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*** IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.A. 516/2018 & CRL.M.(B.) 725/2018**

PRADEEP @ RAJU Appellant
Through: Mr. Kanhaiya Singhal, Mr.
Prasanna, and Mr. Ajay Kumar,
Advocates.

versus

STATE Respondent
Through: Mr. Kewal Singh Ahuja, APP
for the State

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

**JUDGMENT
10.07.2018**

Dr. S. Muralidhar, J.:

1. This is an appeal directed against the judgment dated 24th November 2017 passed by the learned Additional Sessions Judge, Pilot Court, North District, Delhi in Sessions Case No.59320/2016 arising out of FIR No.498/2016 registered at Police Station (PS) Narela, Delhi, convicting the Appellant under Section 302 Indian Penal Code, 1860 (IPC) and the order on sentence dated 6th December, 2017 whereby he was sentenced to undergo rigorous imprisonment (RI) for life with a fine of Rs.5,000/-, and in default of payment of fine to undergo simple imprisonment (SI) for one year.

2. The Appellant was charged with having committed the murder of the deceased Ganeshi Mochi at some time before 09.30 am on 6th July, 2016 at Khasra No. 11/8, 30 ft. Road, behind Maharaja Aggarsen School, Swaroop Nagar, Narela, Delhi by causing head injuries and stab injuries.

Information about the crime

3. The criminal justice machinery was activated when at PS Narela at around 10.18 am on 6th July 2016 DD No.14A was noted that information had been received from a wireless operator of the Police Control Room (PCR) about a fight having taken place at the rear side of the Aggarsen School.

4. The PCR form (Ex.PW-17/A) also noted that a call was received at around 10.16 am about a fight going on behind the school. The PCR form also noted that a report was received from the police who reached the spot at around 10.51 am that they found a person in a bloody condition with knife injuries pursuant to a fight and who appeared to be drunk. He was being taken to the hospital. At around 11.30 am the name of the injured was disclosed as ‘Ganeshi’ and that he was taken to the hospital in a conscious condition. There was also a remark that “*Jhagda Karne Wale Bhi Moke Pe The*”.

5. A PCR van comprising Sub-Inspector Ajay Singh (PW-16) reached the spot and removed the injured Ganeshi, who was still conscious to

the SRH Hospital at Narela. The MLC (Ex. PW-10/A) of Ganeshi shows that he was brought there at around 11.06 am. It was noted that he was still conscious but unfit to make a statement. The MLC noted that he was brought there “in a gasping state.” Two lacerated wounds on the parietal region and the right arm were noted. Stab and incised wounds were also noted. He was declared dead at 11.40 am. A complaint was recorded at the instance of one Sumit Kumar Mishra (PW-22) and an FIR registered on that basis.

Medical evidence

6. The post mortem of the body of Ganeshi was performed by Dr. N. K. Gunjan (PW-9) on 9th July 2016. He noted as many as 7 split lacerated wounds “involving whole layers of scalp”, 5 wedge shaped incised stab wounds muscle deep present over the left shoulder, left arm, left side of the abdomen and left side of the back and one superficial incised wound over the left side of the face. The internal examination revealed diffuse scalpel contusion, a linear fracture over occipital bone bilateral on the skull vault and diffuse subdural and sub-arachnoid haemorrhage present over the cerebral and cerebellar hemispheres bilaterally.

7. The opinion given by PW-9 as to the cause of death was “cumulative effect of the head injury produced by blunt force impact and haemorrhage secondary to multiple stab injury over the body at places produced by a sharp cutting/stabbing instrument.”

8. A knife and scissor was recovered at the spot. These were later shown to PW-9 who gave a further opinion on 2nd September 2016 as under:

“After going through the post-mortem report and examining the alleged weapon of offence I am of the considered opinion that:

1. The injuries no-10,11,12,13,14 and 15 caused on the body of deceased, mentioned in the PM report no-734/16 are possible by the weapon of offence i.e. 'Knife' submitted by the I.O.

2. External injury caused on the body of deceased, mentioned in PM report no-734/16 is unlikely to be caused by the weapon of offence i.e. 'scissor' submitted by I.O.”

Arrest and recovery

9. According to the prosecution, the Appellant/accused was arrested on the pointing out of PW-22 at the Narela Railway station at around 7 pm on 6th July 2016. The Appellant was stated to be wearing a shirt and jeans pant, both of which had blood stains. They were seized and converted into *pulandas*. Later the DNA Report of the FSL (Ex PW-11/A) confirmed that the blood stains on the Appellant's clothes matched that of the deceased.

Trial

10. The charge against the Appellant for the offence punishable under Section 302 IPC was framed by the trial Court on 9th March 2017. The Appellant pleaded not guilty and claimed trial. For the prosecution 25

witnesses were examined. PW-22 turned hostile. The case of the prosecution rested on the evidence of PWs 3 and 4 both of whom stated that the deceased had, even before being taken to the hospital, made a dying declaration that it was the Appellant who had caused the injuries.

11. When the incriminating circumstances were put to him, under Section 313 Cr PC, the Appellant denied them. *Inter alia*, he denied that he was arrested from the Railway Station at Narela. He stated that he was called by the police from the *anaj mandi* at Narela. He claimed that he was innocent and had been falsely implicated. No defence evidence was led.

Trial Court judgment

12. In the impugned judgment, the trial Court came to the following conclusions:

(i) The dying declaration made by the deceased to PWs 3 and 4 was reliable and genuine. It did not need any further corroboration.

(ii) PWs 3, 4 and 16 were consistent on the point that the deceased was conscious at the time he made the dying declaration and was speaking. There was no cross-examination of these witnesses that the injured was not in a position to speak as to who caused the injuries on his person.

(iii) Although PW-22 turned hostile, the arrest of the accused was proved by PWs 24 and 25 who withstood the lengthy cross examination. PW-11 proved that the parcels received at the FSL were duly sealed. The DNA profile developed from the blood found on the clothes of the Appellant tallied with the DNA of the deceased. This circumstance linked the Appellant with the commission of the offence.

(iv) The prosecution had successfully proved that it was the Appellant who gave the knife blows and caused injuries to the deceased and this was also corroborated by the medical opinion of PW-9. The DNA isolated from the blood on the knife also matched with the DNA of the deceased.

13. On the above basis, the trial Court convicted the Appellant for the offence punishable under Section 302 IPC and sentenced him accordingly.

14. This Court has heard the submissions of Mr. K. Singhal, learned counsel for the Appellant and Mr. Kewal Singh Ahuja, learned APP for the State.

Law relating to circumstantial evidence

15. This is a case based on circumstantial evidence. Before beginning to discuss the evidence in the present case, the Court would like to

recapitulate the law in relation to cases of circumstantial evidence. In ***Padala Veera Reddy v. State of Andhra Pradesh 1989 Supp. 2 SCC 706*** the Supreme Court held:

“10. (1) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

16. In ***G. Parshwanath v. State of Karnataka (2010) 8 SCC 593*** the Supreme Court held as under:

“23. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in

the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts.”

17. In ***Rajendra Pralhadrao Wasnik v. State of Maharashtra (2012) 4 SCC 37***, the Supreme Court observed as under:

“12. There is no doubt that it is not a case of direct evidence but the conviction of the accused is founded on circumstantial evidence. It is a settled principle of law that the prosecution has to satisfy certain conditions before a conviction based on circumstantial evidence can be sustained. The circumstances from which the conclusion of guilt is to be drawn should be fully established and should also be consistent with only one hypothesis i.e. the guilt of the accused. The circumstances should be conclusive and proved by the prosecution. There must be a chain of events so complete as not to leave any substantial doubt in the mind of the court. Irresistibly, the evidence should lead to the conclusion which is inconsistent with the innocence of the accused and the only possibility is that the accused has committed the crime.”

18. In ***Brajesh Mavi v. The State (2012) 7 SCC 45***, the Supreme Court explained:

“From the several decisions of this court available on the issue the said principles can be summed up by stating that not only the prosecution must prove and establish the incriminating circumstance(s) against the accused beyond all reasonable doubt but the said circumstance(s) must give rise to only one conclusion to the exclusion of all others, namely, that it is accused and nobody else who had committed the crime.”

Dying declaration

19. In light of the legal position explained in the above decisions, this Court proceeds to analyze the evidence in the present case. The first circumstance to be discussed is the dying declaration purportedly made by the deceased soon after he was found in an injured condition.

20. The person who called the police at number 100 and gave the information about a quarrel taking place behind the school was Bijender Jain (PW-3). According to him the deceased as well as the Appellant used to work as labourers under the contractor Badri Yadav (PW-4). Both of them used to reside in the house of PW-3 situated at Khasra No.11/8, behind the school.

21. According to PW-3, at around 10 am on 6th July 2016, one of his labourers informed him that the deceased was lying in an injured condition in the above house. PW-3 then reached the spot on his motorcycle. On the way, he called the police from his mobile number. Soon after he reached the spot, the PCR van also reached there. According to him, in his presence the police asked the injured Ganeshi as to who had caused the injury to him. PW-3 stated that “Ganeshi Mochi pointed out his hand towards accused Raju @ Pradeep.” The PCR officials then took the injured Ganeshi to the hospital.

22. The above statement implied that the Appellant was in fact present at the time PW-3 reached the spot. In his cross-examination, PW-3 stated that many public persons were present when the deceased pointed towards the accused. PW-3 did not state that the deceased made any oral statement in this regard.

23. The other public witness relied upon by the prosecution is Badri Prasad Yadav (PW-4) with whom both the deceased and the Appellant were working. He was aware of the deceased and the accused residing in the godown of PW-3, who was a commission agent and had a shop at Narela Anaj Mandi. According to PW-4, at around 9.45-10 am, he was informed by a small boy near Narela Mandi that a quarrel had taken place in the godown of PW-3 and that one person had sustained injuries. PW-4 then went to the godown. There he found PW-3. By this time the PCR van had already arrived. According to PW-4, "On the asking of the police Ganeshi said that he has been hit by Raju."

24. What is however different in the statement of PW-4 is that he does not mention that the accused was present at the spot at the time. Significantly, he also does not state that the deceased pointed to the accused when he was asked who had attacked him. In his cross-examination, he maintained that the deceased had stated in his presence "*Raju Ne Mara Hai*". This implied that the deceased in fact had made an oral statement, whereas according to PW-3, the deceased only pointed out to the accused who was present there. PW-4 further

stated that he could not tell the names of other persons present except PW-3. It should be noted here that the MLC of Ganeshi mentioned that he was brought to the SRH Hospital at 11.06 pm in a 'gasping state' and was unfit to make a statement.

25. Neither PW-3 nor PW-4 states that their statements were recorded by the police. PW-3 stated "In my presence police did not record my statement". PW-4 also said "I do not know if police recorded my statement". PW-4 further stated "Police did not make any inquiry from me." This gives rise to a serious doubt whether in fact the PWs 3 and 4 spoke to the police and their statements were recorded as claimed by the prosecution. The APP before the trial Court does not appear to have confronted either PW-3 or PW-4 with their previous statements to the police.

26. Apart from PW-3 and PW-4 not corroborating each other, the evidence of SI Ajay Singh (PW-16) adds a further dimension and raises several questions. He was posted at the PCR vehicle, which reached the spot on receiving the information conveyed by PW-3. According to him "We reached at the spot and entered in a room where there were two persons i.e. one injured Ganeshi Mochi and one another person Pradeep @ Raju. Injured Ganeshi Mochi was conscious and informed me that Pradeep @ Raju caused injuries to him. Thereafter we removed injured Ganeshi Mochi to SRHC

hospital. Injured Ganeshi Mochi was admitted in the hospital in conscious condition.”

27. PW-16 took the injured to the SRHC hospital. In his cross-examination, he explained as under: -

“Vol. Our duty is to take care of the patient and providing medical aid at the earliest. I did not request the doctor that I want to record the statement of injured. Vol. As it was not my duty. I did not tell the doctor that injured had told me that he was stabbed by Pradeep. In my presence doctor did not record the statement of injured. I had mentioned in my log book whatever was told by injured. I did not ask the injured to sign the log book or put his thumb impression.”

28. The above log book of PW-16 has not been exhibited at the trial. It also does not form part of the trial court record. What is surprising is PW-16, a police officer, stating that the Appellant was present when the deceased informed him that it was the Appellant who had caused him injuries and yet making no attempt to apprehend the accused. There is no explanation for this strange behavior of the police officer. As is sought to be shown by the arrest memo (Ex.PW-24/F), the accused was arrested at Narela Railway Station at 7 pm on 6th July, 2016. Why he was not arrested at the spot in the morning itself if he was present there is a mystery. This aspect has been missed by the trial Court.

29. Therefore, we have a situation where PW-3 and PW-4 do not corroborate each other on the material aspect of the presence of the

accused at the spot and PW-16 has no explanation to offer why, if indeed the accused was present at the spot, he was not immediately arrested.

30. The other important witness for the prosecution who unfortunately did not support the prosecution at the trial was Sumit Kumar Mishra (PW-22). He was a 17 year old boy who happened to be coming back from his school that morning at around 9.30 am as he was unable to reach on time. According to PW-22, when he reached the rear side of the school he found 5-10 persons standing and one person lying there. In the meanwhile, the PCR van arrived there.

31. According to PW-22 on the arrival of the police all the other public persons went away and he alone remained there. The PCR official appears to have inquired from him as to what was going on. They then took PW-22 in a gypsy with them to the PS. PW-22 was made to sit in one room. According to him

“In the evening the police officials asked me to sign on paper which was already written. I asked them let me go through as to what is written but they asked to just sign and leave as it is already evening time. Thereafter, I signed that document and came back to my home.”

32. PW-22 was naturally declared hostile by the APP. In his cross-examination thereafter by the APP, he denied everything stated by him earlier to the police which statement was Ex.PW22/A. He denied that

any dying declaration was made by the deceased to him that it was the Appellant who had attacked him with a knife and scissors. He also disputed that any disclosure statement made to the police was recorded as Ex.PW22/B. He disputed the contents of the seizure memos. As far as the personal search memo (Ex.PW22/F) is concerned he admitted that it bore his signature at point 'B'. However, he stated "it is wrong to say that my statement mark PW22/A and PW22/B was read over and explained or that I am deliberately and intentionally suppressing the material facts recorded in my statements and in the seizure memo."

33. These witnesses viz., PWs 3, 4, 16 and 22 are not speaking in the same voice about the dying declaration. While PW-3 states that the deceased merely pointed to the Appellant who was present, PW-4 does not speak of his presence and states that the deceased spoke. So does PW-16. But then the MLC raises doubts whether the deceased was in a position to speak. The medical evidence notes several blunt force injuries on the scalp of the deceased that PW-9 states also caused the death. Importantly PW-9 did not attribute any of the injuries to the scissors. The injuries caused by the knife were not opined by PW-9 to be capable of causing the death of the deceased in the ordinary course of nature. The prosecution had no explanation as to the blunt force injuries on the scalp of the deceased which also contributed to his death.

34. As already noticed, this was a case based on circumstantial evidence where the prosecution had to show that it was only the Appellant and no one else who could have committed the murder of the deceased. Of the three public witnesses the prosecution relied upon to fix the guilt of the Appellant, by means of the dying declaration supposed to have been made by the deceased, one i.e. PW-22 completely turned hostile and the other two i.e. PW-3 and PW-4 did not corroborate each other on the material aspect regarding the presence of the accused at the spot. The medical evidence too does not fully support the version put forth by the above PWs. This Court is therefore not satisfied that it is safe to rely on the above witnesses to conclude that the deceased did make a dying declaration as claimed by the prosecution. The dying declaration cannot be said to have been proved beyond doubt by the prosecution to be genuine and reliable.

No chance prints on knife or scissors

35. According to the prosecution, at the spot they found a knife and a pair of scissors which were the weapons used to inflict the injuries on the person of the deceased. The sketch of the scissors and knife (Ex.PW24/C & Ex.PW24/D respectively) revealed that the blade of the scissors was 5.5 cm whereas the blade of the knife was 10 cm. Neither the scissors nor the knife carried any chance prints which could be recovered by the crime team, who had reached the spot at around 1 pm on 6th July, 2016.

Arrest of the accused not proved

36. The prosecution is not able to explain whether the accused who was presumably present at the spot ran away from there. What is spoken to by SI Parvesh (PW-24) and Inspector Dheeraj Singh (PW-25) is only that thereafter they started looking for the accused. There is, therefore, a gap in the narration which has not been explained by the prosecution. According to PW-24, PW-22 accompanied them when they started looking for the accused. He states that they reached railway station looking for the accused “for the reason that there is probability of his running out of Delhi”.

37. PW-22 is supposed to have pointed out to the accused who was then apprehended. It must be recalled that it was PW-22 who was made the complainant and it was only he who had actually seen the Appellant. Without him, the police would not have been able to identify the accused. However, with PW-22 having turned hostile, the entire prosecution evidence regarding the arrest of the accused at the railway station came apart. PW-25 added a twist to this by saying that he received some ‘secret information’ on the basis of which they went to the railway station and then arrested the accused.

38. The entire prosecution story of the arrest of the Appellant at 7 pm on 6th July 2016 at the Narela railway station is rendered totally unbelievable with there being no public witness to the arrest other than PW-22 who turned hostile. It is also rendered doubtful since

PW-16 stood by his version that he actually saw the Appellant at the spot even while the deceased in an injured condition stated that it was the Appellant who injured him. Why the Appellant would remain at the spot and not try to run away is not explained. Worse still, why did PW-16 not apprehend him then and there? So, even the circumstance of the arrest of the Appellant at the Narela railway station is not proved by the prosecution.

The blood stained clothes of the Appellant

39. The arrest of the accused, according to the prosecution, led further to their seizing the clothes worn by him i.e. a shirt and jeans-pant both of which were stained with blood. These clothes were seized and converted into a *pullanda* and sealed with the seal of 'DS' (since the IO was Insp. Dheeraj Singh).

40. In the trial no attempt was made by the prosecution to show where this seal was preserved; whether the aforementioned *pullanda* containing the clothes of the accused were deposited in the *Malkhana*; whether entries were made in the *Malkhana* Register. The MHC (M) was not examined as prosecution witness and *malkhana* register was not exhibited.

41. What appears to form part of the trial court record is a document constituting the Road Certificate by which the said parcel, two months after the incident, was sent to the FSL. The report of the FSL

(Ex.PW11/A) no doubt records that the seal was intact as per the forwarding letter. However, the important evidence regarding the custody of the said *pullanda* containing the clothes of the accused for a period of two months was simply not produced by the prosecution and this is indeed a serious lacuna.

42. The FSL reports confirm that the DNA of the blood stained on the shirt (Ex.4A) and jeans (Ex.4B) matches the DNA of the blood of the deceased, therefore, providing an important link in the chain of circumstances. However, in a case of circumstantial evidence a few links here and there which might connect the accused to the crime would not be sufficient if they do not form the complete chain of circumstances and each of the circumstances is not proved beyond reasonable doubt.

43. In ***Raj Kumar @ Raju v. State (Delhi)*** (DB) 169 (2010) DLT 517 a Division Bench of this Court discussed the law in this regard and explained thus:

"18. The recoveries of blood-stained clothes at the instance of the appellant have to be viewed in light of various decisions of the Supreme Court where such kinds of recoveries have been held to be very weak evidence.

19. In the decision reported as *AIR 1963 SC 1113 Prabhu v. State of U.P.* recovery of a blood-stained shirt and a dhoti as also an axe on which human blood was detected was held to be extremely weak evidence. Similarly, in the decision reported as *AIR 1977 SC 1753 Narsinbhai Haribhai Prajapati etc. v.*

Chhatrasinh & Ors. the recovery of a blood stained shirt and a dhoti as also the weapon of offence a *dhariya* were held to be weak evidence. In the decision reported as *AIR 1994 SC 110 Surjit Singh & Anr v. State of Punjab* the recovery of a watch stated to be that of deceased and a dagger stained with blood of the same group as that of the deceased were held to be weak evidence. As late as in the decision reported as *JT 2008 (1) SC 191 Mani v. State of Tamil Nadu* recoveries of blood stained clothes and weapon of offence stained with blood were held to be weak recoveries."

44. The DNA report confirming that the blood on the clothes of the accused matched with the blood of the deceased, therefore, does not by itself point unmistakably to the guilt of the accused.

Other unexplained circumstances

45. There are other factors that make it unsafe to base the conviction of the accused only on the DNA evidence. The conduct of the accused in remaining present with the deceased more than half an hour after the alleged occurrence has not been able to be explained by the prosecution. If indeed the accused wanted to murder the deceased and attacked him with sharp-edged weapons, his remaining present when PW-3 reached there, the police reached there and even continuing to remain present while the deceased purportedly pointed to him as the person who had caused the injuries is totally inexplicable and unbelievable.

46. It must also be noted that the place where the deceased was found in an injured condition has not been explained. There are two site plans. The rough site plan (Ex.PW-25/A) shows the room where the blood stains were found, the knife and scissors were found, but it does not mention that the injured was found there. Even the scaled site plan (Ex.PW-6/A) does not indicate where the injured was found; whether it was inside the room or outside the room. It must be recalled that according to PW-22, the injured was found behind the school. Even PW-23 is not very clear in this regard whereas according to PW-16, the injured was found inside the room.

47. The FSL report mentions that on chemical, microscopic, TLC and GC-HS examination, Ex.1C which is the viscera of the deceased was found to contain 'Ethyl Alcohol 59.4 mg/100 ml of blood', which confirms that the deceased was in an inebriated condition at the time of his death. Unfortunately, no MLC of the accused has been exhibited in order to indicate whether the accused had also consumed alcohol at that time. What prompted the quarrel, if any, is not clear. Whether there was any one else besides the accused in the room at the time of any such quarrel is also not clear.

48. A scenario where the accused chose to remain back with the deceased in an injured condition where any other assailant may have left has not been ruled out by the prosecution. It is due to these circumstances that the Court is not convinced that the prosecution has

been able to establish a complete chain of circumstances which point invariably only to the guilt of the Appellant and no one else. In other words, it is unsafe to draw such a conclusion on the basis of the evidence that has been led by the prosecution.

49. A lurking suspicion that it could be the Appellant who may have committed the crime is not sufficient. Recently in *Navaneethakrishnan v. State* (decision dated 16th April 2018 in CrI A. No. 1134 of 2013) the Supreme Court observed:

“(23) 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. 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 must be such as to rule out a reasonable likelihood of the innocence of the accused. 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 doubt. 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 moral certainty and legal proof. There is a long mental distance between “may be true” and “must be true” and the same divides conjectures from sure conclusions. The Court in mindful of caution by the settled principles of law and the decisions rendered by this Court that in a given case like this, where the prosecution rests on the circumstantial evidence, the prosecution must place and prove

all the necessary circumstances, which would constitute a complete chain without a snap and pointing to the hypothesis that except the accused, no one had committed the offence, which in the present case, the prosecution has failed to prove.”

50. The present case is also one where the Court is not convinced that the prosecution has been able to traverse the entire journey from ‘may be’ to ‘must be’ as far as the Appellant’s guilt is concerned.

Conclusion

51. Consequently, granting the Appellant the benefit of doubt, this Court acquits him of the offence punishable under Section 302 IPC. The impugned judgment of the trial Court and the order on sentence are accordingly set aside. The appeal is allowed. The pending application is disposed of. The Appellant is directed to be released forthwith unless wanted in some other case.

52. The Appellant will fulfill the requirement of Section 437-A 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.

JULY 10, 2018

shailendra/sa/dkb