death of Hira Lal.

11. Of the various witnesses examined on behalf of the prosecution before the learned ASJ, nothing substantially turns on the depositions

of PW3, PW4, PW5, PW6, PW6A, PW7, PW8, PW9, PW10, PW11, PW12, PW13 or PW14. Reference need only be made to the deposition of PW-1 Badku - the son of Hira Lal and consequently, the brother-in-law of the appellant - and PW-2 Rekha, the wife of the appellant. Nevertheless, for the purposes of completion of the record, a brief reference to the evidence of all prosecution witnesses (hereinafter referred to as “PWs”) would be apposite.

12. PW-1, Badku, who was the complainant, deposed that (i) he knew the appellant, being his brother-in-law, (ii) the appellant used to reside, along with his wife Rekha, at a rented accommodation situated in Nangloi, (iii) the appellant used to, at times, work as a labourer and, at others, remained unemployed, (iv) he had last seen his father Hira Lal alive on the evening of 11th February 2011, when Hira Lal left the house, stating that he was going to the rented accommodation occupied by Rekha and the appellant to have dinner, and would come back, after taking dinner, at about 10-10.30 pm, (v) however, his father did not return that day, (vi) he, i.e Badku, and his other family members, presumed that Hira Lal might have slept at the premises of the appellant, (vii) on the appellant visiting him, i.e Badku, the next morning at 7 AM, he asked the appellant about the whereabouts of Hira Lal, whereupon the appellant stated that, after taking dinner, Hira Lal had left the appellant's room at about 10:30 PM, (viii) though efforts were made that day, to trace Hira Lal, they were fruitless, (ix) on the next date, i.e 13th February 2011, at about 8 AM, he along with the appellant and his neighbour Ram Swaroop, went towards the

Ganda Nala (drain), where the appellant remarked that a dead body was lying hidden beneath the stones, (x) a scarf/shawl was also lying near the said body which the appellant claimed to have given Hira Lal when he left his room after having dinner, (xi) on removing the stones, they found the body to be that of Hira Lal, (xii) he, i.e Badku, noticed that there were injuries on both sides of the head, a cut mark on one ear, and that one eye had come out, (xiii) the police officials were, thereupon, summoned to the spot, (xiv) his statement was recorded by the police, (xv) the police officials conducted personal search of the body of Hira Lal whereupon one pouch of “Gutkha”, a packet of “bidis”, a small plastic container containing tobacco and lime, and currency of Rs 24/- were recovered, (xvi) Hira Lal’s body was removed to the Sanjay Gandhi Hospital, where its *post mortem* was conducted, whereafter the body was given to him for performing the last rites, (xvii) after removal of the body from the spot, the appellant disappeared/fled from his rented accommodation, which caused him, i.e Badku and his other family members to suspect the involvement of the appellant in the murder of Hira Lal, (xviii) thereafter, the appellant “even made telephonic calls and uttered unparliamentary language”, and (xix) some days later, the appellant even stated, before Rekha, that he had committed the murder of Hira Lal.

13. PW-2 Rekha stated that (i) she had married the appellant 3 years ago and was, since then, residing with him, though he used to beat her occasionally, (ii) the appellant used to work as a labourer, but, thereafter, stopped working, (iii) the appellant used to gamble, and she

used to provide for the family by working as a housemaid, (iv) she complained, to her parents, about the appellant beating her occasionally, which resulted in the appellant, in turn, being beaten by her father Hira Lal, on 2 or 3 occasions, (v) the appellant used to “have an evil eye” on the earnings of Hira Lal, and used to offer him liquor to win his confidence, (vi) on 11th February 2011, Hira Lal came to their room at about 8-8:30 PM, whereupon the appellant called him to “wine and dine”, (vii) the appellant offered liquor to Hira Lal, which they had along with fish, prepared by her, (viii) at about 9-9:30 PM, the appellant left the house with Hira Lal, stating that he was going to drop Hira Lal at his room, (ix) as she went to sleep, she did not know when the appellant returned, (x) the next morning, i.e. on 12th February 2011, the appellant went to Hira Lal’s house, where he was asked about the whereabouts of Hira Lal, to which he replied that he had dropped Hiralal home the previous night itself, and did not know about his whereabouts thereafter, (xi) efforts, to trace Hira Lal, were made by all of them, but to no avail, (xii) on the next day, at 8 AM, the appellant took her brother, mother, herself and their neighbour Ram Swarup, to the Ganda Nala, where they found a dead body, lying beneath the stones, with a shawl lying over the stone, (xiii) after summoning the police, they removed the stones, and found that the dead body was that of her father Hira Lal, (xiv) she came to know, later, that the dead body had been taken to the Sanjay Gandhi Hospital for post-mortem, (xv) her husband, thereafter, “became perplexed” and “used to remain mum”, (xvi) 8 to 9 days thereafter, he absconded, (xvii) a day prior thereto, the accused told

her that he had murdered Hira Lal and asked her to save him, being his wife, the exact words used by the appellant being *tu meri patni hai, ab tu hi mujhe bacha sakti hai, mujhe bacha le*” and (xviii) she recited all these facts to her mother and brother.

14. It is relevant to mention that, during cross-examination, which took place before the learned ASJ on 18th February 2015, Rekha submitted, in contradiction to what she had said during her aforementioned statement, by way of a “voluntarily explanation”, that, when Hira Lal left her house on 11th February 2011, he was not accompanied by the appellant, and that she did not know, in fact, when the appellant left the house.

15. PW-3, HC Subash Chand, who was the duty officer, proved the FIR and endorsed the *rukka* (i.e. the on the spot recording of the complaint).

16. PW-4 Ram Swarup deposed that (i) he was residing as a tenant in a neighbouring house, (ii) on 13th February 2011, Badku and the appellant reached his house, stating that Hira Lal had not returned home since 11th February 2011, whereafter he accompanied them towards the Ganda Nala, (iii) *he saw* that, towards the southern side of the Ganda Nala, a dead body was lying covered with stones, (iv) on removing the stones, the dead body was found to be that of Hira Lal, (v) he noticed injury marks on both sides of the head, that the left eye had come out and the left ear was torn, (vi) thereafter, the police

arrived at the scene, and (vii) a shawl was also there at the spot, and the body of Hira Lal was clothed in a jersey, pant, shirt and undergarments. He identified the body of Hira Lal, as well as the appellant.

17. PW-5, Inspector Jai Singh (retired), who was the initial Investigating Officer (I/O) proved the Daily Diary (DD), *rukka*, inquest proceedings, identification of the dead body, application for conducting *post-mortem*, disclosure statement of the appellant, arrest memo and personal search memo of the appellant, and also identified the case property. He was cross-examined on behalf of the appellant.

18. PW-6, Dr Manoj Dhingra, deposed about the *post-mortem* report and proved the same.

19. PW-6A SI Surat Singh (retired) deposed about receiving the DD dated 13th February 2011, as well as the fact of his having visited the place of occurrence, between the two drains on the road. He further deposed that he had informed, about the incident to senior officers, who arrived at the spot, and that the proceedings were carried out by the I/O in his presence.

20. PW-7 HC Rakesh deposed that he had joined the investigation of the case, with the I/O, on 14th February 2011, 21st February 2011 and 5th May 2011, and that he was also a member of the raiding team

which apprehended the appellant on 5th May 2011. He was cross-examined on behalf of the appellant.

21. PW-8 ASI Ajeet Singh, who was in charge of the Mobile Crime team, deposed about the inspection and subsequent proceedings carried out by him and his team at the spot, and proved his detailed report.

22. PW-9 HC Anil Kumar, who was a member of the crime team and was posted as a photographer with the said team, deposed about the photographs clicked by him at the spot on 13th February 2011 and proved the same, along with their negatives.

23. PW-10 HC Ram Avtar was the MHC(M), who deposed about certain entries in the register, as also about drawing and sealing of samples and sending them, thereof, to the Forensic Signs Laboratory (FSL).

24. PW-11 Constable Sunil Kumar deposed about participating in joint investigation and testified to the steps taken by the I/O during his presence on 13th February 2011 and 5th May 2011.

25. PW-12 Inspector Mahesh Kumar, who was the draughtsman, deposed about the scaled site plan and proved the same.

26. PW-13 Constable Sunil Kumar deposed about the delivery of the special report to the Metropolitan Magistrate and senior police officers.

27. PW-14 HC Jai Bhagwan deposed about depositing of 5 parcels and the Sample seal in the FSL.

28. The above constituted the *summon bonum* of the evidence before the learned ASJ.

29. The findings of the learned Trial Court, as returned in the impugned order, are somewhat perplexing. He commences his analysis by correctly recognizing the principle that a great deal of circumspection is required to be exercised while appreciating the evidence, in cases which were dependent solely on circumstantial evidence, such as the present. The learned ASJ has appropriately culled out the following five principles, governing appreciation of circumstantial evidence as enunciated by the Supreme Court in ***Sharad Birdhichand Sarda vs. State of Maharashtra (1984) 4 SCC 116*** (as quoted from the impugned order itself):

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

(ii) 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.*

(iii) The circumstances *should be of a conclusive nature and tendency.*

(iv) *They should exclude every possible hypothesis except the one to be proved.*

(v) *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 probabilities, the act must have been done by the accused."*

(Emphasis supplied)

30. The learned ASJ, thereafter, proceeds to note that the prosecution based its case, against the appellant, on

- (i) the alleged fact that the person to have last seen Hira Lal alive was the appellant,
- (ii) the existence of motive,
- (iii) the circumstances in which the dead body of Hira Lal was recovered,
- (iv) the extra-judicial confession, of the appellant, made to his wife Rekha, and
- (v) the appellant's conduct.

31. The learned ASJ then proceeds to examine the strength of each of the above points, on which the prosecution was seeking to build its case, as under:

- (i) Last seen evidence:

(a) It is acknowledged, in the findings contained in the impugned order, that, apart from the evidence of Rekha, the only other person who claimed to have seen the appellant along with Hira Lal at about 8.30/9.00 PM on the fateful night was one Vijay, during his examination on 16th February 2011. This, according to the prosecution, was the last occasion when anyone had seen the appellant in the company of Hira Lal. However, Vijay could not be examined during trial, as he remained untraceable, despite issuance of repeated summons to him, even through the I/O and the concerned Deputy Commissioner of Police.

(b) Insofar as the evidence of Rekha was concerned, the learned ASJ holds, in the impugned order, that her initial statement that, on 11th of February 2011, Hira Lal had left the house along with the appellant at about 9 to 9:30 PM was reliable, and that the contrary statement, tendered by her during cross-examination nearly 3 years thereafter, to the effect that the appellant had not accompanied Hira Lal when he left the house, was an attempt at twisting the facts to wriggle out of her earlier statement, which was specific and categorical against the appellant. The learned ASJ holds that, holistically viewed, the later contrary statement, of Rekha, could be ignored, and her earlier position during examination relied upon. He places reliance, for this purpose, on the judgment of the Supreme

Court in *Khujji v State of MP, AIR 1991 SC 1853* which, as per the impugned order, “deals with the similar situation”.

(c) The learned ASJ has also returned the following additional finding to justify his conclusion that, in fact, Hira Lal was last seen alive in the company of the appellant, at about 9 to 9:30 PM on 11th February 2011:

“Further, the time since that is mentioned in the post mortem report of the deceased, is also in consonance with the last seen evidence as deposed by PW-2 where the time since that was mentioned as about 2 days at the time of post mortem dt. 14.02.2011. Further, there is no just explanation on part of the accused in this regard.”

(ii) Motive:

Insofar as the question of motive is concerned, the learned ASJ holds that, though no motive, on the part of the appellant, to do away with his father-in-law Hira Lal, was established, the absence of motive would not be fatal to the case of the prosecution, and the role of the accused-appellant would be ascertained from attendant facts.

(iii) Recovery of dead body:

On this aspect of the case, too, the learned ASJ holds, in favour of the appellant, that “the evidence led by prosecution in this regard is not sufficient to make the court conclude that the dead body was actually recovered at the instance of accused.”

(iv) Extra Judicial Confession:

The alleged extra-judicial confession, stated to have been made, by the appellant to his wife Rekha on 22nd February 2011, has been treated, by the learned ASJ in the impugned order, as incriminating evidence against the appellant. He relies, for this purpose, on the deposition of PW-2, Rekha, during her examination-in-chief on 9th November 2011, to the effect that, one day prior to his absconding, the appellant had stated, to her, that he had murdered her father, and had beseeched her to save him, as also on the corroborative deposition, of PW-1, Badku, to the effect that the appellant had stated, before Rekha, that he had murdered Hira Lal. Taking into stock the law, on the admissibility and reliability of extra-judicial confessions, as laid down in ***Koli Ramsing Gandabhai v State of Gujarat, 1998 (2) Crimes 315 (Guj)***, ***Darshan Lal v State of J & K, AIR 1975 SC 898*** and ***Hari Kishan v State of Haryana, 1990 Cr LJ 385 (P & H)***, the learned ASJ chose to rely on the alleged extra judicial confession made by the appellant to his wife, on the reasoning that (i) “the above mentioned facts regarding confession of guilt by the accused are quite specific, categorical and clear to the effect that the accused has admitted his act of commission of crime i.e. murder of his father-in-law Sh Hira Lal and has pleaded to his wife to save him”, without any ambiguity in his words, (ii) PW-2 Rekha was reliable witness “except some wriggling out attempt during cross-examination”, (iii) Rekha’s claim regarding the confession made by the appellant was “otherwise found to be genuine

and bona fide as the natural circumstances in which the accused had the opportunity to make such confession before PW-2 who is none other than his own wife”, and (iv) the circumstances regarding making of such extra-judicial confession by the appellant was “further explained and strengthened by the fact that the accused absconded from his house after making such confession and could be apprehended after several months while he was very much present on joining the investigation for initial few days after the crime”. Resultantly, the learned ASJ holds, “the confession was made by the accused before his wife in most natural circumstance, without any force, coercion or undue influence from any corner” and could, therefore, “very well be used as an incriminating circumstance against him”.

(v) Conduct:

Applying section 8 of the Evidence Act, 1872, the learned ASJ holds that the conduct of the appellant was “quite capable of drawing inferences regarding his guilt”, in as much as, though he remained present with the family members of Hira Lal on 12th, 13th and 14th February 2011 when the *post-mortem* was carried out, even, thereafter, remained quiet for a few days and suddenly absconded on 22nd of February 2011, whereafter he could be apprehended only on 5th May 2011. Reliance was also placed, for this purpose, on the alleged statement, by Vijay, to the I/O, to the effect that he had seen the appellant with Hira Lal on the fateful night. Though the learned ASJ

acknowledges the fact that the said Vijay could never be examined during trial, he relies on the statement of PW-5 Inspector Jai Singh, to the effect that Vijay had stated the above facts to him on 16th February 2011. On a conjoint reading of these facts, the learned ASJ holds that, after 16th February 2011, many found that he had come under suspicion, and apprehended arrest, the appellant absconded. The appellants alleged conduct of “becoming perplexed” and, thereafter, “remaining mum”, as deposed by Rekha, have also been treated, by the learned ASJ, as damning evidence against the appellant.

32. The learned ASJ proceeds, thereafter, to dismiss the FSL report as not being of much use, and concludes, on the charge against the appellant under Section 302 of the IPC, as under:

“ In view of discussion under different circumstances as mentioned above, it is clear that the prosecution has not been able to prove some of the circumstances but some circumstances have been duly proved beyond reasonable doubt is. On one hand *the prosecution has not been able to prove the motive behind the crime and alleged recovery of the dead body at the instance of accused* while on the other hand *the circumstances relating to last seen, extrajudicial confession and conduct of the accused have been duly established*. It is well settled law that even a single circumstance is capable of proving the guilt of accused if proved beyond reasonable doubts as per law *leaving no scope for innocence of the accused*. In the present case, *there are two vital circumstances in form of last seen evidence and extrajudicial confession of the accused which have been proved on record beyond all reasonable doubts and the same are capable of forming a complete chain of events to prove the guilt of the accused. These two circumstances have been duly corroborated by the circumstances relating the conduct of the accused after commission of offence*. It is duly

established on record that the deceased Hira Lal was last seen in the company of accused at about 09.00-09.30 pm on 11.02.2011 when he left the house of his daughter alongwith accused after taking dinner. Further *it has been duly proved on record that about 8-9 days after the incident and one day before his disappearance, the accused Lalu Passi made extrajudicial confession before his wife i.e. PW-2 Smt. Rekha that he had murdered her father and that she being his wife can only save him.*

Further, *the manner in which the death of Hira Lal has been caused makes clear the intention and knowledge of the assailant which could be nothing else but to kill the deceased.* The post-mortem report Ex. PW-6/A describes that the cause of death is 'Craniocerebral damage consequent to blunt force trauma to the head. All injuries are antemortem, fresh in duration and caused by heavy blunt object'. The post mortem report also describes as many as 9 external injuries on different parts including head and some internal injuries on different parts including head which suggest that the death is homicidal in nature.

In view of above discussion, I am of the considered view that the prosecution has successfully proved the ingredients of the offence punishable u/s 302 IPC beyond reasonable doubts against the accused for committing murder of his father-in-law Sh. Hira Lal."

(Emphasis supplied)

33. The learned ASJ proceeds, thereafter, to hold the charge, against the appellant, u/s 404 IPC, not to be proved, but upholds the charge u/s 201 IPC, thus:

"As per evidence led by prosecution, the dead body of Hira Lal has not been recovered from drain where the dead body was allegedly thrown by the accused. The dead body has been actually recovered from near the drain and not from inside the drain. Although, it is not proved that the dead body was thrown in the drain, it is consistent case of the

prosecution witnesses that the dead body was covered with stones at the time of its recovery and the same could be identified only after removal of the stones. The such act of covering the dead body with stones can very well be attributed to the accused Lalu Passi against whom a conclusion has already been drawn qua commission of the murder of deceased Hira Lal. The act of covering the dead body with stones is duly covered under the scope of the offence prescribed under section 201 IPC for causing disappearance of evidence of offence. On the basis of evidence led by prosecution, it can safely be concluded that the accused Lalu Passi has committed the offence U/S 201 IPC.”

34. As already noted hereinabove, the learned ASJ proceeded, *vide* separate order dated 16th July 2015, to award the appellant the sentence of imprisonment for life and fine of Rs. 5000/-for the offence under Section 302 IPC, with default sentence of one year SI, and the sentence of rigorous imprisonment for 3 years with fine of Rs. 2000/- for the offence under Section 201 IPC, with default sentence of 6 months SI, both sentences being directed to run concurrently. He has also been given the benefit of Section 428 Cr PC in respect of the period already undergone by him. The learned ASJ further, referred the matter to the Daily Legal Services Authority, West, for awarding suitable compensation to the legal representatives of Hira Lal as per rules.

Analysis and findings

35. Having heard Ms.Saahila Lamba, learned counsel appearing for the appellant and Ms. Aashaa Tiwari, learned Additional PP for the

State, we are constrained to observe that the impugned order infracts several fundamental principles of criminal law and appreciation of evidence.

36. There being no eyewitness to the killing of Hira Lal, the present case, undisputedly, rests entirely on circumstantial evidence.

37. The law, relating to circumstantial evidence and the manner in which it is to be appreciated and analysed, is by now trite, and the necessity of multiplied reference to judicial precedents on the issue stands obviated. ***Sharad Birdhichand Sarda (supra)***, and the guidelines prescribed therein, already find mention hereinbefore; for ready reference, however, the five tests postulated in the said decision, the fulfilment of which is the *sine qua non* before conviction can be based on circumstantial evidence alone, may be reproduced as under:

- (i) The circumstances from which the conclusion of guilt is to be drawn should be fully established.
- (ii) 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.*
- (iii) The circumstances *should be of a conclusive nature and tendency.*
- (iv) *They should exclude every possible hypothesis except the one to be proved.*

(v) *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 probabilities, the act must have been done by the accused.*

38. On the same issue, ***Sahadevan v State of Tamil Nadu, (2012) 6 SCC 403*** ordains that “in case of circumstantial evidence, the onus lies upon the prosecution to prove the complete chain of events which shall undoubtedly point towards the guilt of the accused.”

39. The following passages, from ***Nizam v State of Rajasthan, (2016) 1 SCC 550***, are also instructive, on the aspect of circumstantial evidence, and the value and reliability thereof:

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

9. The principle of circumstantial evidence has been reiterated by this Court in a plethora of cases. In ***Bodhraj v. State of J&K, (2002) 8 SCC 45***, wherein this Court quoted a number of judgments and held as under: (SCC pp. 55-56, paras 10-11)

“10. *It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only*

*when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See **Hukam Singh v. State of Rajasthan**, (1977) 2 SCC 99, **Eradu v. State of Hyderabad**, AIR 1956 SC 316, **Earabhadrapa v. State of Karnataka**, (1983) 2 SCC 330, **State of U.P. v Sukhbasi**, 1985 Supp SCC 79, **Balwinder Singh v. State of Punjab**, (1987) 1 SCC 1 and **Ashok Kumar Chatterjee v. State of M.P.**, 1989 Supp (1) SCC 560. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In **Bhagat Ram v. State of Punjab**, AIR 1954 SC 621 it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.*

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

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

10. In **Trimukh Maroti Kirkan v. State of Maharashtra**, (2006) 10 SCC 681, this Court held as under: (SCC p. 689, para 12)

“12. In the case in hand there is no eyewitness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence.”

The same principles were reiterated in *Sunil Clifford Daniel v. State of Punjab*, (2012) 11 SCC 205, *Sampath Kumar v. Inspector of Police*, (2012) 4 SCC 124, and *Mohd. Arif v. State (NCT of Delhi)*, (2011) 13 SCC 621 and a number of other decisions.”

40. A recent judgment of the Supreme Court, in *Ganpat Singh v State of M.P.*, MANU/SC/1187/2017 pithily echoes the same thoughts, thus:

“In a case which rests on circumstantial evidence, *the law postulates a two-fold requirement. First, every link in the chain of circumstances necessary to establish the guilt of the Accused must be established by the prosecution beyond reasonable doubt. Second, all the circumstances must be consistent only with the guilt of the accused.*”

(Emphasis supplied)

41. The following words, from the judgment of the Supreme Court in *Durga Burman Roy v State of Sikkim*, (2014) 13 SCC 35,

employed while rejecting the plea that the circumstances of the case established the guilt of the accused, are also significant:

“Thus, there should be independent evidence. The conviction of the appellant is by placing reliance solely on the recovery of the wristwatch. We have already held above that, it is faulty in procedure and, apart from that, the same does not infuse any confidence in the mind of the Court in the given circumstances, when pitted against the rest of the evidence, that the appellant committed the murder with the motive of theft. It is not enough that the circumstances lead to possibility or probability of the involvement of the accused; the circumstances should point all the fingers to the accused and the accused only. That is not the situation in this case. The circumstances can lead to many other inferences. The chain is also not complete.”

(Emphasis supplied)

42. Ere, therefore, we apply, to the present case, the various indicia for appreciating circumstantial evidence, as adumbrated by the above pronouncements, we have, in the first instance, to segregate, from the mass of facts before us, the circumstances, which, according to the learned ASJ, brought home the guilt to the appellant.

43. Quite clearly, the only circumstances, which, according to the learned ASJ, were available against the appellant, but which, in his perception, were sufficient to prove the charge of murder, of Hira Lal, against him, were

- (i) the fact that he was the person who had “last seen” Hira Lal alive,
- (ii) his extra judicial confession, made to his wife Rekha on 22nd February 2011, and

(iii) his conduct consequent on the *post mortem*, especially his act of absconding and evading detection till 5th May 2011.

44. We proceed, therefore, to analyse each of these circumstances, individually and as a collective whole.

The “last seen” theory

45. On the “last seen theory”, the Supreme Court has this to say, in *Nizam (supra)* (in paras 12, 14, 15 and 18 of the report):

“12. Based on the evidence of PWs 1 and 2, the courts below expressed the view that the motive for murder of Manoj was the lust for the money which Manoj was carrying. The courts below based the conviction of the appellants on the circumstances “*last seen theory*” as stated by PWs 1 and 2 along with the recovery of bilty and receipt by PW 6 on which the name of the accused person (Nizam) was printed. The appellants are alleged to have committed the murder of Manoj for the amount which Manoj was carrying. But neither was the amount of Rs 20,000 nor any part of it recovered from the appellants. *If the prosecution is able to prove its case on motive, it will be a corroborative piece of evidence lending assurance to the prosecution case. But even if the prosecution has not been able to prove the motive, that will not be a ground to throw away the prosecution case. The absence of proof of motive only demands careful scrutiny and deeper analysis of evidence adduced by the prosecution.*

14. The courts below convicted the appellants on the evidence of PWs 1 and 2 that the deceased was last seen alive with the appellants on 23-1-2001. *Undoubtedly, the “last seen theory” is an important link in the chain of circumstances that would point towards the guilt of the accused with some certainty. The “last seen theory” holds the courts to shift the burden of proof to the accused and the accused to offer a*

reasonable explanation as to the cause of death of the deceased. It is well settled by this Court that it is not prudent to base the conviction solely on "last seen theory". "Last seen theory" should be applied taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen.

15. Elaborating the principle of "last seen alive" in ***State of Rajasthan v. Kashi Ram*, (2006) 12 SCC 254**, this Court held as under: (SCC p. 265, para 23)

"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 Mohamed, In re. [AIR 1960 Mad 218]*"

The above judgment was relied upon and reiterated in ***Kiriti Pal v. State of W.B., (2015) 11 SCC 178.***

18. In view of the time gap between Manoj being left in the truck and the recovery of the body and also the place and circumstances in which the body was recovered, possibility of others intervening cannot be ruled out. In the absence of definite evidence that the appellants and the deceased were last seen together and when the time gap is long, it would be dangerous to come to the conclusion that the appellants are responsible for the murder of Manoj and are guilty of committing murder of Manoj. *Where time gap is long it would be unsafe to base the conviction on the “last seen theory”; it is safer to look for corroboration from other circumstances and evidence adduced by the prosecution. From the facts and evidence, we find no other corroborative piece of evidence corroborating the last seen theory.”*

(Emphasis supplied)

46. ***Ganpat Singh (supra)***, too, is instructive on the parameters of the “last seen theory”, and holds, after referring to a catena of earlier authorities, as under:

“Evidence that the accused was last seen in the company of the deceased assumes significance when the lapse of time between the point when the Accused and the deceased were seen together and when the deceased is found dead is so minimal as to exclude the possibility of a supervening event involving the death at the hands of another. The settled formulation of law is as follows:

‘The last seen theory comes into play where the time gap between the point of time when the accused and deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists.

In the absence of any other positive evidence to conclude that accused and deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.’ ”

(Emphasis supplied)

47. In another recent judgment, *Anjan Kumar Sarma v State of Assam*, 2017 SCC Online SC 622, the Supreme Court, relying on its earlier decision in *State of Goa v Sanjay Thakran*, (2007) 3 SCC 775, expostulated thus, on the “last seen theory”:

“22. It is clear from the above that in a case *where the other links have been satisfactorily made out and the circumstances point to the guilt of the accused*, the circumstance of last seen together and absence of explanation would provide an additional link which completes the chain. *In the absence of proof of other circumstances, the only circumstance of last seen together and absence of satisfactory explanation cannot be made the basis of conviction.* The other judgments on this point that are cited by Mr. Venkataramani do not take a different view and, thus, need not be adverted to. He also relied upon the judgment of this Court in *State of Goa v. Sanjay Thakran*, (2007) 3 SCC 755 in support of his submission that the circumstance of last seen together would be a relevant circumstance in a case where there was no possibility of any other persons meeting or approaching the deceased at the place of incident or before the commission of crime in the intervening period. It was held in the above judgment as under:—

“34. From the principle laid down by this Court, the circumstance of last seen together would normally be taken into consideration for finding the accused guilty of the offence charged with *when it is established by the prosecution that the time gap between the point of time when the accused and the deceased were*

found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out. The time gap between the accused persons seen in the company of the deceased and the detection of the crime would be a material consideration for appreciation of the evidence and placing reliance on it as a circumstance against the accused. But, in all cases, it cannot be said that the evidence of last seen together is to be rejected merely because the time gap between the accused persons and the deceased last seen together and the crime coming to light is after (sic of) a considerable long duration. There can be no fixed or straitjacket formula for the duration of time gap in this regard and it would depend upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period, that is to say, if the prosecution is able to lead such an evidence that likelihood of any person other than the accused, being the author of the crime, becomes impossible, then the evidence of circumstance of last seen together, although there is long duration of time, can be considered as one of the circumstances in the chain of circumstances to prove the guilt against such accused persons. Hence, if the prosecution proves that in the light of the facts and circumstances of the case, there was no possibility of any other person meeting or approaching the deceased at the place of incident or before the commission of the crime, in the intervening period, the proof of last seen together would be relevant evidence. For instance, if it can be demonstrated by showing that the accused persons were in exclusive possession of the place where the incident occurred or where they were last seen together with the deceased, and there was no possibility

of any intrusion to that place by any third party, then a relatively wider time gap would not affect the prosecution case.”

(Emphasis supplied)

48. Applying the above principles to the present case, it becomes immediately apparent that the finding, of the learned ASJ, that the appellant had “last seen” Hira Lal alive, and that the said circumstance incriminated him, is totally unsustainable, on facts as well as in law.

49. The burden to prove that the appellant was last seen with the deceased was upon the prosecution. On scanning the testimonies of various witnesses examined by the prosecution, we are of the opinion that no credible evidence has emerged to ascertain as to till what time the appellant was in the company of the deceased. The victim’s body was recovered on 13.02.2011 and the post-mortem examination was conducted on 14.02.2011 at 01.00 p.m. vide post-mortem report (Ex.PW-6/A). The examining doctor opined the time since death about two days. It can be inferred that the homicidal death of the victim occurred on 12.02.2011 at around 01.00 p.m.

50. The FIR was lodged by PW-1 (Badku) on 13.02.2011 after recovery of the victim’s body. In the complaint (Ex.PW-1/A) given to the police at first instance, the victim’s son disclosed that his father had left the house at around 09.00 p.m. to have a dinner at the residence of his sister. While appearing as PW-1 (Badku) in the Court statement, the complainant did not specify the exact time when the

victim had left the house. As per PW-1 (Badku)'s testimony the victim was to return at around 10 – 10.30 p.m. after taking dinner; it did not happen. PW-2 (Rekha) – victim's daughter disclosed that on 11.02.2011 her father had arrived at her house at about 08-08.30 p.m. In her examination-in-chief recorded on 09.11.2011 she disclosed that at about 09-09.30 p.m. the victim and her husband i.e. the appellant had left the house together. She was not aware as to when the appellant returned to the house that night.

51. PW-2 (Rekha)'s testimony does not inspire confidence as in the cross-examination conducted on 18.02.2015, she resiled from her previous statement and disclosed that her husband had not accompanied the victim when he had left the house at about 10.00 p.m. It is pertinent to note that the witness though closely related to the deceased did not inform the police at the earliest as to when her father had left the house and if he was accompanied by the appellant that time. Record reveals that her statement under Section 161 Cr.P.C. was recorded after a considerable delay on 07.05.2011. No other evidence has come on record to corroborate her version.

52. Reliance was placed on the statement of one Vijay recorded under Section 161 Cr.P.C. during investigation on 16.02.2011 where he (Vijay) claimed that on 11.02.2011 at about 08.30 / 09.00 p.m. he had met the victim and the appellant and had some conversation with them. The prosecution was unable to produce and examine this crucial witness. Identity of this individual Vijay could not be

ascertained and he was found untraceable. Adverse inference is to be drawn against the prosecution for withholding this material witness. Vijay claim that he had seen both the appellant and the victim at 08.30 /09.00 p.m. together near the spot is in contradiction to Rekha's claim that her father had left the house at 10.00 p.m.

53. The prosecution did not collect any reliable and firm evidence to ascertain if the appellant had left the house that night, or if so, when he returned to the house.

54. The reliance, by the learned ASJ, on the alleged fact of the appellant having been the person who had "last seen" Hira Lal alive, or who was the person last seen in the company of Hira Lal, has, therefore, to be characterized as misguided. No incriminating circumstance, pointing towards the involvement, of the appellant, in the murder of Hira Lal could, therefore, be said to exist, on this count.

Extra-judicial confession

55. The learned ASJ has also placed considerable reliance on the alleged extra-judicial confession, stated to have been made by the appellant to his wife Rekha on 21st February 2011, to the effect that he had murdered Hira Lal.

56. The learned ASJ himself acknowledges, in the impugned order, that the extra-judicial confession is a very weak type of evidence, and that the burden was entirely on the prosecution to establish its trustworthiness. Among the circumstances to be examined, for this

purpose, as the impugned order rightly notes, would be the occasion/reason for the accused to make such a confession, and the circumstances in which it was made. In the present case, the learned ASJ had entirely failed to notice that the alleged extra-judicial confession was stated to have been made by the appellant, to Rekha, as many as 9 days after the murder of Hira Lal. No explanation, for the appellant remaining quiet for all these days and, suddenly, deciding to unburden himself to his wife Rekha, is forthcoming, either in the case set up by the prosecution against the appellant, or in the findings of the learned ASJ, as contained in the impugned order. It cannot be regarded that such behaviour was normal and ordinarily to be expected, of a person who was alleged to have committed cold-blooded murder of his father-in-law 9 days earlier. The clearly belated nature of the alleged extra-judicial confession, even by itself, would be a circumstance which would substantially erode the said confession of all credibility or reliability, at least for the purposes of fastening a finding of guilt against the appellant, in the matter of having committed murder of his father-in-law Hira Lal. It is not as though any such intervening circumstance is alleged to have existed, as could result in an apprehension, in the mind of the appellant, that his guilt was about to be exposed, which would goad him to confess his guilt to his wife. At the very least, therefore, the behaviour of the appellant in thus confessing his alleged guilt to his wife, 9 days after he is alleged to have murdered his father-in-law Hira Lal, without any intervening event which could prompt the making of such a confession has, therefore, to be regarded as extremely unusual, and inherently

incredible, in the absence of any circumstance that would corroborate the making of the said confession.

57. The prosecution has miserably failed to establish if any extra judicial confession was made by the appellant to his wife PW-2 (Rekha). The alleged confession was made by the appellant after 7 or 8 days of the recovery of the victim's body. It is astonishing as to why PW-2 (Rekha) did not inform the investigating agency about this material circumstance promptly. As observed above Rekha's statement under Section 161 Cr.P.C. came to be recorded after inordinate delay on 07.05.2011. In the said statement, she informed that on the night of 21.02.2011 the appellant was perplexed and had started weeping. At that time, he informed her about commission of murder of her father by him. In the Court statement as PW-2 (Rekha) she did not specify the exact date as to when the said confession was made. She did not elaborate as to what had prompted the appellant to confess the crime all of a sudden that night. She did not furnish plausible explanation as to why this confession was not brought to the notice of the investigating agency. PW-5 (Insp. Jai Singh) – the Investigating Officer did not disclose if any such confession was brought to his knowledge by Rekha. Relevant to note is that the appellant was arrested on 05.03.2011. Seemingly PW-2 (Rekha)'s statement regarding the alleged confession was recorded on 07.03.2015 to strengthen the prosecution case. PW-5 (Insp. Jai Singh), the Investigating Officer, did not utter a word if any statement under Section 161 Cr.P.C. disclosing extra judicial confession was recorded

by him. If the appellant was to abscond soon after making the alleged confessional statement, there was no occasion to him to create an incriminating circumstance against him.

58. In *Pancho v State of Haryana*, (2011) 10 SCC 165, the Supreme Court held that “an extra-judicial confession is on the face of it, a weak evidence and the courts are reluctant, in the absence of a chain of cogent circumstances, to rely on it for the purpose of recording a conviction.” Incidentally, one of the circumstances relied upon by the Court, in the said case, to regard the alleged extra-judicial confession as being unreliable, was the fact that it was belated, as is the situation obtaining in the present case as well.

59. The necessity of existence of some independent corroborative evidence, before reliance can be placed on an extra-judicial confession, has also been stressed, in the judgments of the Supreme Court in *Pakkirisamy v State of Tamil Nadu*, (1997) 8 SCC 158 and *Sansar Chand v State of Rajasthan*, (2010) 10 SCC 604.

60. *Sahadevan (supra)* prescribed the following guidelines, in the matter of analysis and appreciation of an extra-judicial confession (in para 16 of the report):

“These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:

- (i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.
- (ii) It should be made voluntarily and should be truthful.
- (iii) It should inspire confidence.
- (iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.
- (v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.
- (vi) Such statement essentially has to be proved like any other fact and in accordance with law.”

61. Unfortunately, the learned ASJ has chosen to regard the alleged extra-judicial confession, allegedly made by the appellant to Rekha on 21st February 2011, as heavily incriminating the appellant, without examining the veracity or credibility of the said evidence, or even of the allegation of such a confession having been made, in the light of the attendant circumstances, and the law on the subject as enunciated in the decisions cited hereinbefore. The learned ASJ holds the said alleged confession to be reliable on the grounds that the “facts regarding confession of guilt by the accused are quite specific, categorical and clear to the effect that the accused has admitted his act of commission of crime i.e. murder of his father-in-law Sh.Hira Lal and has pleaded to his wife to save him”, and the fact that the accused absconded the next day. The absconding of the accused on 22nd February 2011, in our view, cannot be regarded as a circumstance which lends additional credibility to the alleged extra-judicial

confession, stated to have been made by the appellant to Rekha, on 21st February 2011.

62. The finding, of the learned ASJ, that “the extra-judicial confession made by accused Lalu Passi before his wife can very well be used as an incriminating circumstance against him” is, therefore, in our view misconceived on facts and in law. We cannot, in view of the attendant circumstances, regard the allegation of the extra-judicial confession having been made, by the appellant, to Rekha, on 21st February 2011, as inherently worthy of acceptance, as a corroborative circumstance which would establish the allegation of the appellant having murdered his father-in-law Hira Lal.

Conduct of the Appellant

63. Post event conduct of PW-1 (Badku) and PW-2 (Rekha) and other family members of the victim is unnatural and unreasonable. There was hardly a distance of about 200 metres between the two houses. Strange enough, no inquiry was made by PW-1 (Badku) and his family members to find out the whereabouts of the victim when he did not return as expected. On the next morning, it was the appellant who visited PW-1 (Badku)’s house. On inquiry by PW-1 (Badku) that the victim had not returned, the appellant informed him that he had left the house at around 10.30 p.m. Despite the victim having not returned to the house, no missing report was lodged with the police. The delay of two days in lodging the report and that too after the

recovery of the victim's body on 13.02.2011 has not been explained. It has come on record that PW-1 (Badku) and the appellant were having mobiles. However, no attempt was made by PW-1 (Badku) to contact the appellant or his wife on mobile to know as to why the appellant had not returned that night. The investigating agency did not collect any Call Detail Records of the mobiles used by the appellant and PW-1 (Badku) during the relevant time. PW-1 (Badku) in the Court statement informed that the appellant had made the telephone calls and had uttered un-parliamentary language. No details as to when the calls are made were collected.

64. We are equally unable to subscribe to the view, expressed by the learned ASJ, that the conduct of the appellant was an incriminating circumstance against him. The finding that "after 16.02.2011 the accused Lallu Passi had come under suspicion and he had sensed the same and apprehending his arrest, he absconded after a few days" is, in our view, the *ipse dixit* of the learned ASJ, and nothing else. There is no basis forthcoming, in the impugned order, for the finding that, after 16th February 2011, the appellant had come under suspicion. No oral deposition, or other circumstance, which would lead to such an inference, is available on the record. Neither is there anything to suggest that the appellant was apprehending his arrest after 16th February 2011. In fact, if it were to be assumed that the appellant *was* apprehending arrest, it would be natural for him to flee, and such absconding could not, therefore, be regarded as indicative of his guilt. Apprehension of arrest cannot, in our view, be regarded as a

circumstance indicating the guilt of the accused, as there could be myriad circumstances in which an innocent person apprehends arrest. If, therefore, the appellant *was*, as the learned ASJ has chosen to hold, apprehending arrest, that would justify – factually, of course, not legally or morally - his act of absconding, and would belie the inference that, by thus fleeing from the scene, the appellant had effectively pointed his own finger at himself.

65. In cases where their decision could affect the life and liberty of individuals, courts, we feel, need to be alive to the felt realities of the times, and not just proceed on perceived notions of right and wrong. Every absconder is not a criminal; equally, the act of absconding is not necessarily an acknowledgment of past criminal intent. Applying Section 106 of the Evidence Act, as the learned ASJ has done, to treat the fleeing, of the appellant, from the scene, as indicative of guilt, exhibits an approach which, we feel, is unrealistic. Absconding can be justifiably regarded as a circumstance pointing towards the guilt of the accused only where there is cogent collateral evidence indicating that the accused was fleeing from justice, i.e. seeking to escape the long arm of the law, for an offence which he had, *prima facie*, committed. Treating the act of absconding, *per se* and by itself, as indicative of guilt would, in our view, amount to putting the proverbial cart before the horse.

66. We, therefore, feel that the learned ASJ has erred, yet again, in opining that the conduct of the appellant was also indicative of his complicity, in the murder of Hira Lal.

Other significant factors

67. Our conclusion is also based on one other vitally important circumstance, which, in our view, has entirely escaped the attention of the learned ASJ.

68. The facts of the case, even as recited in the impugned order by the learned ASJ, clearly indicate that, *far from there being any animosity or enmity between the appellant and Hira Lal, or, for that matter, his other family members, they appear to have been on fairly cordial terms.* This is apparent from the fact that (i) Hira Lal had decided to have dinner with Rekha and the appellant, (ii) he informed his family accordingly, before leaving the house, and was not, in any manner, prevented, physically or verbally, (iii) even as per the deposition of Badku, they felt it to be totally natural that, after having dinner, Hira Lal might have decided to spend the night at the appellant's residence, (iv) he did not, in the first instance, doubt the appellant's statement that Hira Lal had left his room at about 10:30 PM on the previous night, i.e. on the night of 11th February 2011, (v) Rekha cooked fish, whereafter the appellant, as per the evidence of Rekha, "called her father to wine and dine", (vi) Rekha, the appellant and Hira Lal then proceeded to have dinner together, (vii) the next morning, the appellant visited the residence of Badku, and (viii) Badku did not disbelieve the appellants statement that he had, the night before, dropped Hira Lal home.

69. The appellant had no ulterior motive whatsoever to commit murder of his close relative. On the day of occurrence, the victim had gone unsuspectingly at the appellant's residence to have dinner. During his stay at the appellant's house no untoward incident whatsoever happened. The dinner was taken by the victim in congenial atmosphere. PW-2 (Rekha), in the cross-examination, admitted that there was no altercation or quarrel or hot exchange of words between her husband and father during his stay at her residence; the relations between the parties were cordial. Similar is the testimony of PW-1 (Badku) who in the cross-examination stated that his father had no apprehension of any kind from the accused and had gone alone to his house. He further admitted that his sister did not inform him about any altercation or quarrel between his father and the appellant in the house and the atmosphere was cordial. The prosecution has failed to establish as to what had forced the appellant in the absence of any apparent motive to commit a heinous crime in the absence of any motive.

70. In such circumstances, the alleged act of murdering Hira Lal, if actually committed by the appellant would reflect grossly aberrant behaviour, totally unexpected and unpredictable, given the circumstances in which they were co-existing, and the admitted manner in which they were treating each other. In the entire factual tapestry before us, there is nothing to be found, either in the case built up by the prosecution, or, for that matter, in the impugned order of the learned ASJ, to suggest that the appellant had any reason to behave

thus and, having had a perfectly cordial evening in the company of his father-in-law, during which they “wined and dined” having suddenly decided to commit his brutal murder, and hide the body behind stones near the Ganda Nala.

71. The decision, of the learned ASJ, to use the appellant’s conduct as a blighting circumstance is, therefore, ironical. If at all, the appellant’s conduct towards Hira Lal and, for that matter, towards the other members of Hira Lal’s family, was suggestive of his innocence, rather than guilt. We are of the view that the above enumerated circumstances were undoubtedly relevant in examining the probability of the appellant having belaboured Hira Lal, and committed his murder, and the learned ASJ has signally erred in failing to take stock thereof.

Analysis of the circumstances

72. Having thus dealt with the individual factors available on the record of the present case, and examined their significance or relevance, vis-a-vis the guilt, or innocence, of the appellant, in the matter of the murder of Hira Lal, we may holistically examine the same. The trite position in law, in a case which rests solely on circumstantial evidence is, as already noted hereinabove, that the circumstances must form a complete chain of events which are unerringly point only towards the guilt of the accused, to the extent that the circumstances, seen as a whole, exclude every other

possibility, and are capable of leading to only one conclusion, i.e., that the accused committed the crime. Do the circumstances, available in the present case, reach this high zenith? We are, unhesitatingly, of the view that they do not.

73. The investigating agency did not collect any Call Detail Records of the mobiles used by the appellant and PW-1 (Badku) during the relevant time. PW-1 (Badku) in the Court statement informed that the appellant had made the telephone calls and had uttered un-parliamentary language. No details as to when the calls are made were collected.

74. The victim had sustained number of injuries on the body by a heavy blunt object. During investigation, no crime weapon used in the occurrence was recovered. The investigation carried out by the investigating agency is not up-to-the-mark.

75. Mere suspension is not enough to assist the case of the prosecution. Suspicion, however, strong cannot take place of the proof which the prosecution is legally bound to discharge in case of crime of heinous nature.

76. We are, therefore, clearly of the view that the above circumstances neither point towards the guilt of the appellant, nor constitute a complete chain of events unerringly indicating that the

appellant had committed the murder of Hira Lal. There is nothing to indicate what happened between Hira Lal leaving the residence of the appellant and meeting his fateful end the next day.

Conclusion

77. The inevitable sequitur of the above discussion, is that the impugned order, dated 13th July 2015, passed by learned ASJ, is quashed, and the appeal of the appellant allowed accordingly. Resultantly, the appellant is acquitted of the charges under Sections 302 and 201 of the IPC. As he is in custody, the appellant shall be released forthwith, if not required in any other case. Bail Bonds, if any, stand discharged.

78. Pending applications, if any, are disposed of accordingly.

C. HARI SHANKAR
(JUDGE)

नित्यमेव जयते

S.P. GARG
(JUDGE)

OCTOBER 28, 2017
neelam/nitin