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

Reserved on: 26th July 2018
Decided on: 6th August, 2018

+ **CRL.A.267/2003**

VINOD KUMAR & ANIL KUMAR Appellants
Through: Mr. Sumeet Verma with Ms.
Preeti Jakhar, Advocates.

versus

NCT OF DELHI Respondent
Through: Mr. Kewal Singh Ahuja, APP.

+ **CRL.A.268/2003**

VINOD KUMAR & ANIL KUMAR Appellants
Through: Mr. Sumeet Verma with Ms.
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versus

NCT OF DELHI Respondent
Through: Mr. Kewal Singh Ahuja, APP.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL**

JUDGMENT

Dr.S. Muralidhar, J.:

1. These two appeals are directed against two judgments, both dated 25th March 2003, passed by the learned Additional Sessions Judge, Tis Hazari, Delhi in SC Nos.17/2000 and 18/2000 arising FIR Nos.780/1999 and 781/1999 respectively, both of which were registered at PS Shalimar Bagh, by which both the Appellants herein, Vinod Kumar (A-1) and his brother Anil Kumar (A-2), were convicted for the offences under

Sections 302/34 and 201/34 IPC. These appeals also challenge the orders on sentence, both dated 27th March 2003, whereby for the offence under Section 302/34 IPC, both the Appellants were sentenced to imprisonment for life along with payment of fine of Rs.2,000/- each and in default of payment of fine, to undergo further rigorous imprisonment for one month. By the same orders, for the offence under Section 201/34 IPC, both Appellants were sentenced to undergo rigorous imprisonment for three years along with payment of fine of Rs.1,000/- and in default of payment of fine, to undergo further rigorous imprisonment for 15 days. Both sentences were directed to run concurrently.

2. The charge against both the Appellants was that on or around 3rd November 1999, at H.No.MU-56/D, Pitampura, they, in furtherance of their common intention, committed the murders of their parents, Radhey Lal Verma and Krishna, and thereby committed the offence punishable under Section 302/34 IPC. They were also charged with causing the evidence of the aforementioned offence to disappear on the intervening night of 3rd/4th November 1999 and thereby committed the offence punishable under Section 201/34 IPC.

3. It transpired that two separate FIRs were registered at PS Shalimar Bagh which led in turn to two separate cases being registered as SC Nos.17/2000 and 18/2000. Although the charges were identical and the prosecution witnesses (PWs) were common, the trial Court passed two separate sets of orders of conviction and sentence on the same dates, all of which have been impugned by the present appeals.

4. On 4th November 1999, at around 6:57 am, a telephonic message was received that a dead body wrapped in a bed sheet was lying on the main road C.B. Block near the *mandir* at Shalimar Bagh. This information was recorded by Constable Babita (PW-10) who was posted at the Police Control Room ('PCR') at that time. The above message was sent to PS Shalimar Bagh where DD No.9A was recorded.

Finding the dead bodies

5. ASI Sarwar Khan (PW-14) along with Constable Vijender (PW-19) went to the spot and found a dead body lying wrapped in a bed sheet on the footpath by the road. The crime team was called to the spot. Meanwhile, SI Chattar Singh (PW-23), Inspector Joginder Kumar (PW-28) and Constable Sandeep (PW-21) reached there. After untying the *bandi*, it was found that the dead body was of a lady aged around 50-55 years wearing a printed *sari* and petticoat and a green blouse. The tongue of the deceased was between the teeth. The injury marks were found on her head and face. She was wearing a nose pin and earrings, a garland, two *bichwas* of silver on her right foot and one on her left. Thereafter, PW-28 made an endorsement on DD No.9A and sent it to the PS for registration of the FIR.

6. At around 7:02 am on 4th November 1999, less than five minutes after the first dead body was noticed, ASI Bhim Singh (PW-8 in SC No.18/2000) received information at the PCR about a dead body found lying near the *nala* (drain) near Plot No.100/101, Ramlila Maidan, Pitampura. This was passed on to PP Pitampura and recorded as DD No.9.

7. SI Rajpal Singh (PW-24 in SC No.18/2000) went to the spot and found the dead body tied in three bedsheets. The photographer was called to the spot. There were injury marks on the nose and cheek of the dead body which was of a male. An endorsement was made on the DD and sent for registration of FIR.

8. Both dead bodies were videographed. Blood was collected from the female dead body. A fingerprint expert was also called to the spot. Both dead bodies were sent to the mortuary for preservation since they were not immediately identified. As far as the male dead body was concerned, it was identified by Tahir Khan (PW-5 in SC No.18/2000) to be the dead body of Radhey Lal Verma.

9. As far as the female dead body was concerned, at around 5 pm on 4th November 1999, Inspector Joginder Kumar (PW-28) was informed by Inspector Manohar Singh (PW-27A in SC No.17/2000 and PW-27 in SC No.18/2000) about the identification of the said dead body.

10. It is stated that the police party thereafter went to the house of the deceased, i.e. H.No.MU-56/D, Pitampura, on 5th November 1999. The door of the house was found locked. On the door, there was a chit on which it was written: “*Verma ji gaye hai tirath yatra ke liye – galti ke liye kshama karna*”. The said chit was taken into possession by the police. The IO of the case, PW-28, also took into possession the broken lock, sample blood, the earth control, broken bangles and scissors.

11. According to the prosecution, during the course of the investigation, it

emerged that the deceased Radhey Lal Verma was a tenant of a shop in Kamla Nagar. He had vacated the shop on 1st November 1999. The two accused who were his sons had purportedly killed him due to a dispute in relation to the said property. The dead body of the two deceased were identified by Bharat Singh (PW-9).

Medical evidence

12. The post-mortem examination of Radhey Lal Verma was performed by Dr. K. Goel (PW-10 in SC No.18/2000). He found diffuse coalesced bruises scattered over the forehead, below the right eye, over the nose with fracture of the nasal bone with overlying abrasions over both cheeks. There was an imprint pressure abrasion in a semi-circular shape over the back of the neck. Both lips were bruised and swollen. Upon internal examination of Radhey Lal Verma, PW-10 found sub-scalp haematoma with bruising over the middle part of the fronto-parietal regions over an area of 4x3 inches and over the occipital region 3x2 inches. The opinion as to the cause of death was asphyxia consequent upon manual strangulation. Injury No.1, i.e. the injury on the neck of the deceased, was stated to be caused by manual strangulation whereas injury Nos.2 and 3 were opined to have been caused by a blunt object.

13. The post-mortem of the deceased Smt. Krishna was performed by Dr. Survesh Tandon (PW-22 in SC No.17/2000). There were ligature pressure abrasion marks around the neck and back of her neck. The opinion as to the cause of death was asphyxia due to ligature strangulation. Injury No.1 was stated to be fatal and was sufficient to cause death in the ordinary course of

nature. After the post-mortem examination was complete, the bodies were handed over to the two accused who were the sons of the deceased couple.

Arrests and disclosures

14. According to the prosecution, after the cremation ceremonies, both the accused were taken to PP Pitampura where Inspector Manohar Singh (PW-27 in SC No.18/2000 and PW-27A in SC No.17/2000) interrogated them and they purportedly made disclosure/confessional statements. Their personal search memo and arrest memo was prepared on 6th November 1999. The seized articles were sent to the Forensic Sciences Laboratory ('FSL').

15. After completion of the investigation, both Appellants were charged in the manner noticed hereinbefore. In the two parallel trials, the prosecution examined 30 witnesses. The incriminating circumstances put to the accused during their examination under Section 313 Cr PC were denied by them. Both claimed to have been falsely implicated. No defence evidence was led by either of them.

Findings of the trial Court

16. The trial Court passed two separate judgments in SC Nos.17/2000 and 18/2000, both dated 25th March 2003. Therein, it was held that the following circumstances were indicative of the guilt of the two accused:

- (i) The writing found on the chit attached to the door of the residence of the deceased was indeed that of A-2.
- (ii) Although witnesses examined on the aspect of motive for commission of the offence turned hostile, the circumstances showed that there was

an ongoing dispute between the two accused and Radhey Lal Verma regarding some property.

- (iii) The accused did not come forward to identify the dead bodies of their parents even three days after they were found.

17. The Appellants were thus held guilty of having committed the offences under Section 302/34 IPC and Section 201/34 IPC and were sentenced in the manner noted hereinbefore. This Court, by its order dated 10th August 2006, suspended the sentences of the Appellants subject to terms.

18. This Court has heard the submissions of Mr. Sumeet Verma, the learned counsel appearing for the Appellants, and Mr. Kewal Singh Ahuja, learned APP for the State.

Circumstances relied on by the prosecution

19. The case of the prosecution was built on certain circumstances which were noticed by the trial Court in the impugned judgment. According to the trial Court, the following circumstances were proved by the prosecution:

- (i) The deceased Radhey Lal Verma was running a tailoring business in the name of Verma Tailors at Shop No.91A, Kamla Nagar. The owner of said shop was Ramesh Chand Gupta (PW-1).
- (ii) Radhey Lal Verma vacated the shop on 30th-31st August 1999. He handed over the documents about vacating the shop on 1st November 1999. He vacated the shop as it was not being run properly. The sons of Radhey Lal Verma also used to work at the shop.
- (iii) The sons of the deceased did not want the shop to be vacated. After

vacating the shop on taking a huge amount, Radhey Lal Verma did not share the amount with his sons and hence, a dispute arose.

- (iv) One Asha (PW-7 in SC No.17/2000 and PW-6 in SC No.18/2000), who was working in the house of the deceased as a maid, noticed at around 4-4:30 pm on 3rd November 1999 that both the accused were quarrelling with their mother Krishna and that one of them had threatened to kill her.
- (v) Another witness Bharat Singh (PW-9) claimed to have been present in his room at around 1 pm on 2nd November 1999 when both the accused attempted to get the door of the house of their parents opened. The parents did not open the door. The accused then threatened the deceased with dire consequences. After some time, the parents opened the door. The accused with their children entered the house. He then heard the noise of quarrelling.
- (vi) At around 4 pm on 3rd November 1999, according to PW-9, both the accused again came there. They found the premises locked. Thereafter, Krishna arrived, opened the door, and then the accused also entered the house. After some time, Asha (PW-7 in SC No.17/2000 and PW-6 in SC No.18/2000) arrived but both the accused did not allow her to work and asked her to leave. At around 9:30 pm, Radhey Lal Verma came there and thereafter, the door was closed. Sumitra (PW-15), another neighbour of the deceased, purportedly stated that Asha (PW-7 in SC No.17/2000 and PW-6 in SC No.18/2000) had told her about disputes going on inside the house.
- (vii) Despite the production of the photographs of the dead bodies of their

parents, neither accused came forward to identify the bodies even after more than two days. This is despite the fact that A-1 was residing in the same locality and A-2 was in the nearby locality.

- (viii) After cremation of both the dead bodies, A-2 became sentimental and both he and A-1 broke down and admitted to committing the crime. This was spoken to by Inspector Manohar Singh (PW-27 in SC No.18/2000) and corroborated by Constable Naresh Kumar (PW-29) and SI Rajpal Singh (PW-24 in SC No.18/2000) and HC Jagmal Sharma (PW-20).
- (ix) The disclosure of both the accused led to recovery of a scooter bearing registration DIK 2778 which purportedly was used by them to take the dead bodies and then throw the dead bodies at different places. After removal of the dead bodies, A-2 wrote the chit which was then placed outside the flat of the deceased. Thereafter, they threw the clothes with which they cleaned the floor of the house as well as the key of the lock of the house in the *nala*. They also threw their own clothes which they were wearing at the time of the incident. The scooter was recovered from the house of A-1 who produced the keys of the scooter.
- (x) From the report of the FSL, it was proved that the blood on the scooter was of human blood of group 'A'. The bed sheets in which the dead bodies were wrapped were also found to be stained with human blood of group 'A'. Both the deceased were having blood group 'A'.
- (xi) There were similarities in the letters 'ह', 'र' and 'ड' in the handwriting on the chit and the handwriting of A-2. There was, therefore, some similarity in the authorship of the said document with

the writing of A-2.

20. Consequently, the trial Court came to the conclusion that the above circumstances formed a complete chain which pointed unerringly to the guilt of the two accused and no one else.

Law relating to circumstantial evidence

21. This is a case based on circumstantial evidence. The law relating to circumstantial evidence, as explained in several decisions including *Sharad Birdichand Sarda v. State of Maharashtra AIR 1984 SC 1622*, *Tanviben Pankajkumar Divetia v. State of Gujarat (1997) 7 SCC 156*, *Harishchandra Ladaku Thange v. State of Maharashtra AIR 2007 SC 2957* and *Vithal Eknath Adlinge v. State of Maharashtra AIR 2009 SC 2067* is fairly well-settled. The conditions precedent that must be fully established to bring home the conviction of an accused, on the basis of circumstantial evidence have been explained as under:

“(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned ‘must’ or ‘should’ and not ‘may be’ established;

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

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

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

(5) there must be a chain of evidence so complete as not to leave any

reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

22. In *Gagan Kanojia v. State of Punjab (2006) 13 SCC 516*, the Supreme Court opined:

“9. ... Indisputably, charges can be proved on the basis of the circumstantial evidence, when direct evidence is not available. It is well settled that in a case based on a circumstantial evidence, the prosecution must prove that within all human probabilities, the act must have been done by the accused. It is, however, necessary for the courts to remember that there is a long gap between 'may be true' and 'must be true'. Prosecution case is required to be covered by leading cogent, believable and credible evidence. Whereas the court must raise a presumption that the accused is innocent and in the event two views are possible, one indicating to his guilt of the accused and the other to his innocence, the defence available to the accused should be accepted, but at the same time, the court must not reject the evidence of the prosecution, proceeding on the basis that they are false, not trustworthy, unreliable and made on flimsy grounds or only on the basis of surmises and conjectures. The prosecution case, thus, must be judged in its entirety having regard to the totality of the circumstances. The approach of the court should be an integrated one and not truncated or isolated. The court should use the yardstick of probability and appreciate the intrinsic value of the evidence brought on records and analyze and assess the same objectively.

Motive

23. In order to prove that there was motive for commission of the crime, the prosecution sought to establish that the deceased Radhey Lal Verma had, against the wishes of his sons, sold the tailoring shop and had not shared the money he obtained with them. In order to prove this, the owner of the

tailoring shop was examined as PW-1. Unfortunately for the prosecution, PW-1 failed to support their case. While he produced the possession letter dated 1st November 1999 handed over to him by the deceased Radhey Lal Verma and admitted that it was in the possession of the said deceased, he claimed not to know if A-2 was also working with him or that he had another son, namely Vinod Kumar (A-1). He also stated that “I do not know if the sons of the deceased now accused present in Court today never wanted that the deceased Radhey Lal Verma should vacate the shop”. Therefore, there was absolutely no evidence to prove that the deceased Radhey Lal Verma obtained any money whatsoever for vacating the shop or that he did this against the wishes of the two accused.

24. The trial Court has, in the impugned judgment, noticed the relevance of proof of motive in a case of circumstantial evidence. This Court would like to highlight the role the circumstance of motive plays in a case wholly based on circumstantial evidence. In *Arjun Mallik v. State of Bihar 1994 Supp (2) SCC 372*, the Supreme Court laid down the position of law in the following manner:

“...mere absence of proof of motive for commission of a crime cannot be a ground to presume the innocence of an accused if the involvement of the accused is otherwise established. But it has to be remembered that in incidents in which the only evidence available is circumstantial evidence then in that event the motive does assume importance if it is established from the evidence on record that the accused had a strong motive and also an opportunity to commit the crime and the established circumstances along with the explanation of the accused, if any, exclude the reasonable possibility of anybody else being the perpetrator of the crime then the chain of evidence may be

considered to show that within all human probability the crime must have been committed by the accused.”

25. The position, thus, is that while in a case based on direct evidence, motive may not assume much significance, failure to prove the circumstance of motive in a case based wholly on circumstantial evidence would be fatal unless all other circumstances have been established beyond reasonable doubt. In the present case, the conclusion reached by the trial Court that the motive for commission of the offence was due to a purported dispute between the deceased father and his two accused sons is based on mere surmise and conjecture. Although the trial Court has held that such motive could be “inferred”, there is absolutely no evidence available on the record to make such an inference. Therefore, the circumstance of motive for commission of the offence has not been successfully established by the prosecution.

Circumstance of ‘last seen’

26. The next circumstance sought to be proved by the prosecution was circumstance of ‘last seen’. Admittedly, the two accused were not living with their parents. In order to show that shortly prior to the time of the incident, the two accused were seen in the company of their parents, the prosecution sought to examine the Asha (PW-6 in SC No.18/2000), Bharat Singh (PW-9) and another neighbour Tahir Khan (PW-5 in SC No.18/2000).

27. As far as the Asha (PW-6 in SC No.18/2000) is concerned, she admitted to working as a maid servant in the house of the deceased for one month prior to the date of the incident. However, she claimed not to know either of

the accused or whether they were sons of the deceased. She simply stated, "I had not seen the accused persons in the house of the deceased any day". She specifically denied the suggestion that on 4th November 1999, at around 4:30 pm, when she went to the house of the deceased for cleaning, she found the door closed and that there was slip posted on the door and when she inquired from someone about the slip, she found that the deceased had gone to Haridwar. She also denied knowing anybody by the name Sumitra (PW-15 in SC No.18/2000), a neighbour of the deceased.

28. Then we have the evidence of Bharat Singh (PW-9), who is a neighbour of the deceased. He had been taken by the police to the mortuary to identify the deceased. Apart from stating that both the accused were the sons of the deceased, he again stated that he did not know anything else. He was declared a hostile witness and when cross-examined by the APP, he denied the incident which purportedly occurred on 2nd November 1999 where the deceased were reluctant to open the door to the accused and their children and consequently, the accused issued threats to the deceased.

29. PW-9 also denies that the door was finally opened after which the accused went into the house along with their children and the noise of quarrelling could be heard. He also denies that on 4th November 1999, the accused came to the house of the deceased at around 4 pm to find the house locked. PW-9 further denies that deceased Krishna arrived there and opened the door after which she along with the accused entered the house. He also states that it would be incorrect to suggest that Asha (PW-6 in SC No.18/2000) arrived there and was told to leave without doing her work by

the two accused. He also states it to be incorrect that deceased Radhey Lal Verma arrived at the house at around 9:30 pm and the door was answered by A-2 who let him in after the deceased questioned why the two accused were present there. PW-9 also denies seeing the slip on the door on 4th November 1999. Therefore, PW-9 too failed to help the prosecution.

30. Sumitra (PW-15) was another witness who turned hostile and denied that the accused had come to the house of the deceased parents along with their children. Tahir Khan (PW-5 in SC No.18/2000) has stated that he knew the two deceased as well as the two accused. Apart from admitting that he had identified the dead bodies of the deceased, he too stated: "I do not know anything else in this case and no incident had taken place on 2nd November or 3rd November at the house of the deceased persons".

31. The net result is that there was absolutely no evidence to show that any time prior to the death of the deceased, the two accused were seen in their company and, in particular, that there was any quarrel between the deceased and their two sons.

32. The trial Court has, despite noticing that all of the above named witnesses have turned hostile, persisted with looking at the other circumstances to infer the guilt of the accused. However, the above discussion clearly shows that apart from the important link of motive not being proved, the prosecution has also failed to establish that the deceased were last seen in the company of the deceased immediately prior to being killed.

Confessions by the accused

33. The trial Court has then commented adversely upon the conduct of the accused and the fact that they broke down and confessed to the commission of the crime at the crematorium. In doing so, reference has been made to Section 8 IEA.

34. The only witnesses who have spoken to what happened after the cremation of the deceased are the police witnesses, viz., Inspector Manohar Singh (PW-27 in SC No.18/2000), Constable Naresh Kumar (PW-29), SI Rajpal Singh (PW-24 in No.18/000) and HC Jagmal Sharma (PW-20). It is not the case of the prosecution that there were no public persons available there. The non-association of public witnesses while recording the purported confessional disclosures, especially since other family members of the deceased were likely to have been there, would be fatal to the case of the prosecution.

35. In fact, all the public witnesses examined by the prosecution in this case have, in fact, turned hostile. This Court is unwilling to simply believe the police witnesses' testimonies in this regard and is of the view that the trial Court had erred in doing so.

Unconvincing recoveries

36. Another important part of the evidence in the present case is the recoveries affected. Upon the disclosure made by A-1, the police have supposedly recovered the scooter that was parked at his house and which was used to transport the dead bodies to their respective spots of

abandonment. The seizure memo in respect of the scooter simply mentions that a Bajaj scooter bearing registration DIK 2778 was parked near on the ground near the staircase. There was nothing in the seizure memo that indicated that the said scooter, in fact, belonged to A-1. No attempt has been made by the prosecution to prove the ownership of the scooter. Why A-1 would keep a scooter with “bloodstains on the stepney, chassis, seat, rubber mats and other places of the scooter” in the parking in his own house is not apparent to this Court.

37. The prosecution has also not been able to persuade the Court as to how the two accused could have carried the two bodies of the deceased on a mere two-wheeler scooter. Furthermore, the presence of blood on the scooter does not tally with the injuries on the bodies of the deceased. Only one of the bodies showed effusion of blood ostensibly on account of strangulation. However, if these bodies were in fact wrapped in bed sheets as has been claimed by the prosecution, the question of there being blood stains on “the stepney, chassis, seat, rubber mat and other places on the scooter” does not arise.

38. The recovery of the scooter is, therefore, shrouded in mystery and does not inspire the confidence of this Court. It must be recalled that a strong circumstance relied upon by the prosecution is the fact that the FSL report confirmed that the blood stains on the scooter matched the blood groups of the deceased both of whom had blood group ‘A’. However, this kind of a seizure without associating any public witnesses must always been viewed with some degree of suspicion.

39. There was also the recovery of blood stained clothes of the accused several days after the incident. In this context, the attention of the Court is drawn to the observation of the Supreme Court in ***Prabhoo v. State of Uttar Pradesh, AIR 1963 SC 1113***:

“10. From the mere production of the blood stained articles by the appellant, one cannot come to the conclusion that the appellant committed the murder. Even if somebody else had committed the murder and the blood stained articles had been kept in the house, the appellant might produce the blood stained articles when interrogated by the Sub-Inspector of Police. It cannot be said that the fact of production is consistent only with the guilt of the appellant and inconsistent with his innocence.”

40. In ***Deepak Chadha v. State, 2012 (1) JCC 540***, this Court observed as under:

“18. We do not propose to deal with the purity of the evidence relating to the two recoveries i.e. the recovery of the shirt and the knife at the instance of the appellant, for the reason, in the decisions reported as *Kaloo Passi vs. State, 2009 (2) JCC 1206*; *Narsinbhai Haribhai Prajapati vs. Chhatrasinh & Ors., AIR 1977 SC 1753*; *Surjit Singh vs. State of Punjab, AIR 1994 SC 110*; *Deva Singh vs. State of Rajasthan, 1999 CriLJ 265*, & *Prabhoo vs. State of UP, AIR 1963 SC 1113* the Supreme Court held that in the absence of other incriminating evidence, the circumstances of seizure of blood stained clothes at the instance of the accused as also the recovery of a possible weapon of offence at the instance of the accused are wholly insufficient to sustain the charge of murder against the accused.”

41. Therefore, the recovery of the scooter, the bloodstained clothes and the mere fact that the blood stains on the scooter seat matched the blood group

of the deceased cannot by be considered strong enough circumstances to link the two accused with the crime.

Handwriting

42. The other circumstances relied upon by the trial Court in arriving at its finding of guilt qua the two accused is that the handwriting on the chit found outside the flat matched somewhat with the sample handwriting of A-2. The trial Court itself has actually noted that FSL report in this regard (Ex.PW-27/G) only states that “there is similarity of letters HA, RA and DA with the hand writing of the accused Anil”. In fact, the FSL report states that a definite opinion cannot be given as the other words in the chit could not be compared. Further, the opinion is clear that the handwriting on the chit is not that of A-1. It is inconceivable how with only three letters being similar, the trial Court could observe that “from this report, it is clear that there is some similarity with the authorship of document Q1 in respect of accused Anil and from this, inference can be drawn that this chit was written by Anil as is the prosecution case”. The above conclusion of the trial Court is based purely on an inference made on the basis of surmise and conjecture. Consequently, the FSL report as regards the handwriting of A-2 cannot also be said to connect the accused with the crime.

Conclusion

43. It has been repeatedly pointed out by the Supreme Court that in cases of circumstantial evidence the trial Court should not succumb to the temptation of pronouncing the guilt of the accused without every link in the chain of circumstances being proved beyond reasonable doubt. Reference in this

regard may be made to the decision of the Supreme Court in ***Ramesh v. State of Rajasthan (2011) 3 SCC 685*** wherein it was opined as under:

“... it has to be borne in mind that this case depends upon circumstantial evidence and, as such, as per the settled law, every circumstance would have to be proved beyond reasonable doubt and further the chain of circumstances should be so complete and perfect that the only inference of the guilt of the Accused should emanate therefrom. At the same time, there should be no possibility whatsoever of the defence version being true.”

44. Also while some of the circumstance might indicate a strong suspicion qua the accused, such suspicion by itself will not constitute proof. There is a distance to be travelled between “must be” and “should be”. The following observations of the Supreme Court in ***Tanviben Pankaj Kumar Divetia v. State of Gujarat (supra)*** are relevant in this context:

“The principle for basing a conviction on the basis of circumstantial evidence has been indicated in a number of decisions of this Court and the law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubts. It has been held that the Court has to be

watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between normal certainty and legal proof. It has been indicated by this Court that there is a long mental distance between "may be true" and must be true" and the same divides conjectures from sure conclusions."

45. In the present case, the Court is not satisfied that the prosecution has been able to prove beyond reasonable doubt each of the links in the chain of circumstances that would point unerringly to the guilt of the accused and no one else. Thus, this Court is of the view that the accused entitled to the benefit of doubt.

46. Accordingly, the Appellants are acquitted of the offences under Section 302/34 IPC and Section 201/34 IPC. Their bail bonds and surety bonds stand discharged. The Appeals are allowed and the impugned judgment and order of sentence passed by the trial Court are hereby set aside. Both the Appellants will satisfy the requirements under Section 437A Cr PC to the satisfaction of the trial Court at the earliest. The trial Court record be returned forthwith together with a certified copy of this judgment.

S. MURALIDHAR, J.

VINOD GOEL, J.

AUGUST 06, 2018

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