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

Reserved on: 6th April 2018

Decided on: 11th April 2018

+ **CRL.A. 1105/2013**

SHAILESH @ RINKU

...Appellant

Through: Mr. Vikas Padora with Ms. Inderjeet
Sindhu and Mr. Dipanshu Chugh,
Advocates

versus

STATE

...Respondent

Through: Mr. Kewal Singh Ahuja, APP for
State

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE I.S. MEHTA**

J U D G M E N T

Dr. S. Muralidhar, J.:

Introduction

1. This appeal is directed against a judgment dated 20th May 2013 passed by the learned Additional Sessions Judge (ASJ), Dwarka Courts in Sessions Case No.15/2013 arising out of FIR No.296/2011 registered at Police Station ('PS') Dabri, convicting the Appellant for the offences under Sections 411/392/397/302/201 Indian Penal Code ('IPC').

2. This appeal is also directed against the order on sentence dated 28th May 2013 passed by the learned ASJ whereby:

(i) For the offence under Section 302 IPC, the Appellant was sentenced

to undergo imprisonment for life and pay a fine of Rs.10,000/- and in default of payment of fine, to undergo simple imprisonment for six months;

- (ii) For the offence under Section 392 IPC, the Appellant was sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- and in default of payment of fine, to further undergo simple imprisonment for two months;
- (iii) For the offence under Section 397 IPC, the Appellant was sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.2,000/- and in default of payment of fine, to further undergo simple imprisonment for one month;
- (iv) For the offence under Section 411 IPC, the Appellant was sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs.2,000/- and in default of payment of fine, to further undergo simple imprisonment for one month;
- (v) For the offence under Section 201 IPC, the Appellant was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.3,000/- and in default of payment of fine, to further undergo simple imprisonment for two months,
- (vi) For the offence under Section 27 Arms Act, the Appellant was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.3,000/- and in default of payment of fine, to further undergo simple imprisonment for two months.

3. All the sentences were directed to run concurrently.

The charges

4. The Appellant was charged with:

(i) robbing the deceased Smt. Meena Mehra on 31st August 2011 at an unknown time at her house on Som Bazar Road, Jeewan Park, New Delhi of Rs.40,000/- in cash and one gold locket and,

(ii) while committing the robbery, using a deadly weapon thereby committing an offence under Section 397 read with Section 392 IPC;

(iii) committing her murder by stabbing her in the neck thereby committing an offence punishable under Section 302 IPC;

(iv) throwing the knife into heap of garbage lying alongside the *ganda nala* behind Jeewan Park Bus Stand and also setting fire to his own blood stained clothes thereby committing an offence punishable under Section 201 IPC;

(v) being found in possession of Rs.6,340/- in cash and retaining it having reason to believe that it was stolen property belonging to the complainant, Mahender Mehra (PW-4), thereby committing an offence under Section 411 IPC; and

(vi) getting recovered on 15th September 2011, the knife used in the commission of the offence, thereby committing an offence punishable under Sections 25/27/54/59 Arms Act.

Complainant's narration of events

5. Mr. Mahender Mehra (PW-4) was a property dealer running a business under the name and style of 'M/s. Mehra Properties' at RZ-73, Raghu Nagar, Pankha Road, Delhi. The parents of the Appellant were tenants of PW-4 in his house adjoining his office at RZ-74, Raghu Nagar, Pankha Road. Initially, the Appellant was staying with his parents in the said house but later on separated from his parents.

6. According to PW-4, about seven to eight days before the date of the incident, i.e. on 31st August 2011, the Appellant called PW-4 on his mobile phone number 9136290363 ('0363') when PW-4 was present in his house. According to PW-4, he told the Appellant that he (PW-4) was at home and would be coming to the office. It is stated that as PW-4 reached his office, the Appellant, in the meanwhile, had reached the house of PW-4. When PW-4 returned home for lunch, his wife (the deceased) told PW-4 that the Appellant had come to the house and asked for water. After drinking water, the Appellant had left.

7. According to PW-4, at around 11:06 am on 31st August 2011, the Appellant again called PW-4 on his mobile phone and asked him whether he was coming to the office. PW-4 then said that he would be coming to the office soon after having his breakfast. PW-4 reached the office but did not find the Appellant. When PW-4 called the Appellant on his mobile phone, the Appellant told him that he would be coming to the office soon. When he had not yet arrived even half an hour thereafter, PW-4 called him again and the Appellant told him that he would be arriving soon. This was repeated

another two or three times. Ultimately, according to PW-4, the Appellant reached the office of PW-4 at 1:30 pm. According to PW-4, the Appellant appeared to be in a frightened state as if he had come running from somewhere. When asked, the Appellant told PW-4 that he had come from Sagarpur. The Appellant spoke to someone on his mobile phone and told PW-4 that his grandfather had fallen very ill and therefore, he had to go to his village immediately. He then left the office.

8. Half an hour thereafter, PW-4 left for home for lunch. When he reached his house at around 2:20 pm and rang the door bell, his wife did not come to open the door as she usually did. When he went upstairs, he found that his wife was lying on the centre table and her head was on the sofa set nearby. She was bleeding from the throat as well as mouth. PW-4 then cried '*khoon khoon*'. He states that his hands were trembling to such an extent that he could not hold his mobile phone in his hands.

9. PW-4 first called Mr. Kamal Bassi, a leader of the Bharatiya Janata Party who resided nearby. PW-4 claims that he thereafter called the police control room ('PCR') on number 100. The PCR van reached the house at 2:45 pm on 31st August 2011. The local police also reached there and made inquiries.

Inspection of the scene of crime

10. As far as the police were concerned, the original PCR form was unable to be produced before the trial Court. However, the extract of the DD entry register (Ex.PW-9/A) reflected that a call was received at 2:25 pm from the address of PW-4 and from mobile number ending in 0363 stating that his wife had been murdered. Head Constable ('HC') Jagdish Prasad (PW-9)

attached to PS Dabri received the said information from the wireless operator and reduced it in writing as DD No.27A. The said DD was handed over to Constable (Ct.) Surender Kumar (PW-13) who in turn handed it over to Inspector Sita Ram Kumawat (PW-18).

11. PW-18 then proceeded to the spot along with PW-13 and found around five to seven people present on the third floor. The deceased was lying with her head on the sofa and legs as well as feet on a nearby table. Blood had been scattered on the floor. A message was sent to the crime team. Inspector Ram Kishan Yadav (PW-22) posted as SHO at PS Dabri had also reached the spot. The police noticed that there were injury marks on the throat of the deceased. There was blood on the centre table and on the sofa and the floor. Some drops of blood were also near the kitchen door. The *almirah* in the bedroom was open and its articles were lying scattered in the room. The main door of the flat was open and so were the doors of all the rooms.

12. The crime team inspected the spot and photographed it from various angles and thereafter, the dead body was sent to DDU Hospital through Ct. Surender (PW-13). The statement of PW-4 was recorded (Ex.PW-4/A) and on that basis a *rukka* was prepared and sent to the police station through HC Ramesh Kumar (PW-14) for registration of the FIR.

Post-mortem examination

13. The post-mortem of the deceased was performed by Dr. Santosh Kumar (PW-11). The cause of death was noted to be haemorrhagic shock caused by tearing of large blood vessels of the neck consequent upon stab injury by a

sharp edged pointed weapon. The external injury no.1, namely the knife wound on the neck, was opined to be sufficient in the ordinary course of nature to cause death. There were four external injuries. Apart from the incised stab wound on the base of the neck on the right side, there was an incised wound on the lateral aspect of the left eyebrow. There were two further bruises, one on the left side of the face and other on the left fronto-temporal region. After the post-mortem examination, the dead body was handed back to PW-4.

Arrest and recovery of the weapon of offence

14. According to PW-22, on 15th September 2011, secret information was received that the Appellant would be coming to ISBT Anand Vihar as he planned to travel to Haridwar. PW-22 assembled a team of policemen and the informer and reached ISBT Anand Vihar. According to PW-22, “the accused Rinku was apprehended inside the ISBT Anand Vihar on the pointing out of secret informer”.

15. The Appellant was then interrogated and arrested. His personal search was conducted (Ex.PW-18D). The Appellant purportedly gave a disclosure statement. He then led the police team to the crime spot and, thereafter, to a spot on the banks of the *ganda nala* behind the Jeewan Park Bus Stand. From there, he got the knife purportedly used by him in the commission of the offence recovered.

16. The Appellant was produced before the trial Court on 16th September 2011 and remanded to two days’ police custody. The Appellant purportedly

disclosed to the police that he had thrown the clothes he was wearing at the time of the incident into a drain in Sagarpur after burning them. It is stated by PW-22 that although the Appellant had led them to the spot and “intensive search was made for those clothes”, they could not be found.

17. PW-22 further stated that at the time of the Appellant’s arrest, a sum of Rs.6,340/- was recovered from his possession and was seized. The weapon of offence was shown to the autopsy doctor on 22nd November 2011. His opinion was that the subject injuries found on the deceased could be caused by that weapon.

18. PW-22 also prepared a rough site plan of the scene of crime (Ex.PW-22/E). He also obtained the CDRs of the mobile phone of the Appellant having the number 8750595281 (hereafter ‘5281’). Upon the completion of the investigation, a charge sheet was filed. By an order dated 27th January 2012, the charges were framed against the Appellant in the manner indicated hereinbefore.

The trial

19. Twenty-four witnesses were examined by the prosecution. When all the incriminating circumstances against him were put to the Appellant under Section 313 Cr PC, he denied them and claimed innocence. He claimed to have been falsely implicated in the case. He denied having made any disclosure statement. He stated: “I was never arrested or apprehended from ISBT Anand Vihar”. The Appellant claimed that the police team from Delhi lifted him from his native village and that his signatures were forcibly taken on blank papers.

20. In order to prove that he was arrested not from ISBT Anand Vihar but from his native village, the Appellant examined Ct. Mahesh Chand Dubey (DW-1) attached to PS Jagdishpura, Agra, Uttar Pradesh. The said police official from PS Jagdishpura brought General Diary ('GD') No.27 dated 14th September 2011. He identified the hand writing in the said GD to be in the handwriting of Ct. Pawan Kumar who was on medical rest having suffered a fracture in his leg. In terms of GD No.27 (Ex.DW-1/A), the Appellant was apprehended by the police team at Agra who informed DW-1 that they were taking the Appellant along with them to PS Dabri, South-West Delhi for examination.

21. In the cross-examination by the Additional Public Prosecutor ('APP') for the said State, DW-1 stated that it was correct that as per GD No.27, the Appellant was not formally arrested by the Delhi Police at PS Jagdishpura. He admitted also as correct that the GD does not bear the signatures/thumb impression of any of Delhi Police officials or of the Appellant. DW-1 denied the suggestion made by the APP that Ex.DW-1/A was a false entry made in collusion with the Appellant.

Impugned judgment of the trial Court

22. The case was entirely based on circumstantial evidence. In the impugned judgment dated 20th May 2013, the trial Court came to the following conclusions:

- i) According to PW-4, the deceased was using a mobile phone 0363 owned by Sangeeta Singh (PW-23), the daughter of PW-4 and the deceased. This was proved by Jyotish Mohrana (PW-24). PW-23

deposed that the number 0363 was in fact being used by PW-4.

- (ii) The entries from 22nd August 2011 until 31st August 2011 in the CDRs of the mobile numbers 0363 (belonging to PW-4) and 5281 (belonging to the Appellant) showed that a number of calls had been exchanged between the numbers. This was further corroborated by Sudhir Kumar Bhatnagar (PW-20) who had seen the Appellant coming to the shop of PW-4 which was in the vicinity of the shop of PW-20. According to PW-20, on 31st August 2011, at around 1:30 pm, when PW-4 was sitting in his shop, the Appellant came there in a frightened state. When inquired, he said that his grandfather was on his death bed and he had to leave for his native place.
- (iii) The version of PW-4 was corroborated by the CDRs that showed that the Appellant was in constant touch with PW-4 at least one week prior to 31st August 2011.
- (iv) The Appellant was in search of an occasion to rob the deceased in the absence of her husband. The visit made by him to the house of PW-4 one week prior to the incident was in the form of reconnaissance. There was no cross-examination of PW-4 on the Appellant coming there in a frightened state. The Appellant had been in search of an occasion to find the deceased alone. This conduct of the Appellant was relevant as it pinpointed the incriminating nature of his actions.
- (v) The further incriminating circumstance against the Appellant was that he had disposed of all his household articles on the day of the incident and left the rented premises in which he was living. During his cross-examination, PW-2 admitted that the lady he met had stated that she was disposing of the household articles as some person was sick in the

family and she had to vacate the rented accommodation.

- (vi) The testimony of PW-2 was further corroborated by Rambo Devi (PW-3) who stated that that the Appellant had stayed in her house on rent for about 1 month and vacated it in the evening of 31st August 2011. The Appellant along with his four children and wife had left on 31st August 2011 stating that someone had been sick in the family. The conduct of the accused, therefore, incriminated him. It proved that he had hurriedly left his house after committing the crime.
- (vii) The Appellant did not have any explanation for absconding for two weeks after the incident.
- (viii) Even the motive for the crime stood proved as it was known to the Appellant that PW-4 had received money in the month of June 2011 for vacating the premises. This was further substantiated by the recovery of Rs.6,340/- from his possession.
- (ix) As regards the deceased being last seen alive in the company of the Appellant, the prosecution had examined Prem Pal (PW-7) who was ironing clothes just below the house on the street. PW-7, however, turned hostile. The recovery of the weapon of the offence was also a circumstance against the Appellant
- (x) As regards the arrest of the Appellant, the trial Court merely noted that DW-1 had brought the register with him but in view of the testimony of PW-22, he threw doubt about the defence evidence. The knife had a blood stain which tallied with the DNA profiling of the blood of the deceased. The knife had been recovered at the instance of the Appellant.
- (xi) All of the aforementioned circumstances were conclusively proved

against the Appellant by the prosecution.

23. The trial Court, therefore, proceeded to convict the Appellant for the aforementioned offences and sentenced him in the manner noticed hereinbefore.

24. This Court has heard the submissions of Mr. Vikas Padora, Advocate and Ms. Inderjeet Sidhu, Advocate on the panel of the Delhi High Court Legal Services Committee for the Appellant and Mr. Kewal Singh Ahuja, the learned APP for the State. The counsel for the complainant was also heard.

Law relating to circumstantial evidence

25. As noted earlier, with no direct evidence available in this case, the trial Court's conviction hinged on the circumstantial evidence available to it. Before discussing the evidence on record in light of the above submissions, it is necessary to recapitulate the settled legal position regarding circumstantial evidence.

26. In ***Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116***, the Supreme Court explained that a case based on circumstantial evidence should satisfy the following tests:

- “(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.
- (2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.
- (3) The circumstances should be of a conclusive nature and

tendency.

- (4) They should exclude every possible hypothesis except the one to be proved, and
- (5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

27. In *Ram Avtar v. State* 1985 Supp SCC 410, the Supreme Court explained that:

“...circumstantial evidence must be complete and conclusive before an accused can be convicted thereon. This, however, does not mean that there is any particular or special method of proof of circumstantial evidence. We must, however, guard against the danger of not considering circumstantial evidence in its proper perspective, e.g., where there is a chain of circumstances linked up with one another, it is not possible for the court to truncate and break the chain of circumstances. In other words where a series of circumstances are dependent on one another they should be read as one integrated whole and not considered separately, otherwise the very concept of proof of circumstantial evidence would be defeated.”

28. In *State of Tamil Nadu v. Rajendran* (1999) 8 SCC 679 the Supreme Court held:

“... the law is fairly well settled that in a case of circumstantial evidence, the cumulative effect of all the circumstances proved, must be such as to negative the innocence of the accused and to bring home the charge beyond reasonable doubt. It has been held by a series of decisions of this Court that the circumstances proved must lead to no other inference except that of guilt of accused.”

29. In *Trimukh Maroti Kalan v. State of Maharashtra* (2006) 10 SCC 681,

the Supreme Court held:

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

30. 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.”

‘Last seen’ evidence

31. As already noticed, the prosecution relied on the deposition of PW-7 to show that the Appellant was last seen with the deceased in the house near Jeewan Park outside of which PW-7 was ironing clothes. He, however, turned hostile. He stated in Court that at around 1 pm on 31st August 2011, he heard the shouts of the owner of the house to the effect that a murder had taken place. When he went upstairs, he found the wife of PW-4 lying dead having been murdered. PW-4 then asked PW-7 to call his daughter from her matrimonial home. PW-7 obliged. Beyond this, he said nothing about

whether he saw the Appellant at the scene of crime soon before it occurred.

32. PW-7 was confronted with his previous statement to the police but stood firm. Therefore, the prosecution was unable to effectively prove the circumstance of 'last seen'.

Evidence of PW-4 inconsistent

33. The Court has carefully analysed the evidence of PW-4 and found unexplained inconsistencies therein. First, when the police arrived at the scene of crime, they found the TV turned up to a high volume. It was at 2:20 pm when PW-4 first noticed the deceased lying in a pool of blood and for almost two hours thereafter, nobody from the police arrived. When he arrived there he found the TV turned on to a high volume. Till the police arrived he did not think it necessary to turn the volume down. This was indeed unusual.

34. It is the case of PW-4 that he called the police at number 100 from his mobile number ending in 0363. The CDR of 0363 reveals that there was not a single call made to number 100 from that mobile number on the date of the incident. Also, the original PCR form was never produced. If it was not PW-4 who made the call, the question then arises as to who made it. Also, what is strange is that PW4 did not first call the police. Instead he called a local politician. Unfortunately, the said politician expired during the pendency of the trial. So the opportunity to examine him as a witness was lost.

Analysis of CDRs

35. Most significantly, the CDRs speak a different story to what is claimed

by the prosecution. The call location details form part of the CDRs. If one considers the CDRs of the mobile number used by the Appellant (5281), it is seen that he had been moving on 31st August 2011 from Sagarpur West at 8:18 am and the entry at 12:30 pm is at Mahendra Park-I where a call was made by the Appellant to PW-4. This is 2 km from Jeewan Park. At 12:48 pm, his location is shown at Raghu Nagar where the property dealer shop of PW-4 is located which was at a distance of 4.5 km from the place of occurrence at Uttam Nagar. The phone remained at Raghu Nagar from 12:48 pm till 1:15 pm. At 1:53 pm, the phone of the Appellant is shown at Sagarpur West, i.e. his residence which is more than 6 km from the scene of occurrence.

36. Generally speaking, CDRs are just a corroborative piece of evidence. However, in the context of the prosecution wanting to prove that the Appellant was in the vicinity of the house of the deceased, it was important for the prosecution to eliminate the possibility that the accused was perhaps elsewhere. It must be recalled that according to the post-mortem report which was conducted at 2:30 pm on 1st September 2011, the time of death is approximately 24 hours earlier. Even if the time of murder in terms thereof is taken as somewhere between 11am and 1 pm, it was important for the prosecution to show that the Appellant was present at or in the immediate vicinity of the house of the deceased during this time. That burden has, however, not been discharged by the prosecution.

37. The counsel for the Appellant have also placed an analysis of the location chart of the mobile phone of the Appellant for 31st August 2011

which contradicts the case of the prosecution that the Appellant was present in the vicinity of Uttam Nagar where the crime took place.

38. Mr. Ahuja, the learned APP, tried to suggest that the cell tower that serviced Mahavir Nagar also covered Uttam Nagar. However, this is not a matter for surmise. No question to that effect was put by the APP to the witness on behalf of the mobile service provider who incidentally produced the certificate under Section 65B of the Indian Evidence Act, 1872.

39. Turning to the CDRs of the mobile phone of PW-4, as already noticed they do not show that any call was made to the police from his mobile phone at any point in time. The counsel for the accused have carefully analysed the CDRs of the mobile phone used by PW-4 and set it out in a tabular form as under:

S.No.	Time of Call	Outgoing or incoming	Duration	Other person
1.	02.18 PM	Outgoing	40 secs	987319943 (naresh verma)
2.	02.22 PM	Incoming	54 secs	01123861102 (CATS Ambulance)
3.	02.24 PM	Incoming	16 secs	01123861102 (CATS Ambulance)
4.	02.37 PM	Incoming	62 secs	8750871087
5.	02.42 PM	Outgoing	1 sec	9211208269 (Ganesh painter)
6.	02.52 PM	Outgoing	39 secs	9818477740 (sunita)
7.	02.55 PM	Incoming	47 secs	0114553811 (Educo Office)
8.	03.13 PM	Outgoing	13 secs	9818477740

				(sunita)
9.	03.52 PM	Incoming	79 secs	011262883650 CAW Cell, nanakpura
10.	04.28 PM	Outgoing	43 secs	9868114294 (sudhir)
11.	04.52 PM	Incoming	108 secs	01125639350 (PS Dabri)
12.	05.31 PM	Incoming	10 secs	9015284626
13.	05.32 PM	Incoming	30 secs	9289058869
14.	05.37 PM	Outgoing	18 secs	9015284626 (Ravi ravinder)
15.	05.43 PM	Outgoing	13 secs	9015284626 (Ravi ravinder)
16.	05.55 PM	Outgoing	13 secs	9015284626 (Ravi ravinder)
17.	05.59 PM	Outgoing	23 secs	9015284626 (Ravi ravinder)

40. From 12:25 pm to 2:18 pm there is no call from the mobile phone of PW-4. The outgoing call at 2.18 pm is to a private number. From the location details, it is seen that from 2:18 pm to 4:52 pm, PW-4 remained at his house. It is seen that throughout it was the police which was trying to reach PW-4 and not the other way around. These anomalies have not been explained by the prosecution.

Suspicious arrest of the Appellant

41. What is most mysterious is the arrest of the Appellant. The case of the prosecution is that upon a tip off from a secret informer, the Appellant was arrested at ISBT Anand Vihar. However, as proved by DW-1, his arrest took place at Agra. The Appellant has been able to show that he wound up the flat in Delhi taken by him on rent and moved to Agra with his wife and four

children on the evening of 31st August 2011. Therefore, it was not entirely improbable that fifteen days later the Appellant was arrested from there. He cannot be said to have absconded.

42. The trial Court has not, in the above context, properly analysed the defence evidence. That the UP Police would act in connivance with the Appellant and fabricate an official record was a preposterous suggestion by the APP and ought not to have been permitted without any concrete evidence to support it. On the other hand, DW-1 produced the original register maintained at PS Jagadishpur and his cross-examination did not demonstrate that he was not speaking the truth. There was no basis to suspect that DW-1, a public servant, would want to aid the Appellant to escape the guilt for a serious crime. There was no basis for the trial Court to disbelieve DW-1.

43. If indeed the Appellant was not arrested in Delhi but in Agra then the entire prosecution case fails. It would amount to falsification of the record by the prosecution. The Court is not convinced, therefore, that the prosecution has been able to prove beyond reasonable doubt the important circumstance of the arrest of the Appellant.

Unconvincing recoveries

44. According to PW-4, Rs.40,000/- of the Rs.50,000/- cash which was allegedly stolen from the house of PW-4 was in four bundles of Rs.1000 notes. What happened to that money is a mystery. What was found with the Appellant is a sum of Rs.6,340/- which nowhere reflects the actual amount purportedly robbed by the Appellant. Even the denominations of the

currency notes did not match what was stolen. The prosecution has not bothered to further investigate the money trail. This is a huge gap in its evidence.

45. The recovery of the knife in an open place and, that too, two weeks after the occurrence does not inspire confidence at all. In *Mani v. State of Tamil Nadu (2009) 17 SCC 273*, the Supreme Court was faced with a similar scenario and opined:

“19. ...It need not be stated that where the discovery of the relevant articles have been made from the open ground though under the bush, that too after more than 10 days of the incident, such discovery would be without any credence. It does not stand to any reasons that the concerned investigating officer did not even bother to look hither and thither when the dead body was found. We are, therefore, not prepared to accept such kind of farcical discovery which has been relied by the courts below without even taking into consideration the vital facts which we have shown above.

20. The discovery is a weak kind of evidence and cannot be wholly relied upon on and conviction in such a serious matter cannot be based upon the discovery.”

46. Therefore, the circumstance of the recovery of the knife also cannot be said to be proved by the prosecution beyond reasonable doubt.

47. There is also no explanation given by the prosecution for the absence of any entry in the *malkhana* register about the deposit of the knife and its removal therefrom at the time it was sent to the FSL. There is no road certificate. The learned APP pointed out that when the FSL received the knife, it found the seal of the packet intact. However, as pointed out by Mr.

Padora, the sample seal was not sent to the FSL for comparing it with the seal on the packet. Therefore, even this circumstance cannot be said to have been proved by the prosecution.

Conclusion

48. There are too many loopholes in the case of the prosecution. The circumstances that remain unproved are too numerous. The circumstances as put forth by the prosecution do not form a continuous chain. It cannot be said that each of the links in the chain has been convincingly proved by the prosecution beyond reasonable doubt. Therefore, the benefit of doubt, in this regard, ought to be given to the Appellant.

49. The Court accordingly acquits him of the offences with which he was charged. The impugned order of the trial Court and the order on sentence are hereby set aside. Unless wanted in some other case, the Appellant shall be released forthwith. He will fulfil the requirement of Section 437A Cr PC to the satisfaction of the trial Court at the earliest.

50. The appeal is allowed. The trial Court record be returned together with the certified copy of this judgment.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 11, 2018
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