

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

Judgment reserved on: 05.01.2018

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Judgment delivered on: 02.07.2018

+ **CRL. A. 743/2014**

SOHAN SINGH

..... Petitioner

Through: Ms. Rakhi Dubey, Advocate

versus

STATE

..... Respondent

Through: Ms. Aashaa Tiwari, APP for State
with SI Om Prakash, PS- DBG Road

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P. S. TEJI

J U D G M E N T

VIPIN SANGHI, J.

1. The present Criminal Appeal has been preferred by the Appellant under Section 374(2) of Code of Criminal Procedure against the judgment and order on sentence passed by Ms. Savita Rao, Learned ASJ, Tis Hazari Courts, Delhi; dated 18.02.2014, in SC No. 100/2013 arising out of FIR No.211/2010, under section 302 IPC registered at PS D.B.G. Road . The appellant stands convicted and sentenced to imprisonment for life under Section 302 IPC with fine of Rs.50,000/-, in default of which he is sentenced to undergo SI for six months.

2. The case of the prosecution is that on 14.09.2010, one lady Smt Shanti Devi PW-4 came to PP Shidipura and informed about an injured lady lying in a room on the third floor of her house. On receipt of this information, HC Sukhpal PW-10 alongwith SI Satbir Singh and Ct. Jaswant PW-12 went with PW-4 to her house. One woman (hereinafter also referred to as 'deceased') was found lying dead on the floor, unclad and soaked in blood, in the said room. The place was inspected, and rukka Ex. PW-6/A was prepared on the statement of PW-4 (Ex PW-4/A) in which she stated that the said room was rented out to the accused and that she had last seen the accused Sohan Singh and the deceased come together to the said house at 12:30 PM that day.

3. The scene of crime was inspected and a few seizures were made. Crime team was called and it inspected the place minutely and took photographs of the dead body.

4. Site plan without scale was prepared vide Ex. PW-16/A. During investigation, a call was received on the mobile phone found in the said room, and it was found that the deceased was one named Sunita, and that she had left with the accused around 12 PM that day. The deceased's husband, Arun Verma, PW-2 reached the spot, identified the dead body as being that of his wife and also gave information regarding sister of the accused. Thereafter, FIR No. 211 Ex. PW-3/A was registered on the same day i.e 14.09.2010 and the dead body was sent for examination.

5. The exhibits from the deceased- two metal churi, vaginal swab, viscera, sample of blood, vaginal smear and clothes of the deceased, were

collected from the mortuary and seized vide Ex. PW-12/A by the IO on 15.09.2010.

6. The post mortem of the deceased was conducted on 15.09.2010 at 2.30 PM vide Ex. PW-7/A and the doctor had opined that the cause of death in this case was shock and hemorrhage as a result of cut throat injury which is sufficient to cause death individually in ordinary course of nature. Following injuries were noted on the body and all were opined to be ante mortem in nature.

“1 Cut throat wound of length 26 cm × gaping 10cm. at the midline, present 7 cm below chin, 4 cm above supra sternal at anterior midline of neck, 8.5 cm below and back to the left mastoid process, 17cm extended left to midline at left side of neck. The right end of wound 7cm below and forward to right mastoid process on right side of neck. The margin of wound is clean cut. A skin tag is found at right side of neck present on right angle of wound. Inside the wound, the subcutaneous tissue, muscles of left, right and anterior part of neck, both superficial and deep blood vessels, both carotid arteries, trachea, esophagus were cut with clean cut margins associated with hematoma. There were two cut marks of length 4cm and 2cm parallel to each other with 2cm gaping present over the anterior side of upper cervical vertebra.

2. A incised wound of size 6×2cm muscle deep horizontally present over right upper part of neck, 3cm below and right to mentum with acute margins.

3. A linear cut of length 3cm present over mentum obliquely with tailing towards right.

4. Linear cut 3cm×0.2cm present over left shoulder, lateral aspect.

5. Linear cut of size 2cm present over left upper chest region, anterior aspect with tailing towards right.

6. *Linear cut of size 5cm × 0.2cm obliquely present over suprasternal notes with tailing towards left.*
7. *Incised wound of length 6.5cm gaping, muscle deep, spindle shape with clear cut margins present over right elbow joining lateral aspect obliquely present.*
8. *Incised wound of size 2.5cm, gaping 0.5cm present over right First webspace, muscle deep. (Defensive wound)*
9. *Linear cut 3cm present over right palm, thenar eminence.*
10. *Linear cut 4cm obliquely, present over left forearm in lower 1/3, ventral aspect.*
11. *Incised wound 2.5× 0.5cm bone deep present over backside of left thumb dorsal at base.*
12. *Incised wound 2.5×0.5cm muscle deep present over 1st web space on the left side.*
13. *Incised wound 5×0.3cm muscle deep present over left thenar eminence.*
14. *Incised wound 2.5×0.5cm muscle deep present over ventral aspect of left thumb; distal phalanx ventral aspect.*
15. *Incised wound 1.5 ×0.2cm present over left distal finger, ventral aspect.*
16. *Incised wound 1.5×0.2cm present over ventral aspect, middle finger of left hand and one linear cut 6.5 ×0.2cm present over right leg upper 1/3, 8cm below right knee ”*

The probable time of death was stated to be ‘about one day’. This report was duly proved by PW7 Dr. Kulbhushan, who had conducted the post mortem.

7. The sister of the accused was interrogated, the CDRs and cell site IDs with location of accused’s phone were traced and it showed the location of accused’s phone at Shamli, U.P. The CDRs are now Ex. PW-1/C and the cell site IDs are Ex. PW-1/DA. The accused was apprehended on 24.09.2010

vide arrest memo Ex. PW10/A, from Gali No. 6, Gopalpur, Near Wazirabad on information by the sister of the accused; his disclosure statement was recorded in which he disclosed that after the incident he went and hid at a Dharamshala in Shamli. He thereafter led the police party to the said Dharamshala and the entry register of the Dharamshala was seized vide Ex. PW-10/B.

8. On completion of the investigation, the Police filed the charge sheet and charge was framed against the appellant under section 302 IPC on 02.04.11. The statement of the accused was recorded on 22.07.2013 when the incriminating circumstances were put to him. He claimed innocence and chose to lead defence evidence where he examined himself under section 315 CrPC as DW-1

9. The prosecution examined a total of 16 witnesses, the main witnesses being PW-2, husband of the deceased and PW-4 the complainant.

10. PW-2 in his testimony stated that on 14.09.2010 at about 10:30 or 11 AM he was present at his house. His wife was upset since the morning because of repeated calls on her mobile phone by someone. On enquiry, she told him that it was one Sohan who was her colleague and that he was not well. At about 11.15 AM, she went to meet Sohan at his house in Shidipura. PW-2 waited for her to return home till 5-5.30 PM and during this period he made several calls on her number, but there was no reply. The accused's phone was also switched off. Then he called accused's sister whose number was fed in his daughter's mobile phone. The sister of the accused had no idea about accused's whereabouts. They continuously called on deceased's phone and at about 5:30-5:45 PM, someone answered and asked him to

reach PP Shidipura. On reaching there, police told him that his wife had been murdered by her colleague Sohan Singh. On reaching the house of the accused, he saw a dead body which had been covered and identified it as that of his wife. He knew the accused being colleague of his wife. On 24.09.2010 he was again called by the police at PP Shidipura, where he identified accused Sohan Singh.

11. In her testimony, PW-4 has stated that the accused was her tenant in one room on the third floor of her house and he used to pay Rs. 1500 per month as rent. He had taken the room on rent about 5-6 months prior to the date of the incident. Accused was living alone in the said room though he had told her that he was married and his family members were living somewhere else. On 14.09.2010, it was a Tuesday at about 12-12.15 noon, accused along with one lady namely Sunita came to his room. The said Sunita had also come on few occasions to the house of the accused. She told him that accused was related to her as her 'Devar'. After half an hour of arrival of accused along with Sunita, she heard noise of falling of some heavy article from the room of the accused. At about 2.30 PM, she had gone to the third floor to fetch water. She noticed the fan in the room of accused was switched on. On seeing this, she knocked the door of the accused but no one responded, so she returned back to her room. She became suspicious and made inquiry from her daughter about the presence of the accused in his room. Her daughter told her that the accused had left the room since a long time. She again went to the room of the accused in order to switch off the fan. She again knocked the door, but no one responded. Then she noticed that the door was not latched/bolted from outside. She pushed the door, it

was slightly opened, and; she saw the legs of Sunita having blood stains. She immediately closed the door and went to Police Post Siddhipura and informed the police. The police inquired from her whether the said woman was dead or alive, to which she told them that it seemed to her that she was dead. She was accompanied by the police back to that room. Her statement was recorded by the police. She never issued any rent receipts to the accused. The trial court, as aforesaid, has convicted the accused/ appellant by the impugned judgment.

12. Ms. Rakhi Dubey, Ld. Counsel for the appellant submits that the case is one of circumstantial evidence where much importance has been placed on the testimony of PW4, who stated that the deceased was last seen alive with the accused. It is submitted that the accused was not present at the scene of crime at the time when the incident took place, as is stated by him in his testimony. It is submitted that the accused has been erroneously convicted, influenced by his conduct of his absconding after the occurrence. It is further submitted that the prosecution has failed to attribute any motive to the appellant for the alleged murder. Lastly, it is submitted that the investigation done in this case was a shoddy one, and no medical examination of the dead body was undertaken to determine whether the deceased was subjected to sexual assault.

13. Ld. Counsel for the appellant submits that allegedly PW4 saw the deceased last in the company of the accused, but that by itself is not sufficient to find the appellant guilty. Ms. Dubey has drawn our attention to the testimony of PW4 in court which we have already taken note of hereinabove. Ld. Counsel submits that the testimony of PW4 has been

improved in the court. She submits there is a contradiction in the testimony of PW4 on the point whether she went to fetch water at 2:30 pm, or at 3:00 pm; also whether she went once, or twice on the said floor before discovering the body of deceased. Ld. Counsel submits that having regard to the above said inconsistencies, the testimony of PW-4 should be disregarded.

14. Ld. Counsel further submits that in order to hold the accused guilty, the prosecution has to raise suspicion grave enough to conclude that the crime could have been committed only by the accused, and by no one else. Ld. Counsel submits that the said rented room of the accused was accessible from the neighborhood and the possibility of an intruder coming from the adjoining property cannot be ruled out. On this aspect, Ld. Counsel points towards the cross examination of husband of the deceased— PW2, on behalf of the accused dated 19.05.11, wherein he states that the gate was lying open when he reached the spot around 5:30 p.m. She also points out the cross examination of Inspector Satyaveer (PW6) on behalf of the accused, where he stated that there were houses adjacent to the house of complainant on both sides, and also on the back side. There was one more room, besides the room of the accused. The said room was lying locked and was in the possession of complainant.

15. Ld. Counsel refers to the cross examination of PW10— Head Constable Sukhpal on behalf of the accused dated 02.05.12, wherein he stated that anyone can reach the adjacent houses after jumping over the boundary wall of the open space outside the room where the dead body was recovered.

16. Ld. Counsel has attempted to construct a timeline of the day of the incident i.e., 14.09.10, narrating the proceedings as per the testimony of PW4. She submits that as per PW4, the accused came to the room along with the deceased around 12:00-12:15 p.m. About 30 minutes thereafter, PW4 heard a loud noise from the third floor. This should be around 12:45-1:15 p.m. At about 2:30 p.m., PW4 went upstairs to fetch water and she thereafter discovered the dead body of the deceased around 2:40 p.m. Ld. Counsel has compared this with the post mortem report of the deceased, which is recorded at 2:30 p.m on the next day, i.e. 15.09.2010, wherein the time since death is recorded as 'about one day' . She submits that the post mortem was conducted on 15.09.2010 at 2:30 PM vide Ex PW-7/A, and the 'probable time of death' is recorded as 'about one day' in the same. Ld. counsel submits that this puts the time of death at around 2:30 p.m. on 14.09.2010; and that the accused had already left the place of incident by that time.

17. Ld. Counsel points to the statement of the accused recorded under Section 315 Cr.P.C., wherein he claimed innocence and stated that he was working in Hotel Prince Colony, Paharganj in the year 2010. He knew deceased Sunita who was working with him in the aforesaid hotel. Her husband used to remain ill and he was not earning. The entire family, consisting of her husband and three children was dependant only on her income. The deceased was in the business of prostitution for earning extra income, and he used to arrange customers and also used to provide his rented room for the aforesaid purpose. On the day of the incident, she came to his room. Sometime thereafter, a customer came in the room from the

adjoining house. Thereafter the deceased asked him to go from there and, accordingly, he left the room. When after sometime he came to the room, he saw that the deceased was lying unconscious, in an injured condition, and blood was oozing out from her injuries. He became scared and ran away.

18. Ld. Counsel submits that the accused had left the room shortly after his arrival with the deceased. Whereas, the murder of the deceased took place at a later point of time, i.e. in the absence of the accused; which is corroborated by the post mortem report of the deceased Ex. PW-7/A.

19. Ms. Dubey concluded her arguments by submitting that suspicion cannot take the place of proof and hence, the accused should be given the benefit of the doubt. Reliance is placed on the decision in *Anjan Kumar Sarma & Ors. V State of Assam*, JT 2017 (6) SC 498.

20. Per contra, Ms. Aasha Tiwari, Ld. APP for State submits that the prosecution has been able to complete the chain of circumstances in order to prove the case of the prosecution. It is submitted that the deceased was last seen in the company of the accused, after which she was never seen alive. It is further submitted that there is sufficient evidence to establish the guilt of the appellant.

21. Ms. Aashaa Tiwari submits that the burden of proving what transpired inside the room of the accused, after it has been established that he went to the room with the deceased, is on the accused under section 106 of the Evidence Act, 1872, since that fact was especially within the knowledge of the accused. Since the accused was last seen coming in the house with the deceased by PW-4, the onus of proving what happened inside the room of the accused lies on the accused, as he was the one who had

exclusive knowledge of the proceedings. Ms. Tiwari further submits that the accused has failed to give any satisfactory explanation to discharge his obligation. Nor has he led any evidence to show that he was not present at the scene of incident at the time when the crime is alleged to have taken place.

22. Ld. Counsel points to the statement made by the accused in Court under Section 313 Cr.P.C., and his testimony under Section 315 Cr.P.C. She submits that they are contradictory; and he has failed to provide sufficient explanation with regard to the proceedings of the fateful day. She also points out that the accused even failed to give a description about the appearance of the alleged customer of the deceased in his cross examination by the Ld. APP.

23. Ms. Tiwari further submits that the accused claimed he was in the business of arranging customer for the deceased, yet he could not tell the house number from where the said customer came into his room. He merely states that it was an adjacent house. He merely states that the customer was aged about 40 years and he was clean shaved. Ms. Tiwari submits that the accused has, thus, failed to discharge the burden of proving the facts alleged by him, and he has been rightly convicted. Ld. Counsel places reliance on *Trimukh Maroti Kirkan Versus State Of Maharashtra*, (2006)10 Supreme Court Cases 681; *State of Punjab Versus Karnail Singh*, (2003) 11 Supreme Court Cases 271; *State of West Bengal Versus Mir Mohammad Omar and others*, AIR 2000 Supreme Court 2988; *State of Rajasthan Versus Thakur Singh*, (2014) 12 SCC 211; and *Balbir Singh Versus State*, 168 (2010) Delhi Law Times 406 (DB), to press the aforesaid submissions.

24. Ld. Counsel further submits that the conduct of the accused, subsequent to the incident is pertinent. The accused, admittedly absconded in fear. She points out the statement of PW16, IO Jeewan Lal, who states that on the basis of the CDR of the mobile phone of the accused, it was found out that the accused was present at Shamli. Thereafter a raiding party went there and a police team was sent to his native village, but the accused was not found anywhere. On 24.09.2010, sister of the accused informed that accused would come to her house at about 3 PM. On receipt of this information, a raiding team was constituted by him comprising of HC Sukhpal and Incharge of Police Post Shidhipura and accused was apprehended from Gali No. 6, Gopal Pur, near Waziarabad on the basis of aforesaid information. Accused was brought to Police Station and after interrogation he was arrested vide arrest memo Ex. PW-10/P1. During PC remand, accused led the Police to Aggarwal Dharamshala in Shamli, where he was hiding under the name of Vijay. The records of the register of the said Dharamshala (Ex. PW10/P-I) from 18.09.2010 to 23.09.2010, which were duly proved by PW11– the care taker of the Dharamshala, corroborate the fact that the accused had changed his name in an attempt to hide his identity. She submits that this conduct of going into hiding, of the appellant, suggests that it was indeed him who had murdered the deceased, and his failure to prove otherwise, the trial court rightly held him guilty. Ld. Counsel places reliance on *Arabindra Mukherjee V. State of West Bengal*, 2012 Cri. L. J. 1207, in support of her aforesaid submission.

25. We have considered the submissions advanced by learned counsels and perused the evidence brought on record thoroughly. We have also

perused the impugned judgment and scrutinized the reasoning adopted by the learned ASJ while convicting the appellant.

26. PW-4 has corroborated the contents of the rukka Ex. PW-4/A, in material particulars in her testimony. She has consistently stated that the accused came with the deceased around 12.30 PM; after about 30 minutes she heard a noise from the room of the accused; she went upstairs to fetch water in the afternoon, and noticed that the fan of the room of the accused was on; she noticed that the door of the accused was not latched; she went to switch the fan off, and when she opened the door of the room, she saw the dead body of the deceased lying there soaked in blood and a blood stained knife was lying next to her dead body; she straightaway rushed to the police post and informed the police of the incident. PW-4 was cross examined by Ld. Amicus Curiae on this point at length, but nothing material came out to discredit her testimony. There are hardly any improvements in her statements.

27. Pertinently, Ex. PW-4/A is a statement made by PW-4 to the police, and not before a Court, and she was not expected to disclose incidents that had occurred before she discovered the dead body. Her omission in informing the police that she had gone to the third floor once prior to discovering the dead body, in our view, is of no material consequence. Similar is our view regarding the so called contradiction in time of PW-4 going to the third floor to fetch water being 2:30 PM, or 3 PM. Pertinently, the rukka was recorded on 14.09.2010, whereas her testimony was recorded in Court on 19.05.2011; human memory is fallible and a witness cannot be expected to recollect the incident in verbatim after the passage of several

months. Therefore, we are of the view that the minor variations in the testimony of PW-4, whose testimony we otherwise find to be cogent and consistent, do not shake her credibility. We are thus of the view that these so called contradictions are inconsequential and of no consequence. Thus we are of the opinion that PW-4 was a credible witness, whose testimony is trustworthy.

28. We do not find merit in the submission that the accused was not present at the spot when the alleged incident took place, for the reason that the post mortem report Ex. PW-7/A gives the probable time of death as “about one day”. It cannot be concluded that the deceased had died exactly at 2:30 pm on 14.09.2010. Presence of the accused at the place when the incident is stated to have taken place is established by the testimony of PW-4, who is the witness to the last seen evidence. Pertinently, even the appellant/ accused states in his statement recorded under Section 315 Cr.P.C. that he was with the deceased in the room. He claims to have left while the deceased was still alive— a fact which he has failed to probabalize. Nothing has come on record to convince us of his leaving the spot. Even the appellant has not led any evidence in support of his aforesaid claim. He has not set up an alibi. Pertinently, in his cross examination, PW-2 Arun Verma, specifically states that the staircase that led to the room of the accused went through the inside of the building of the house PW-4. In case, someone entered through the door of the house, the same would have been noted by PW-4, but PW-4 in her testimony nowhere mentions that any other person went up the stairs at the material time. PW-4 also states that around 2:30

p.m. that day, she went up to the floor where the incident had happened to fetch water, and noticed that the fan of the room of the accused was on.

29. There is a material contradiction in the statement made by the accused under Section 313 Cr.P.C., when compared with his statement recorded under Section 315 Cr.P.C. In his statement recorded under Section 313 Cr.P.C. he stated that the deceased came to his house with a customer, and asked him to go outside for two hours. However in his testimony recorded under Section 315 Cr.P.C., he states that the deceased came to his room, thereafter a customer came from the adjoining house, and the deceased asked him to leave. In view of the differing statements made by the accused, his testimony fails to inspire the confidence of this Court, and we therefore agree with the submission of Ms. Tiwari that the appellant has failed to discharge his burden under section 106 of Evidence Act.

30. Reliance placed by Ld. Counsel for the appellant on **Anjan Kumar Sarma** (supra) is misplaced because in that case there was a substantial time lag between the time when the deceased and the accused were last seen together, and the time of death of the deceased as determined upon post mortem. The deceased was last seen at a bungalow with the accused on 27.12.1992 at 9 PM, and her body was recovered at a railway track on 29.12.1992 at about 1:50 PM i.e. more than 40 hours after she was last seen with the accused; the time of death according to her post mortem report was also 15 hours after she was seen with the accused. In the present case, deceased was last seen by PW-4 with the accused at 12:30 PM going into the room of the deceased on 14.09.2010; and thereafter her dead body was found lying in the same room on the same day around 2:30 PM by PW-4 i.e.

2 hours later. Also, the dead body in *Anjan Kumar* (supra) was recovered from the railway track, which is a common place accessible to general public. However, in the present case, the dead body was recovered from the room of the accused, which was in the exclusive possession of the accused.

31. There is merit in the submission of Ld. APP, that the burden of proving what transpired inside the room of the accused— after it has been established that the deceased was last seen with him going into his room, is on the accused under section 106 Evidence Act. The accused has not helped his cause by failing to give cogent description of the alleged customer of the deceased. The same probablises the fact that no other person ever came to the room of the accused, and the appellant has concocted a story as an after-thought. Pertinently, the accused never disclosed about the presence of anyone in his room at the time of alleged offence to the investigating officer.

32. In *Arabindra Mukherjee V. State of West Bengal*, 2012 CrI L. J. 1203, the Supreme Court, while dismissing the convicts appeal observed:

“6. None of these contentions impress us. PW 1 and PW 11 both have deposed that the accused used to come to the house of the deceased even subsequent to the passing of the decree of divorce. Thus, the visits of the accused to the house of the deceased was a common phenomenon. On the fateful day, as per these witnesses, he had come to the house of the deceased and requested her to come out with him for seeing a movie in the cinema hall. The deceased had accompanied the accused never to return to her home. Upon search, her body was found on the railway track next day.

7. The statements of these two witnesses read along with the medical evidence on record fully support the case of the prosecution. Once the appellant was last seen with the deceased, the onus is upon him to show that either he was not

involved in the occurrence at all or that he had left the deceased at her home or at any other reasonable place. To rebut the evidence of last seen and its consequences in law, the onus was upon the accused to lead evidence in order to prove his innocence. It was also for the accused to establish that he was falsely implicated. The stand taken by the accused in his statement under Section 313 of the Code of Criminal Procedure, was a complete denial of involvement and a result of false charges by the appellants. Once the prosecution had established its case, it was expected from the appellant to prove his defence of false implication. The conduct of the accused-appellant also is suspicious in the sense that after the occurrence he was absconding and with difficulty the police could trace and arrest him.” (emphasis supplied)

33. In *Mir Mohammad Omar* (supra), the State of West Bengal, as well as the convicted persons filed appeals against the decision of the Calcutta High Court. The State challenged the acquittal of the accused on the charge of murder, and the latter challenged their conviction under Section 364 read with Section 34IPC. The Supreme Court allowed the appeal filed by the State and dismissed the appeals filed by the convicted persons. It relied on the presumption which arose against the accused on account of the last seen evidence which was not rebutted by the accused. The Supreme Court observed as under:

“33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to

presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

34. When it is proved to the satisfaction of the Court that Mahesh was abducted by the accused and they took him out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning process would enable the Court to draw the presumption that the accused have murdered him. Such inference can be disrupted if the accused would tell the Court what else happened to Mahesh at least until he was in their custody.

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37. The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference.” (emphasis supplied)

34. In ***Thakur Singh*** (supra), the accused Thakur Singh took his wife and daughter inside a room and bolted it from within, keeping the room locked throughout the day. He did not open the same even on being persuaded by his relatives. Later in the evening, the ‘kelu’ was removed from above the house, and it was then discovered that the wife had died. He was accused of murdering his wife. Supreme Court, while allowing the State’s appeal and restoring the judgment of the Trial Judge, invoked Section 106 of the Evidence Act, 1872. It observed:

“22. The law, therefore, is quite well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts.”

35. In **Karnail Singh** (supra), the deceased was last seen by the brother of the deceased, being dragged by the accused who were armed with weapons. Thereafter, the headless body of the deceased was recovered lying in a field near the Dera of accused Karnail Singh. After searching for the head of the deceased, the same was found lying in the tubewell at the Dera. The Supreme Court, while allowing the State’s appeal and restoring the conviction by the Trial Court observed:

*“7. ... It is to be noted that there was no dispute by the accused regarding the presence of the dead body and the severed head in the field and near the tubewell of accused Karnail Singh. Though the prosecution has to lead evidence to substantiate its accusations, **if facts within the special knowledge of the accused are not satisfactorily explained it is a factor against the accused. No explanation was given by the accused during examination under Section 313 of the Code except making bold denial. Though this factor by itself cannot be sufficient to fasten the guilt of the accused, while considering the totality of the circumstances this is certainly a relevant factor.** The evidence of PWs 1 and 2 is clearly cogent and without even properly analyzing their evidence the High Court came to the conclusion that their presence was doubtful.*

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12. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an

*innocent. Letting guilty escape is not doing justice according to law. (See Gurbachan Singh v. Satpal Singh [(1990) 1 SCC 445 : 1990 SCC (Cri) 151 : AIR 1990 SC 209] .) **The prosecution is not required to meet any and every hypothesis put forward by the accused.** (See State of U.P. v. Ashok Kumar Srivastava [(1992) 2 SCC 86 : 1992 SCC (Cri) 241 : AIR 1992 SC 840] .) **A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish. [See Inder Singh v. State (Delhi Admn. [(1978) 4 SCC 161 : 1978 SCC (Cri) 564 : AIR 1978 SC 1091]).] **Vague hunches cannot take place of judicial evaluation. “A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties.”** (Per Viscount Simon in *Stirland v. Director of Public Prosecution* [1944 AC 315 : (1944) 2 All ER 13 (HL)] quoted in *State of U.P. v. Anil Singh* [1988 Supp SCC 686 : 1989 SCC (Cri) 48 : AIR 1988 SC 1998] , SCC p. 692, para 17.) **Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth.** (See: *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : (1974) 1 SCR 489] , *State of U.P. v. Krishna Gopal* [(1988) 4 SCC 302 : 1988 SCC (Cri) 928 : AIR 1988 SC 2154] and *Gangadhar Behera v. State of Orissa* [(2002) 8 SCC 381 : 2003 SCC (Cri) 32 : (2002) 7 Supreme 276] .)”(emphasis supplied)***

36. We may also observe that the conduct of the accused of running away and remaining in hiding under a false identity, is also a circumstance which goes against the appellant. The plea of the accused that he was scared as he

was involved in the deceased's business of prostitution does not impress us, since there is not even an iota of evidence— apart from the testimony of the accused, on the point that the deceased was a prostitute. Accused has also not led any evidence in support of this claim. Pertinently, in his cross examination the accused admitted to having an extramarital relationship with the deceased. We, therefore, hold this circumstance to be against the appellant.

37. Pertinently, the deceased was killed by slitting open her neck, and as per PW-4 there was a pool of blood in the room when she first saw the dead body. It is only natural that in the act, blood splattered in and around the deceased. When the police reached the scene of crime, they had made seizures of blood stained clothes lying in the said room vide Ex. PW-6/B. All of these exhibits, including clothes like vest, shirt, nikkar etc. found in the room of the accused, were sent to the FSL for examination. According to the FSL Report Ex. PW-16/E, blood was detected on all of the clothes. As per Ex. PW-16/F, the blood detected on the vest, shirt, boxer, tshirt and towels were found to be of 'AB' group; matching the one found on the clothes of the deceased, as well as on the weapon of offence. It would be absurd to hold that someone else would come into the room, put on clothes, kill the deceased, then change clothes there itself before leaving the scene of crime within such a short span of time, and that too inconspicuously.

38. With regard to the submission that the investigation done on the aspect of sexual assault was insufficient, we may observe that PW-16 was cross examined on the said aspect and he stated that he had made enquiries from some other people, including the staff of the hotel where the accused

and the deceased worked together, but nothing material came out of the same; and the same was recorded by him in the case diary. Pertinently, even the 2 exhibits containing vaginal smear of the deceased were sent to the FSL for examination and the FSL report Ex. PW-X-1 states that semen could not be detected on the exhibit.

39. Keeping in view the above discussion, we find no merit in the present appeal and dismiss the same. We uphold the judgment and order on sentence rendered by the Ld. ASJ.

(VIPIN SANGHI)
JUDGE

(P. S. TEJI)
JUDGE

JULY 02, 2018