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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A. 49/2003

Reserved on: 9th July, 2018

Decided on: 24th July, 2018

VINOD & ANR

.....Appellants

Through: Mr. R.M. Tufail and Ms. Astha,
Advocates with Appellants
present in person.

versus

THE STATE (NCT OF DELHI)

....Respondent

Through: Mr. Hirein Sharma, APP for
State

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

J U D G M E N T

Dr. S. Muralidhar, J.:

1. This appeal is directed against the judgment dated 21st December 2002 passed by the learned Additional Sessions Judge in SC No.132/2001 arising out of FIRs No.169/99 and 208/99, both registered at PS Jahangirpuri whereby the two Appellants, namely Vinod Kumar (A-1) and Farooq (A-2), have been convicted for the offence punishable under Section 120B IPC as well as under Section 302/120B IPC. Further, the Appellants also seek to challenge the orders on sentence dated 6th January 2003 whereby under each of the aforementioned FIRs, the Appellants were sentenced to undergo imprisonment for life along with fine of Rs.1,000/- each and in default of payment of fine, to undergo further simple imprisonment for three months.

By the same orders, for the offence under Section 302/120B IPC, the Appellants were sentenced to undergo imprisonment for life along with fine of Rs.2,000/- each and in default of payment of fine, to undergo further simple imprisonment for six months.

Charge in FIR 169/99

2. The offence under FIR No.169/99 concerned the murder of deceased Purnima who was the wife of A-1. The charge framed thereunder was that at about 9.45 pm on 28th March 1999, at bus stop ITI, K-Block, Jahangirpuri, the two Appellants along with one Ajay Sharma (since deceased) committed the murder of Purnima in pursuance of the conspiracy entered into by them on or before the aforementioned date and thereby committed an offence punishable under Sections 120B and 302/120B IPC. In the trial arising out of FIR No.169/99, only A-1 and A-2 were arrayed as the accused persons with the actual assailant, Ajay Sharma, having already expired. They were convicted under Sections 120B and 302/120B IPC.

Charge in FIR 208/99

3. In the trial arising out of FIR No.208/99, the charge framed was that on 13th April 1999, behind Kamal Cinema, near the wall of park, C-Block Masjid, Jahangirpuri, the two Appellants herein along with two other co-accused, namely Yusuf and Sheikh Saidul, committed the murder of the aforementioned Ajay Sharma in pursuance of the conspiracy entered into by them on or before the aforementioned date and thereby committed an offence punishable under Section 120B and 302/120B IPC.

4. The trial Court has convicted the Appellants of the offences with which

they were charged. By the same judgment, the trial Court acquitted the two other co-accused against which the State has not preferred an appeal.

Case of the prosecution

5. The brief case of the prosecution is that A-1 was having an illicit relationship with one Shanu who was related to the deceased Purnima and this led to his plan to eliminate Purnima for which he approached A-2, who in turn engaged the services of Ajay Sharma. The further case of the prosecution is that after Ajay Sharma had killed Purnima on 28th March 1999, A-1 along with the other co-accused planned to eliminate Ajay Sharma as A-1 feared that Ajay Sharma might disclose the truth about the roles of A-1 and A-2 in the murder. According to the prosecution, the four accused entered into a criminal conspiracy and on 13th April 1999 murdered Ajay Sharma.

6. The case of the prosecution is that A-1 married the deceased Purnima sometime in September 1987 after a romantic courtship. Their marriage took place against the wishes of the deceased Purnima's family which comprised her brothers Kishan Bahadur (PW-2 in FIR No.169/99) and Birka Bahadur (PW-5 in FIR No.208/99). Following their marriage, A-1 and Purnima began residing at D-1315, Jahangirpuri and they had a daughter, Vanshika.

7. It is stated by PW-2 that in 1991, one Pappu along with his sister Shanu, who were related to Purnima, came to live in the house of Purnima. According to PW-2, he tried to make Shanu understand that she should not stay but Purnima was insistent that Shanu should be allowed to continue to stay with them. According to PW-2, after about four months, Purnima

informed PW-2 that Shanu was having an illicit relationship with A-1. When PW-2 confronted A-1, the latter apparently realised his mistake and said -2 that the matter should be treated as closed. According to PW-2, sometime in December 1998, Purnima again came to his house and told him that A-1 was keen on divorcing her. When PW-2 persuaded A-1 not to do so, A-1 is stated to have threatened him by saying that he was friends with A-2 “who has already murdered” and warned that if PW-2 did not mend his ways, he too would be get killed by A-2.

8. According to the prosecution, it emerged from the disclosure statement made by A-2 that A-1 paid him Rs.10,000/- as an advance payment for getting Purnima murdered. A-1 purportedly handed over a photograph of Purnima to A-2 to this end. It is also claimed that A-1 was to pay a further Rs.15,000/- to A-2 after the plan had been carried out. It is then the case of the prosecution that A-2 in turn hired Ajay Sharma and gave Ajay Sharma the photograph of Purnima.

Death of Purnima

9. What transpired on 28th March 1999 is spoken to by Premwati (PW-1 in the trial arising out of FIR No.169/99). Premwati was a neighbour of Purnima. On 28th March 1999, she and Purnima went to Alpana Cinema to watch a film. At around 9.30 pm, after the film screening had concluded, she and Purnima reached the bus stop of Alpana Cinema to catch a bus going to Jahangirpuri. They boarded the bus for Jahangirpuri about 10-15 minutes later. When the bus reached the ITI Stop at Jahangirpuri, Premwati first alighted from the bus. The deceased followed immediately behind Premwati.

When Premwati had walked about two steps ahead, she heard the loud cries of Purnima. Premwati then turned and inquired from Purnima as to what had happened. Purnima purportedly replied saying that she had been hit by somebody with something.

10. According to Premwati, she could not see the assailants as a large crowd had collected there. Purnima fell down on the ground and began bleeding profusely. Premwati then sent someone to call A-1 from his house in Jahangirpuri. A-1 then came there with some neighbours and removed Purnima in a TSR to the hospital, where she was declared to have been “brought dead”.

11. Premwati then states that they brought the dead body of Purnima back to her home in a TSR. The police arrived and recorded the statement of Premwati and the crime team was called and photographs of the dead body of Purnima were taken. Premwati then took the police to the bus stop and pointed to the place of the incident. A site plan was drawn up on the basis of her pointing out. Premwati produced two bus tickets (Ex.P1 and P2) which were then seized by the police in her presence. She volunteered that Purnima was carrying a black purse which, however, could not be found after she was attacked.

12. In her cross-examination, Premwati stated as under:

“I cannot say when Purnima cried loudly and I turned back and tried to hold her, if the black purse with her or not. Some blood had stuck to my clothes when we were taking her to hospital in a TSR. My clothes which had some blood stains were seized by the police.”

Post mortem of Purnima

13. The post-mortem examination of the body of Purnima was performed by Dr. Ashok Jaiswal (not examined) at the government hospital at Sabzi Mandi. He found, *inter alia*, four external injuries. Three of these were abrasions on the chin, wrist and left eye respectively. The fourth, i.e. injury no.1, was an incised stab wound obliquely placed on the left side back, 20 cm below inferior angle of scapula, 14 cm above the iliac region, 2 cm to the left of the midline. It was a clean cut with the lower angle being acutely cut. This post-mortem examination was performed at 11 am on 29th March 1999. Injury no.1 was stated to have been caused by a sharp-edged weapon and death was opined to be due to haemorrhagic shock consequent upon the said injury which was sufficient to cause death in the ordinary course of nature. The time since death was estimated to be approximately 13 hours.

14. Constable Dilbagh Singh (examined as PW-15 in the trial arising out of the FIR No.208/99) stated that he had taken the dead body of Purnima to the mortuary for the post-mortem examination. After that, one sealed envelope sealed with the seal of 'KS' and sample seal, one purse, and a polythene bag containing clothes of the deceased Purnima were handed over to him. He, in turn, handed these over to Sub-inspector Sumitra (PW-19). A *rukka* was drawn up and sent to the PS for registration of FIR No.169/99.

15. Naveen Kumar (PW-25), of the Tyagi Hospital has spoken about A-1 bringing Purnima there on 28th March 1999 at about 10 pm. Since Dr. Tyagi was not available and blood was oozing from the back of Purnima, PW-25 asked them to go to the Hindu Rao Hospital.

Investigation into Purnima's death

16. Inspector Sajjab Singh (PW-26) has spoken about Head Constable Rajender of the PCR informing that Kishan Bahadur (PW-2) had told him that a woman had died due to stab wounds at around 11.02 pm. DD No.67B recorded this fact. This was entrusted to Sub-inspector Paramjit Singh (PW-28) for investigation. It has come in the evidence of PW-28 that he first went to the spot with Constable Ashok Kumar (PW-32). He went to the house of A-1 where he found the dead body of Purnima lying on a cot on the ground floor. He met both A-1 and PW-1. Meanwhile, PW-28 also reached the spot. He recorded the statement of PW-1 and also prepared the site plan on her pointing out. PW-1 handed over the two bus tickets used by the deceased and her to PW-26 which were then seized.

17. PW-26 has deposed that on 1st April 1999, during patrolling, a secret informer met him and told him that A-2 who was on bail in those days was involved in a murder and was residing at House No.C-159, Jahangirpuri. PW-26 checked the above address but did not find it. He simply states that “subsequently the investigation was handed over to Inspector Rajender”.

18. As far as Inspector Rajender Prasad (PW-34) was concerned, he states that it is only on 10th April 1999 that he took over charge of the investigation in FIR No.169/99 from PW-26. In other words, this means that between 28th March 1999, when Purnima was killed, and 10th April 1999, no effective investigation took place at all. This is indeed one strange aspect of the case for which there is no satisfactory explanation.

Death of Ajay Sharma

19. The next development in the case was when DD No.18A (Ex.PW-14/A) was recorded at PS Jahangirpuri on 13th April 1999.

20. Vishal Sharma (PW-14) was the brother of the deceased Ajay Sharma. He stated that Ajay Sharma was working as a mechanic at Mayapuri at a generator shop. According to PW-14, approximately 5-6 days prior to his death, Ajay Sharma came to him with Rs.4,000/-. He claimed to be working as a partner with A-2 in a property dealing business. PW-14 disclosed that on 13th April 1999, at about 8 pm, Ajay Sharma left the house stating that he was going to A-2 to collect the remainder of his share of the money. When Ajay Sharma had still not returned next morning, and the search for him turned out to be futile, PW-14 went to A-2 and asked him about the whereabouts of Ajay Sharma. A-2 is supposed to have claimed ignorance at which point PW-14 returned home.

21. PW-14 stated that his mother asked him to once again to A-2's father and A-2. When PW-14 went to the father of A-2, the latter said that Ajay Sharma used to usually visit A-2. He again met A-2 but A-2 did not reveal anything. At this point, PW-14 lodged a missing person report about Ajay Sharma having gone missing at PS Jahangirpuri and this was recorded as DD No.13A (Ex. PW-14/A). This was recorded at around 3.30 pm on 13th April 1999.

22. In the meanwhile, Sub-inspector Tejpal Singh (PW-13) was entrusted DD No.18A (Ex. PW-13/A) which recorded that at around 6.30 pm on

13th April 1999, information had been received from Head Constable Jagdish (PW-11) that a dead body was found lying near the wall of Kamal Cinema. PW-13 then accompanied Inspector Rajender Prasad (PW-34) to the spot. They found the dead body of Ajay Sharma lying in the park. PW-14 was then called there and he identified the dead body to be that of his brother. The dead body was found lying under the *kabari* which belonged to Anisa Biwi (PW-2).

23. PW-34 recorded the statement of PW-14. From the personal search of the dead body, a purse containing the photograph of PW-14, a slip containing a telephone number, and two coloured cloth bands were recovered. A *rukka* was drawn up and sent to the PS for registration of the FIR. The crime team was called there and a site plan (Ex. PW-34/B) was prepared. PW-34 also recorded the statement of Vijender Pal (PW-12), the father of the deceased Ajay Sharma.

Post mortem of Ajay Sharma

24. The post-mortem examination of the body of deceased Ajay Sharma was performed by Dr. Komal Singh (PW-9) on 14th April 1999. He found one ligature mark present on the anterior side of the neck at the middle of the thyroid cartilage level. The hyoid bone was found to be broken on both the sides and a bruise was present over the thyroid cartilage. The trachea was found to be congested and its lumen contained 3 ml of blood. The cause of death was opined to be asphyxia due to strangulation made by a ligature. The possibility of involvement of more than one person could not be ruled out. Subsequently, when a rope of nylon was recovered at the instance of the

accused was shown to him, PW-9 opined that the ligature mark on the neck of the deceased Ajay Sharma could have been caused by the said rope (Ex.PW-6).

Arrests, disclosures and recoveries

25. Surender Awasthi (PW-1 in FIR No.208/99), a neighbour of Ajay Sharma, and Birka Bahadur (PW-5 in FIR No.208/99), joined the investigation on 15th April 1999. According to PW-34, at approximately 5.15 pm on 15th April 1999, A-2 was detained on the pointing out of Surender Awasthi. A-2 is stated to have been arrested and his disclosure statement recorded. On the basis of the said disclosure statement, accused Yusuf was arrested on the pointing out of A-2. Again, on the pointing out of A-2, Sheikh Saidul was arrested from his house. The disclosure statements of Yusuf and Sheikh Saidul were then recorded.

26. According to PW-34, A-2 then took the police officials to his own house in Jahangirpuri from where he got recovered the leather purse belonging to Purnima. This purse contained cash amounting to Rs.28/-, her photograph, and two tickets of Alpana Cinema dated 28th March 1999. The purse was taken out by A-2 from an *almirah* in his house. He then produced an envelope containing 20 notes of Rs.100/- each and explained that it was the leftover amount of money received by him for killing Purnima. All these articles were then seized.

27. A-2 is also said to have produced a rope of approximately one meter in length from a corner of some room and disclosed that it was used for strangulating the deceased Ajay Sharma. According to PW-34, all three

accused then pointed to the place where Ajay Sharma was strangled. All three accused then took the police to a nearby street where A-1 was found sitting on the *pulia*. A-1 was then arrested on the pointing out of the remaining three accused. A-1's disclosure statement was recorded and he was arrested. PW-34 also recorded the statement of Sujata (PW-8) as well as Bhatia, Sonu and Naveen (PW-25).

Trial

28. Thereafter, the charge sheet was filed. As far as FIR No.169/99 is concerned, the trial Court framed charges against A-1 and A-2 in the manner mentioned hereinbefore by its order dated 23rd September 1999. On the same date, charges were framed in the case arising out of FIR No.208/99 against four accused persons, two of whom are the Appellants herein.

29. As far as FIR No.169/99 is concerned, three PWs were examined, namely the friend of the deceased Purnima, Premwati (PW-1), the brother of the deceased Purnima, Kishan Bahadur (PW-2), and one Jagdish Lal (PW-3) who was working as the Manager at Alpana Cinema at the time of the incident and who confirmed the two tickets booked for the 6.30 pm show on 28th March 1999.

30. In the trial arising out of FIR No.208/99, 34 PWs were examined. When the incriminating circumstances were put to the accused persons, they denied them. As far as A-1, Vinod was concerned, he claimed innocence and offered to lead defence evidence. He denied making any disclosure statement. He claimed that his signatures were taken on blank sheets of paper. He claimed not to know any of the co-accused. In particular, he

denied having hired the services of A-2 for committing the murder of Purnima.

31. As far as A-2 was concerned, he too, denied all the circumstances. He, too claimed to have been falsely implicated. He denied that anything was recorded from him or that he had made any disclosure statement. The answers given by the other accused need not be discussed since they have been acquitted by the trial Court and their acquittal is not under challenge.

32. On behalf of the defence, two witnesses were examined. Om Prakash (DW-1) from the Telegraph Office of Azadpur informed the Court that he could not bring the summoned record since it had been destroyed. The defence dropped the other witness, namely Head Constable Chattarpal (DW-2) who was attached to the Vigilance Branch, although he brought on record a report which had been summoned by the trial Court.

Impugned judgment of the trial Court

33. In the impugned judgment, the trial Court discussed the circumstances which, according to the prosecution, formed a complete chain and which pointed solely to the guilt of the accused. The circumstances noted by the trial Court were as under:

- (i) The murders of both Purnima and Ajay Sharma were blind murders, i.e. there were no eye-witnesses to either murder.
- (ii) From the evidence of Vishal Sharma (PW-14), the brother of Ajay Sharma, and Vijender Pal (PW-12), the father of Ajay Sharma, it was revealed that Ajay Sharma used to visit A-2 in relation to their real estate business and was expecting his share of the profit from the said

business. He had gone at about 8 pm on 12th April 1999 from his house to meet A-2 and did not return thereafter. This, therefore, pointed the needle of suspicion to A-2.

- (iii) The prosecution was able to prove that when A-2 declined to tell anything about Ajay Sharma to PW-14, he lodged a missing person report, i.e. DD No.13A.
- (iv) PW-14 correctly identified the dead body lying in the park near Kushal Cinema to be that of Ajay Sharma. This happened on 13th April 1999 at around 7.30 pm.
- (v) Although Surender Awasthi (PW-1) had claimed to the police that he had last seen Ajay Sharma at the shop of A-2, in the trial, he turned hostile and did not support the prosecution.
- (vi) Upon his arrest, A-2 disclosed to the police the plot hatched by A-1 to eliminate Purnima and for which he would be paid a sum total of Rs.25,000/-. The disclosure of A-2 also revealed that he had, in turn, hired Ajay Sharma to kill Purnima.
- (vii) The recovery of the black leather purse of Purnima at the instance of A-2 which contained the two tickets of Alpana Cinema as well as the photograph of Purnima was an importance circumstance.
- (viii) According to A-2, he was asked by A-1 to come to him on 7th April 1999 to take the balance payment. When Rs.15,000/- was handed over to A-2 by A-1, the latter informed him that he proposed to kill Ajay Sharma as well and offered to pay him Rs.25,000/- to that end.
- (ix) The rope which used to strangle Ajay Sharma was proved to have been recovered at the instance of A-2.

34. The trial court also noted that the motive for A-1 to eliminate Purnima emerged in the evidence of her brothers Kishan Bahadur (PW-2 in FIR No.169/99) and Birka Bahadur (PW-5). The trial Court rejected the plea that the illicit relationship with Shanu took place in 1991 and therefore, could not supply the motive for commission murder in 1999, eight years later. This was because PW-5 has deposed that, in spite of the intervention of the brothers of Purnima, A-1 continued the illicit relationship. Secondly, Purnima told her brothers that A-1 wanted to divorce her and this was not disputed in the cross-examination of PW-5. The trial Court opined that this must have been due to the strained relations between the two of them and was a good reason for A-1 to eliminate Purnima. The circumstance of cash payment being made to Ajay Sharma by A-2 was proved by PW-14, the brother of the deceased Ajay Sharma.

35. As regards the murder of Purnima, the trial Court concluded that A-1 knew about Purnima and PW-1 going to see a movie at Alpana Cinema. He must have passed on this information to A-2 and Ajay Sharma. Despite Chander Parkash (PW-3) and Surender Awasthi (PW-1) not supporting the prosecution, it was held that no adverse inference could be drawn. The IO's evidence was good enough to prove the recovery of Purnima's purse from A-2.

36. However, since no evidence was led by the prosecution to prove the role of Yusuf and Sheikh Saidul in the commission of the crime, the trial Court gave them the benefit of doubt. As far as the involvement of A-1 and A-2 in the murders of Purnima and Ajay Sharma, the circumstances which were

held to be proved were as under:

- i) The disclosure statement made by Farukh;
- ii) Recovery of purse of Purnima, her photograph and two tickets of Alpana Cinema;
- iii) Payment of money by Farukh to Ajay and payment of Rs.4000/- by Ajay Sharma to his family and;
- iv) Recovery of rope with which Ajay Sharma was strangled.

37. According to the trial Court, the above circumstances constituted a complete chain and pointed unerringly to the guilt of the two accused. They were accordingly convicted and sentenced by the trial Court in the manner indicated hereinbefore.

38. This Court has heard the submissions of Mr. R.M. Tufail, learned counsel appearing for the Appellants, and Mr. Hirein Sharma, learned APP for the State.

Law relating to circumstantial evidence

39. The law regarding circumstantial evidence is fairly well settled and the duties of the Court in evaluating such evidence have been reiterated on a number of occasions. In ***Mahmood v. State of UP (1976) 1 SCC 542***, the Supreme Court observed as under:

“It is well settled that in a case dependent wholly on circumstantial evidence, the Court before recording a conviction on the bias therefore must be firmly satisfied -

- (a) that the circumstances from which the inference of guilt is to be drawn, have fully established by unimpeachable evidence beyond a shadow of doubt;

- (b) that the circumstances are of a determinative tendency unerringly pointing towards the guilt of the accused; and
- (c) that the circumstances, taken collectively, are incapable of explanation on any reasonable hypothesis save that of the guilt sought to be proved against him.”

40. In *Tanviben Pankaj Kumar Divetia v. State of Gujarat (1997) 7 SCC 156*, the Supreme Court reiterated the above position and went on to opine:

“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.”

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

"10. We would proceed on the well-known principles in regard to appreciation of the circumstantial evidence which were noticed by the High Court in the following terms:

- 1) There must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.
- 2) Circumstantial evidence can be reasonably made the basis of an accused person's conviction if it is of such character that it is wholly inconsistent with the innocence of the accused and is consistent only with his guilt.
- 3) There should be no missing links but it is not that every one of the links must appear on the surface of the evidence, since some of these links may only be inferred from the proven facts.
- 4) On the availability of two inferences, the one in favour of the accused must be accepted.
- 5) It cannot be said that prosecution must meet any and every hypothesis put forward by the accused however far-fetched and fanciful it might be. Nor does it mean that prosecution evidence must be rejected on the slightest doubt because the law permits rejection if the doubt is reasonable and not otherwise."

42. Recently in *Anjan Kumar Sarma v. State of Assam (2017) 14 SCC 359*, the Supreme Court reiterated the above principles thus:

- "(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 of

- 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 shown that in all human probability the act must have been done by the accused”

Analysis and reasons

43. It is of significance that in the present case, Purnima’s killing was treated as a case of blind murder. Although she was killed on 28th March 1999 and her post-mortem proved her death to be homicidal, no progress was made till the dead body of Ajay Sharma was found. The prosecution has tried to link the two murders by suggesting that Ajay Sharma himself was one of the killers of Purnima and that he had been hired by A-2 at the instance of A-1 to do so. The further case of the prosecution is that A-1 got worried that Ajay Sharma might disclose this fact and therefore, again conspired with A-2 and two other co-accused persons to eliminate Ajay Sharma.

44. Consequently, without establishing clearly the role of Ajay Sharma in the killing of Purnima, this entire story of the prosecution would fall apart. In order to show that Ajay Sharma was involved in the killing of Purnima, the prosecution has heavily relied on the evidence of his father Vijender Pal (PW-12) and his brother Vishal Sharma (PW-14). According to Vijender Pal, Ajay had got Rs. 4,000/- from A-2 around 5-6 days prior to his death purportedly as his share of profits from their property dealing business. Ajay told him that he was going to A-2 to collect the remaining amount but did not return. The missing person report was lodged on 13th April 1999.

45. There was nothing in the evidence of PW-12 to indicate that Ajay Sharma had a criminal record and was involved in any past crimes with A-2. On the contrary, PW-12 stated that Ajay Sharma was working as a mechanic. PW-14 corroborated the above facts but this again did not point to the involvement of Ajay Sharma in any criminal activity either of his own or at the behest of A-2. It must be noted at this stage that working as a partner with A-2 in a property business is very different from being a hired killer. It is unlikely that A-2 would engage Ajay Sharma to carry out a murder unless A-2 trusted him and knew him to be capable of committing such a major crime.

46. This explains the prosecution's attempt at roping in independent witnesses to speak to the fact of Ajay Sharma acquaintance with A-2 in the commission of the crime. However, this attempt failed. Surender Awasthi (examined as PW-1 in FIR No. 208/1999) turned hostile. The prosecution was depending on his testimony to prove that Ajay had told him about having some business dealings with A-2. In the trial Court, PW-1 simply stated, "I was made to sign certain papers by the Police which I signed without knowing their contents". In fact, PW-1 was supposed to help the prosecution with evidence to the effect that he had seen Ajay Sharma at the shop of A-2 and that he was talking to A-2 and co-accused Saidul. In his cross-examination by the APP, PW-1 volunteered, "I saw Farooq for the first time at the police station".

47. Even more damaging to the case of the prosecution is that PW-1 denied that A-2 had been arrested in his presence on 15th April 1999 by the police.

He denied that any disclosure statement was made by A-1 or A-2 in his presence. He denied that any of the other accused persons were arrested in his presence. Therefore, the one public witness who was supposed to have been present throughout the arrest of the four accused and their disclosures and the recoveries made at their instance, turned hostile. PW-1 simply stated as under:

“I had signed all these papers at the police station when I had gone there with my father. I had not gone anywhere out the police station with any police officer. When I enquired as to what was written in the papers on which my signatures were being obtained, I was told that whatever has been stated by me about Ajay Sharma was recorded therein.”

48. The other public witness upon whom the prosecution relied to prove the arrest and recoveries was Chander Prakash (PW-3). He too turned hostile. He was supposedly a neighbour of Ajay Sharma. The prosecution was really ambitious as far as PW-3 was concerned. He is supposed to have given a statement to the police that Ajay Sharma had met him two three times prior to *eid* and had showed him the photo of a lady saying that “she is to be murdered” and that for doing so, Ajay Sharma would be paid Rs. 25,000/-. Further, Ajay Sharma is supposed to have disclosed to PW-3 that the photo of Purnima had been given to him by A-2. Further, Ajay Sharma is supposed to have told PW-3 that if he didn’t return home for 2-3 days, PW-3 should find out about Ajay Sharma from A-2. Ajay Sharma is also supposed to have told PW-3 not to speak about this to anyone or else he would be got killed by A-2. In other words, the prosecution depended upon PW-3 to demonstrate the role of Ajay Sharma in the murder of Purnima.

49. Unfortunately for the prosecution, PW3 also turned hostile. He admitted knowing Ajay Sharma as he was a neighbour but stated:

“I had no talk with the deceased prior to his death. Ajay had not shown me any photograph of a lady asking that she should be murdered and that I shall be paid Rs.25,000- or that I had told him that one should remain away from such activities.”

50. It should be recalled that but for the arrest of A-2, there was no way that the police would have proceeded to arrest the other three co-accused, including A-1. They could not have even made any of the recoveries and in particular, the black leather purse of Purnima recovered from an *almirah* in the house of A-2. If indeed, there was no public witness, i.e. other than Surender Awasthi (PW-1) who has turned hostile, then it could not be said that the prosecution has proved the arrests, disclosures and the recoveries made from the accused persons.

51. Therefore, the first circumstance held by the trial Court to have been proved viz., “the disclosure statement made by Farooq” cannot be said to have been proved by the prosecution. This is because even the arrest of A-2 and the consequent arrests of the other three co-accused persons have not been proved to have been made in the manner indicated by the prosecution. With the arrests not being proved, the disclosures and the recoveries also cannot be said to have been proved.

52. The weapon of offence used in the killing of Purnima was also never recovered. That is because Ajay Sharma, who was supposed to have committed that crime, was not alive. The police did nothing by way of serious investigation in the crucial period of two weeks between the killing

of Purnima and the murder of Ajay Sharma. There is no explanation given by Inspector Sajjab Singh (PW-26) as to why since 1st April 1999, when a secret informer told him that A-2 was involved in a murder, no attempt was made to trace A-2 out until 10th April 1999 when the investigation was transferred to PW-34. The trial Court appears to have not noticed this serious lapse on the part of the prosecution.

53. Secondly, no attempt was made by the police to search the premises of Ajay Sharma to find out any clues about his actual involvement in the crime of murdering Purnima. There is no evidence to show that Ajay Sharma was at any time in possession of the photograph of Purnima. Without the photograph of Purnima being given to him, Ajay Sharma could not have killed her because she was a complete stranger to him. With Chander Prakash (PW-8) having turned hostile, there is nothing at all to show that Ajay Sharma had the photograph of Purnima; that he was given that photograph by A-2; or that A-2 promised him money to kill Purnima and in fact paid him some advance money to that end. The prosecution was unable to prove the cash payment purportedly made by A-2 to Ajay Sharma for the elimination of Purnima or that Ajay Sharma had given Rs. 4,000/- to his family out of the said amount. With all these crucial facts not being able to be proved, the prosecution has miserably failed to show that Ajay Sharma was somehow involved in the killing of Purnima and that he was hired by A-2 at the instance of A-1 to do so. Thus, yet another limb of the prosecution's case fell apart.

54. At this juncture, it requires to be noticed that even Premwati did not

actually see who stabbed Purnima from the back as she was alighting from the bus on 28th March 1999 at around 9.30 pm. The police also do not appear to have bothered to question any of the passengers in the bus or any passers-by who may have witnessed the occurrence. After all, it was at a busy bus stop and even according to Premwati, a crowd was present there at that time.

55. Be that as it may, when A-1 was called, he immediately took Purnima with him to the hospital, remained with her there and then brought her back to his house after she was declared dead. Such behaviour on the part of A-1 cannot be said to be abnormal.

56. In a case of circumstantial evidence, when other circumstances have not been satisfactorily proved, the motive becomes a very important factor for the prosecution to prove. In the present case, A-1 is supposed to have had an illicit relationship with one Shanu. This is supposed to have happened in 1991 whereas the crime took place in the year 1999. A close reading of the evidence of the brothers of Purnima, i.e. Kishan Bahadur (examined as PW-2 in FIR No. 169/99) and Birka Bahadur (PW-5) reveals that she had in fact fallen out from her family as they had objected to her love marriage. In the circumstances, it is unlikely that either of the brothers would have kept close track of what is happening in her life, particularly over a long span of nine years between when she first disclosed to them about the alleged illicit relationship and the date of her actual killing. This part of the evidence is, therefore, unconvincing.

57. Secondly, it is surprising that the police never questioned Shanu or even her brother, Pappu, both of whom were stated to be related to Purnima. If the

prosecution was serious about proving the motive for the commission of crime of the murder of Purnima, it was essential for them to prove the motive for the crime beyond reasonable doubt.

58. The cross-examination of Kishan Bahadur (PW-2) demonstrated the weakness of his testimony. He stated that “since 1991 up to 1998, no complaint was lodged with the police regarding the divorce proceedings; or regarding the illicit relationship of Vinod and Shanu. This fact that Shanu was living with Vinod was within their knowledge only and not in the knowledge of other persons of neighbourhood”. He claimed that it was their personal affair, “thereafter I did not visit Purnima”. He also did not go to her house for about 8-9 months. He also stated that “I never saw Vinod beating my sister Purnima nor she has made any complaint in this regard”.

59. As far as Birka Bahadur (PW-5) is concerned, his evidence is also not convincing. In his cross-examination, he too admitted that no complaint was made to the police when he received information from his brother Kishan Bahadur (PW-2) about what transpired between him and A-1. In fact, Kishan Bahadur was working in Delhi Police and had he been threatened by A-1 about being eliminated by A-2, it is unlikely that he would not have made a complaint in that regard. From his evidence, it again appears that the complaint made by Purnima about the illicit relationship was in 1991 and the huge gap between then and her murder in 1999 has not been explained by this witness at all.

60. The last circumstance, which according to the trial Court has been

proved, is the recovery of the purported rope with which Ajay Sharma was strangled. A rope, however, is a common object and it is hardly unusual for it to be found in a residential home. This evidence too is not very convincing. With the arrest of A-2 itself being doubtful, the disclosure and recovery of the rope from him appears to be doubtful and by itself does not unerringly point to his guilt.

Conclusion

61. Consequently, the Court is of the view that the prosecution has failed to prove important links in the chain of circumstances *qua* the murders of both Purnima and Ajay Sharma beyond all reasonable doubt. The prosecution has also failed to prove that the chain of circumstances point unerringly to the guilt of A-1 and A-2 and no one else. Both the Appellants are, therefore, entitled to the benefit of doubt.

62. The Appellants are acquitted of the offences punishable under Sections 120B and 302/120B IPC. The appeal is allowed. The impugned judgment of the trial Court and the consequent order on sentence *qua* A-1 and A-2 are hereby set aside. Their personal bonds and bail bonds stand discharged.

63. The Appellants will fulfil the requirements of Section 437A Cr PC to the satisfaction of the trial Court at the earliest.

64. The trial Court record be returned forthwith along with a certified copy of this judgment.

S. MURALIDHAR, J.

VINOD GOEL, J.

JULY 24, 2018/rd