

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

Date of Decision : January 19th, 2018

+ CRL.A. 695/2017

DEEPAK @ PETA

..... Appellant

Through: Ms.Aishwarya Rao, Advocate
(DHCLSC)

versus

STATE

..... Respondent

Through: Ms.Aashaa Tiwari, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S. TEJI, J.

1. The present appeal has been filed by the convict/appellant (hereinafter referred to as “the appellant”), namely, Deepak @ Peta under Section 374(2) of the Cr.P.C. against the judgment dated 27.01.2010 whereby the appellant has been convicted under Section 302 IPC, and against the order on sentence dated 03.02.2010 whereby the appellant has been sentenced to life imprisonment along with fine of Rs.5,000/-, in default of payment of fine to further undergo one year simple imprisonment.

2. Factual matrix, emerging from the record, is that on 25.06.2007 at about 23.33 hours, an information was received by the police with regard to commission of a murder at House No.6/207, Block No.6, Trilok Puri, Delhi. On receipt of said information, SI Om Prakash along with Ct.Shiv Kumar reached the spot and found a dead body wrapped in a black colour cloth bag under a cot in a room situated on the ground floor. The said bag was opened and a dead body of deceased Pooran Chand was found in it, which was identified by his son Shiv Kumar. Statement Ex.PW3/1 of Shiv Kumar was recorded who stated that they were two brothers and a sister. His elder brother was Deepak and sister was Seema. Name of his mother was Rekha. His father used to work in MCD and on 25.06.2007, at about 12:30 in the day time he returned from his duty. He had his meals and got his head and legs massaged from Shiv Kumar and then went to sleep on the ground floor. His brother Deepak sent Shiv Kumar to 22 Block Trilok Puri to get the prices of memory card, lead, charger and two connections. He inquired from three shops and informed Deepak that the price of these articles was Rs. 860/-. Deepak met him near the stairs of his house. Deepak again sent Shiv Kumar to 15 Block and 10 Block, Trilok Puri to ask for the price of the said items. After coming from there, Deepak met Shiv Kumar on the road outside the street and informed him that the rates were same at all the places. Shiv Kumar remained outside on the road as there was no electricity at his house. At about 4 p.m, his mother came to

the house and then Shiv Kumar went to his friends house to take meals. When he returned back to his house, he found that the door of the room on the ground floor was locked. He asked his mother as to why it was locked, to which she replied to ask from Deepak. She also told that Deepak had sprinkled some medicine. On asking, Deepak informed that he had sprinkled medicine to remove bed –bugs, and not to open the door as the influence of the medicine would remain for 10 hours. Shiv Kumar went upstairs and laid there. At about 7:30 pm he went to the mobile shop and when he returned, Deepak met him on the ground floor and asked him to go and sleep upstairs. Thereafter, he went to sleep. At that time, his mother had gone to the house of his aunt at 12 Block Trilok Puri. Shiv Kumar woke up due to drizzle. He saw people had gathered outside his house and one of the person said that Deepak had killed his father. His uncle Ranjeet broke the lock of the room. Inside the room, he saw the dead body of his father in a cloth bag stained with blood. He had shown his suspicion on Deepak.

3. On the basis of the statement of Shiv Kumar, FIR of the present case was registered. Investigating Officer prepared site plan and place of occurrence got inspected by the Crime team. Said spot was got photographed. The dead body of the deceased was removed to Lal Bahadur Shastri (LBS) Hospital. One lock and a hammer were seized. From the spot, one black bag, cloth sheet, towel, vest and a piece of vest were

seized. From near the cot, one Pyjama and one black-white pillow cover were seized. Earth control from the spot was taken. After opening the one side box of the double bed, one round pillow with cover, one square pillow and one quilt cover were seized. From the other side of the bed box, one hammer having blood stains weighing about 11 kg and another hammer weighing about 8 kg were seized. After conducting post mortem, dead body of the deceased was handed over to his legal heirs.

4. During investigation Smt. Rekha, wife of deceased had disclosed that on the day of incident when she asked Deepak why the door had been locked, Deepak became perplexed and disclosed that he and Dheeraj had killed the deceased/his father. On 02.07.2007, accused Deepak was apprehended outside Anand Vihar ISBT who confessed that he had killed his father. He was arrested and thereafter got recovered one piece of vest from the bushes near the drain of 8 Block Trilok Puri, and further disclosed that the black coloured bag was tied after putting the dead body of the deceased with the remaining piece of the vest. The said piece of vest was seized. From a pit beneath the boundary of drain, he got recovered one key-while disclosing that the said key was of the lock put in the room where he had killed his father. He disclosed that he had thrown the same after locking the room. The same was also seized. The accused Deepak pointed out a

shop from where he had purchased the black colored cloth, and the tailor from whom he got the bag stitched. Co-accused Dheeraj was also arrested. After completion of investigation, charge sheet was filed in the court.

5. Charge under Section 302/34 IPC was framed against both the accused to which they pleaded not guilty and claimed the trial.

6. To prove its case, prosecution had examined 25 witnesses viz. Seema (PW1), Rekha (PW2), Shiv Kumar (PW3), Satish Kumar (PW4), Meera (PW5), Vinod Kumar (PW6), Manoj Kumar (PW7), Kirori (PW8), Ranjeet (PW9), SI Mukesh Kumar (PW10), Dr. C.P Singh (PW11), ASI Madan Kumar (PW12), H.C Lalta Prasad (PW13), ASI Jai Ram (PW14), Jitender (PW15), Const. Shiv Om (PW16), Mohd. Khalid (PW17), Dr. Mukta Rani (PW18), Const. Omvir Singh (PW19), Const. Inder Kumar (PW20), Const. Adesh Tyagi (PW21), Const. Shiv Kumar (PW22), Const. Mukesh Kumar (PW23), SI Om Singh (PW24) and ACP Rajeshwar Kumar (PW25).

7. After completion of prosecution, statement of accused Deepak @ Peta under section 313 of Cr.PC was recorded in which he denied the entire case of prosecution. Despite opportunity being granted, he did not lead any defence evidence.

8. The Ld. Trial court vide impugned judgment dated 27.01.2010, acquitted accused Dheeraj, whereas accused Deepak has been convicted under Section 302 IPC and sentenced as aforesaid. Feeling aggrieved by the judgment of conviction, the present appeal has been preferred by the appellant.

9. Arguments advanced by the learned counsel for the appellant are that the present case is based on circumstantial evidence and the prosecution has failed to establish all the links to make out a case against the appellant. It was further argued that it is settled law that in the cases based on circumstantial evidence, the prosecution is bound to prove its case beyond all reasonable doubts. The chain of events and the circumstances must be proved convincingly, and if there is any missing link, it would lead to acquittal of an accused while granting him the benefit of the doubt. It was further submitted that in the present case, the prosecution has failed to prove the motive behind the alleged murder of the deceased. The daughter of the deceased has not supported the case of the prosecution. She stated that she was never teased or molested by the deceased. Even there is no evidence on record to show that appellant was given step-fatherly treatment by the deceased. There is also no evidence on record to show that the deceased and appellant were having any enmity or quarrel. It was argued that PW-2 Rekha had informed PW6-Vinod, that Shibu (Shiv Kumar) had put the lock

on the door and that in the PCR Form Ex.PW13/A, it is mentioned that Vinod Kumar sent a message that Rekha had informed that the room was locked by Shibu, and not by the appellant. It was submitted that the appellant is entitled for acquittal, as the prosecution has not been able to prove all the circumstances and there are several missing links in the chain of circumstances.

10. On the other hand, learned APP for the State has argued that there is enough evidence and material available on record which connects the appellant with the murder of his father. The relatives of the deceased as well as appellant have categorically admitted that they had seen the appellant outside the room where the murder of the deceased was committed. All these witnesses have deposed about the extra-judicial confession made by the appellant before them regarding killing of the deceased. Key of the locked room was recovered from the appellant, which is an important link in the chain of circumstances. It was further submitted that motive is not an essential ingredient to prove the commission of murder when other circumstances have duly been established. There is no missing link of circumstances and the prosecution has successfully proved its case against the appellant conclusively.

11. We have heard the rival contentions of the parties and have gone through the evidence and material available on record, meticulously.

12. First important witness of the prosecution is PW2-Rekha. PW2 had deposed that she used to work as house helper in *kothies/bungalows* in Lajpat Nagar. Her marriage with deceased Pooran Chand was her second marriage. From the wedlock with Pooran Chand, son Shiv Kumar was born. From her earlier marriage, she had two children, namely, Deepak-the appellant, and Seema. Her husband Puran Chand used to work in MCD as Safai Karamchari. She further deposed that her son Deepak had not been doing any work and her husband Pooran Chand and Deepak used to quarrel every day. Whatever Deepak used to earn, he used to spend the same on himself. Whenever PW2 used to say something to Deepak, he used to quarrel with PW2 also. She further deposed that on the day of death of her husband, he came back home at about 12.00 noon and PW2 returned from her work at about 4.00 p.m. When she reached home, she enquired from her daughter Seema as to whether her father had taken lunch. She told PW2 that Shiv Kumar gave lunch to his father. After that, PW2 had her lunch, lay down, and slept for some time on the second floor. At that time, Deepak was on the ground floor and sitting outside the door. When PW2 woke up and came down on the ground floor, she enquired from Deepak as to why he had locked the ground floor, to which Deepak replied that he had sprinkled medicines to kill bed-bugs. Thereafter, PW2 went outside to search her husband, as he was a habitual drinker. She could not trace him and when she returned back home and told Deepak that his

father was untraceable, Deepak became nervous. Again, PW2 went to search for her husband and reached 12 Block where her bhabhi (sister-in-law) Meera used to reside, and asked her to come with PW2. PW2 told Meera that Deepak had locked the room and had not been opening the same. Meera came along with PW2 and she (Meera) asked Deepak as to why he was not opening the door of the ground floor. Deepak came down and informed that his father was no more and then told that he had killed his father and then ran away. Thereafter, PW2 raised an alarm. Neighbours gathered there and police was called. Someone broke open the lock of the door. Police came and dead body of her husband was found in a bora (sack) lying under a cot. She identified the dead body of her husband. She also stated that when she had seen the dead body, its head was broken.

13. During cross-examination, PW2 stated that police recorded her statement after the cremation of her husband. She admitted that when she came back from her work on the day of the incident, she had not seen her husband. She further admitted that her house was of 25 sq. yards and on its ground floor, there was only a hall and stairs to the first floor which passed from its side. She denied that she was involved in immoral activities or that, in order to get rid of her husband, she in collusion with her son Shiv Kumar, killed deceased Pooran and falsely implicated accused Deepak. She denied that Deepak

used to hand over his earnings to his father and PW2 used to quarrel with him for not handing over his earnings to her. She denied that Deepak was not present at home on the day of incident.

14. Testimony of PW2 has been corroborated by PW1-Seema, step-daughter of the deceased, who is also the real sister of appellant Deepak. PW1 had deposed that her deceased father Pooran Chand was an employee with MCD, and her mother used to work in *Kothies*. She has two brothers, Deepak and Shiv Kumar. On 25.06.2007, her father Pooran Chand left the house at about 6 a.m. and thereafter her mother had left for work. At about 12 noon, her father came back to the house. Thereafter, her father refilled the gas cylinder from the gas agency. Thereafter, her younger brother Shiv Kumar gave lunch to her father. After having lunch, her father was massaged by Shiv Kumar. Thereafter, her father went to sleep in the room on the ground floor. Deepak sent PW2's younger son Shiv Kumar to the market. Thereafter, PW1 went to the room which was situated on the second floor and slept there. At about 4 p.m., when her mother came to the house, she asked whether PW1 has given lunch to her father, to which PW1 replied that Shiv Kumar had given lunch to her father. The room in which her father was sleeping was locked. Her mother asked accused Deepak as to why the room was locked, on which accused Deepak told that he had sprinkled medicine to

kill bed-bugs. They had asked for the keys of the room, but accused Deepak refused to hand over the keys to them. Thereafter, her mother searched for her father in the locality but he could not be found. Thereafter, her mother called her *Mami*, namely, Meera (PW5), who asked accused Deepak as to why he was not giving the keys of the room. On this, accused Deepak became perplexed and said that he had done something with the father and father was no more, and then he ran away. Her mother started crying and weeping on which, people in the locality gathered. Someone broke the lock and door was opened. She further stated that on opening the door, dead body of her father was found in a black coloured sack lying under the cot and blood was oozing from his head.

15. PW3-Shiv Kumar, son of deceased further corroborated the testimony of PW1-Seema and PW2-Rekha. PW3 had deposed that on 25.06.2007, his father Pooran Chand had returned from his work at about 12.30 p.m. PW3 gave meals and then massaged his father. Accused Deepak sent him to 22 Block, Trilok Puri for checking the rates of lead, charger, one memory card and two new connections for the mobile phone. When he returned back at about 2.00 p.m., Deepak met him in the street. PW3 told Deepak that the cost of the items was Rs.860/- and then again he was sent by Deepak to 15, 21 and 10 block to again check the price. When PW3 again came back, accused Deepak met him on the road. After collecting

books, when PW3 again returned back to his house, accused Deepak took the books from him and did not let him enter the house. PW3 sat outside his house. His mother returned home at about 4.00 p.m. At about 4.45 p.m., he reached home and found the door of the ground floor locked. When he enquired from his mother the reason for locking the room, his mother told that Deepak had locked the room. PW3 went to the second floor and slept there. He got up at about 7.30 p.m., went to a mobile shop and returned at about 11.30 p.m. Deepak met him in the street. PW3 came back home and went to the roof and slept there. PW3 woke up due to drizzling and heard the noise below. Someone told him that Deepak had killed their father. PW3 came down and found many people there. The door was still locked. Uncle Ranjit broke open the lock. Inside the room, they found dead body of his father in a black coloured sack. Someone informed the police and police reached there. Police seized the articles from the spot. Police seized hammer and lock, two crushed pillow, one quilt cover and a part of the vest which was stained with blood. Police also took a piece of the floor where the blood was lying and sealed that also. Thereafter, all the seized articles were shown to the witness where he identifies the hammer and a piece of cloth. Another blood stained hammer was also seized vide seizure memo Ex.PW3/3 which is also shown to witness and the witness identifies both the articles. After that, one round pillow, one cover of round pillow, one square pillow of white colour and one quilt cover all

stained with blood were also sealed vide seizure memo Ex.PW3/4, which were also identified by the witness. Police also seized one blood stained piece of vest having sticker of mark swagat, one big black colour bag, one old white colour bedsheet, one old towel, one old vest having sticker mark of Divya, which were sealed vide seizure memo Ex. PW3/5. They also were identified by the witness. Police has also taken a piece of the concrete floor having blood stains which was seized vide seizure memo Ex.PW3/6. The blood which was lying on the floor was also taken into possession vide seizure memo Ex.PW3/7. Police had also seized one blood stained pillow and one blood stained male pyjama which were seized vide seizure memo Ex.PW3/8, and the same were identified by the witness. A lock and one small hammer was also seized vide seizure memo Ex. PW3/9 which was also identified by the witness.

16. PW1, PW2 and PW3 are the material witnesses in support of the case of the prosecution to prove the fact that door of the room, wherein the dead body of the deceased was recovered, was locked by the appellant Deepak. PW3-Shiv Kumar has stated that on the day of the incident, when his deceased father came back from work, he gave lunch to him and then gave massage to him at the ground floor room. Thereafter, he was repeatedly sent to the market for checking the price of some articles by his brother-appellant Deepak. When he came back home in the evening, he found the door of the ground floor

room locked and on asking, he came to know from his mother-Rekha (PW2) that it was locked by the appellant Deepak on the pretext of sprinkling some medicine. In the night, when he woke up, he found crowd at the gate of his house and then he came to know that his father was killed by appellant Deepak. Almost similar testimony has been made by Smt.Rekha (PW2), wife of the deceased. PW2 has categorically stated that when she returned from her work, she asked her daughter Seema (PW1) whether she had given lunch to her father, to which Seema replied that the same was given by Shiv Kumar. Thereafter, she kept on searching her deceased husband in the locality but he could not be found. She found the door of the ground floor locked, and on asking from appellant Deepak, he told that he had sprinkled some medicine in the room and that is why the room was locked. She along with Meera came back after searching her husband to her house, and on asking by Meera, appellant Deepak confessed that his father was no more and that he had killed his father and then ran away. Seema (PW1) also corroborated the testimony of PW2-Rekha and PW3-Shiv Kumar. PW1 has stated that on 25.06.2007 at about 12 noon, his father came from work and he was given lunch was Shiv Kumar (PW3). After having lunch and massage, her father went to sleep in the room on the ground floor. Thereafter, Shiv Kumar was sent to the market by Deepak. After the return of her mother Rekha (PW2), it was found by this witness that the room in which her father was sleeping, was locked. She also

stated that when her mother asked Deepak as to why the room was locked, he replied that he had sprinkled medicine to kill the bed-bugs. When they asked for the keys of the room, Deepak did not give it to them. Thereafter, her mother searched for her father in the locality and then called her *Mami* Meera. On asking by Meera to hand over the keys of the room, Deepak confessed that he had done something with the father and that her father was no more and then he ran away.

17. Smt.Meera (PW5) has also corroborated the testimony of PW2-Rekha and PW1-Seema. PW5 had deposed that on the day of incident, Rekha came to her house and told that Deepak was not opening the lock, and asked PW5 to accompany her. Thereafter, PW5 accompanied Rekha to her house and on reaching there, Deepak was found there. She asked Deepak to open the lock to which he declined, and confessed that he had killed his father and then he ran away.

18. From the testimony of PW1-Seema, PW2-Rekha, PW3-Shiv Kumar and PW5-Meera, it has duly been established that on the day of incident the door of the room where the deceased was sleeping was locked by the appellant Deepak. As per their testimony, the excuse given by the appellant for locking the door was that he had sprinkled medicine to kill the bed-bugs. He did not open the door. When he was asked sternly to open the lock on the door, he confessed his guilt that he had killed his father, and then ran away. From the testimony

of these witnesses, the circumstance of locking the room wherein the deceased was sleeping and his presence at the spot has clearly been established. It is also established that he gave a false excuse for locking the room.

19. The next circumstance put forth by the prosecution is the recovery of the key with which the lock of the ground floor room was locked at the instance of the appellant Deepak, and it was the same key of the said lock. Investigating Officer Rajesh Kumar (PW25) had deposed that Deepak @ Peta was arrested on 02.07.2007 at the instance of a secret informer. After his arrest, accused got recovered one piece of vest from *ganda nala* near bushes, and one key was also recovered at his instance. Both were seized vide seizure memo Ex.PW17/D and Ex.PW17/E. He further deposed that accused disclosed that it was the second piece of vest which was tied with the black bag and that it was the key with which he locked the room. PW25 identified the piece of vest as Ex.P20 and key as Ex.P21. Similar statements regarding apprehension/arrest of the appellant Deepak and recovery of key and piece of vest by him have been made by Ct. Omvir Singh (PW19) and Ct. Mohd. Khalid (PW17).

20. So far the recovery of key Ex.P21 is concerned, the same is clearly admissible in view of Section 27 of the Indian Evidence Act. The Supreme Court in the case of ***Dhananjay***

Chatterjee alias Dhana Versus State of West Bengal 1994 (2)

SCC 220 observed as under :

“....Though, the entire statement made by the appellant before the police is inadmissible in evidence being hit by Sections 25 and 26 of the Evidence Act but that part of his statement which led to the discovery of the shirt and the pant is clearly admissible under Section 27 of the Evidence Act. We disregard the inadmissible part of the statement and take note only of that part of his statement which distinctly relates to the discovery of the articles pursuant to the disclosure statement made by the appellant as it is only so much of the statement made by a person accused of an offence while in custody of a police officer, whether it is confessional or not, as relates distinctly to the fact discovered which is capable of being proved and admitted into evidence. The discovery of the fact in this connection includes the discovery of an object found, the place from which it is produced and the knowledge of the accused as to its existence.

Similar views have been further expressed in ***Nisar Khan @ Guddu and Ors. v. State of Uttaranchal (2006) 9 SCC 386.***

21. Dr.C.P. Singh (PW11) further established the circumstance that the key Ex.P21 which was got recovered by the appellant Deepak was the same key which was used to lock the lock put on the room wherein the dead body of the deceased was found. Dr.C.P. Singh (PW11), Assistant Director (Physics), Forensic Science Laboratory, Delhi had deposed that on 31.07.2007, he had received two cloth parcels through Ct. Mohd. Khalid. The said parcels were found containing one hammer, one lock and one key. He deposed that on examination of lock and key, it was observed that the lever system of the lock could be made in alignment for locking and unlocking the lock. He was of the view that the lock could be opened by the key. He proved his report as Ex.PW11/A.

22. From the testimony of PW11 and report Ex.PW11/A also, the prosecution has successfully established on record the circumstance that the lock used on the door of the room in question could be opened by the key Ex.P21, which was got recovered by the appellant as the key Ex.P21 was in working order to lock and unlock the lock.

23. The post mortem over the dead body of the deceased was conducted by Dr.Mukta Rani (PW18). PW18 had deposed that on 26.06.2007, she had conducted the postmortem on the dead body of the deceased Puran Chand. On examination, she found following external injuries :

- 1.Lacerated wound 3.5 x 0.5 x bone deep over left temporal area of head placed 6.5 cms above left ear pinna.
- 2.Lacerated wound 7 x 1.5 cms x bone deep in front and above the left ear pinna.
- 3.Lacerated wound 4.5 x 1 x 1 cm over inner and upper half of left ear pinna.
- 4.Lacerated wound 2 x 0.5 x 2.5 cms over outer part of upper 1/3rd of left ear through and through the left ear.
- 5.Bruise 5 x 2.5 cms reddish just below left ear.
- 6.Abrasion 2.5 x 0.2 cms reddish over left side of nape of neck placed 5.5 cms behind left ear.
- 7.Bruise 10 x 8 cms reddish over left ear and all around left ear.
- 8.Bruise over inner side of both lips in an area of 7 x 5 cms with loosening of left lower canine tooth and lacerations of gums and multiple fracture, dislocation of facial bones including jaw.
- 9.Bruise 5 x 1.5 cms reddish over back of left shoulder placed 12 cms below shoulder tip.
- 10.Abrasion 2 x 0.2 cms reddish over upper outer back of left side of chest placed 17 cms to left of midline and 7.5 cms below and inner to injury no.9.
- 11.Bruise 5 x 5 cms over outer middle 1/3rd of back of left side of chest placed 5 cm below injury no.10 and 16 cms to left of midline.
- 12.Bruise 8 x 7 cms reddish over outer lateral part of middle 1/3rd of left side of chest placed 11.5 cms outer to midline and adjacent to injury no.11.

13. Bruise 16 x 7 cms reddish over outer lower lateral aspect of left side of chest placed 14.5 cms outer to midline and 6 cms below injury no.12.

14. Bruise of dimension 4.5 cms x 2.5 cms x 2 cms reddish over outer lateral aspect of left side of abdomen placed 21 cms outer to midline.

15. Bruise 2 x 2 cms reddish over lateral aspect of left side of abdomen just inner to injury no.14.

16. Bruise 9 x 7 cms reddish over outer lower lateral aspect of left side of abdomen with abrasion in its centre of size 2 x 1 cms.

17. Multiple abrasion reddish over back of right hand, two over knuckles of middle finger 0.1 x 0.1 cms, 0.1 x 0.1 cms, 1 x 1 cms over middle back of right ring finger.

18. Bruise 3 x 1 cms reddish over back of right middle finger.

On internal examination, the doctor found effusion of blood over ribcage on reflection of skin of chest. There were fractures of all the ribs on left side along posterior vertebral lines. Both lungs of the deceased were found congested. Spleen showed multiple lacerations and contusions. In the head, there was effusion of blood on reflection of scalp on left side as well as temporalis muscle via injuries no.1 to 7. In the skull, there were multiple comminuted fractures of vault and base including facial bones via injuries no.1 to 8. Brain showed contused laceration of both temporal lobes and subdural haemorrhage over left frontal, temporal and right fronto-temporo -parietal area of cerebrum via injuries no.1 to 7. There

was subarachnoid haemorrhage all over the brain. The doctor opined the cause of death as combined effect of cranio cerebral damage and injuries to abdominal organs produced by blunt force impact via injuries no.1 to 7 and 14 to 16. All the injuries were opined to be ante mortem in nature, fresh in duration and injuries no.1 to 7 and 14 to 16 were found to be sufficient to cause death in ordinary course of nature individually and collectively. Time since death was given as about one day (24 hours). PW18 proved the postmortem report prepared by her as Ex.PW18/A.

24. From the testimony of PW18 and the postmortem report Ex.PW18/A, it has duly been established that the death of the deceased had taken place due to ante mortem injuries caused to him on his abdominal region and scalp and as per the opinion of the doctor, all the said injuries are individually and collectively sufficient to cause death in ordinary course of nature. Therefore, it was duly proved that the death of the deceased was a homicidal death and not otherwise.

25. PW18 had also examined the alleged weapons of offence i.e. hammers Ex.P1 and Ex.P2. PW18 had deposed that on 06.07.2007, she received an application from Insp. Rajeshwar Kumar regarding opinion in relation to examination of weapons in respect of postmortem on the body of Puran Chand. Two sealed parcels were received having two hammers weighing 10 kg 300 gms and 8 kg 800 gms. The heavy hammer

had blood stains. She had examined both the hammers and was of the opinion that injury no.1 to 18 on the body of deceased could be caused by the said weapons or by some similar weapons. She proved her subsequent opinion as Ex.PW18/C. She had identified both the hammers as Ex.P1 and Ex.P2. There is no cross-examination of PW18 on any point. Thus, the testimony of PW18 and her report remained unrebutted, unchallenged and uncontroverted to the effect that the hammers Ex.P1 and Ex.P2 recovered from the spot were the same weapons with which the deceased was murdered.

26. The important circumstance relied upon by the prosecution is that the offence had taken place inside the room which was locked by the appellant. The dead body of the deceased was recovered from inside the room when the door was broken open and only the accused had the opportunity to commit the offence. Prosecution mainly relied upon Section 106 of Indian Evidence Act which says that *when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him*. In the present case, the prosecution mainly relied upon the circumstance that the occurrence had taken place on the ground floor room; that murder had taken place inside the room; that the appellant has no plausible explanation for the death of his father-Pooran Chand; and the absence of explanation by the accused point to his guilt. In similar circumstances, the Supreme Court in the

case of *Shambu Nath Mehra v. The State of Ajmer* AIR 1956 SC 404 held that :

“This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are 'especially' within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word 'especially' stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. It is evident that that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which

he is tried. These cases are Attygalle v. Emperor A.I.R. 1936 P.C. 169 and Seneviratne v. R. [1936] 3 All E.R. 36, 49”

Further in the case of *State of West Bengal vs. Mir Mohammad Omar & Ors. etc. AIR 2000 SC 2988*, while discussing section 106 of the Evidence Act, the court observed that:

“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.”

Further, in the case of *Trimukh Maroti Kirkan vs. State of Maharashtra (2006) 10 SCC 681*, scope of Section 106 of the Evidence Act was discussed and it was observed as under :

“If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in

circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. 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. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case.”

27. The principle underlying Section 106 of the Evidence Act is that the burden to establish those facts, which are within his personal knowledge is cast on the person concerned, and if he fails to establish or explain those facts, an adverse inference may be drawn against him. Explaining the death of deceased, the appellant has simply denied having committed any such offence. It is not in dispute that the deceased was the father of the appellant. It is also not in dispute that he was present in his house on the day of incident. The prosecution witnesses, particularly, PW1-Seema, PW2-Rekha and PW5-Meera have categorically stated that on the day of incident when they asked the appellant as to why he had locked

the room, he took the excuse that he had sprinkled some medicine to kill the bed-bugs and then on the insistence of Meera (PW5) to open the room, Deepak confessed his guilt that he had killed his father and then he ran away from the spot. It has also been established on record that the key was recovered at the instance of the appellant with which the room was locked wherein the dead body of the deceased was recovered. The report of the FSL expert further established that the said key belonged to the same lock which was identified to be put up on the door wherein the dead body of the deceased was lying. Therefore, we are of the view that the present case is a fit case to raise a presumption under Section 106 of the Evidence Act against the appellant.

28. It was argued by the learned counsel for the appellant that the prosecution has failed to prove any motive for commission of alleged murder of deceased by the appellant. It was contended that PW1-Seema, daughter of the deceased has stated that she was never teased or molested by her deceased father, whereas the case of the prosecution from the very beginning was that the appellant had enmity against his deceased father due to teasing and molestation of his sister Seema (PW1) who were born from the first marriage of their mother. It was also submitted that the prosecution has also tried to put on record another motive that the deceased used to give step-fatherly treatment to the appellant, which led to the

commission of his murder. It was further submitted that since the prosecution has failed to prove any motive, the prosecution case falls and the appellant is entitled for acquittal.

29. Though it is correct that initially the prosecution has alleged that the motive behind the commission of murder of the deceased by the appellant was teasing and molesting of his sister (PW1-Seema) and step-fatherly treatment given by the deceased to the appellant, but there is no such evidence on record to establish the same. We are of the view that in cases based on circumstantial evidence, though motive plays an important aspect, but when the prosecution has successfully established all the circumstances from the ocular and reliable testimony of witnesses, absence of motive cannot be made basis to discard the case of the prosecution in toto. In similar circumstances, the Supreme Court in the case of ***Thaman Kumar v. State of Union Territory of Chandigarh*** (2003) 6 SCC 380 held as under :

“There is no such principle or rule of law that where the prosecution fails to prove the motive for commission of the crime, it must necessarily result in acquittal of the accused. Where the ocular evidence is found to be trustworthy and reliable and finds corroboration from the medical evidence, a finding of guilt can safely be recorded even if the motive for the commission of the crime has not been proved. Hence, in the facts and

circumstances of the case, the absence of any evidence on the point of motive cannot have any such impact so as to discard the other reliable evidence available on record which unerringly establishes the guilt of the accused.”

30. Next contention made by the learned counsel for the appellant was that PW2-Rekha had informed PW6-Vinod Kumar that Shibu had put the lock on the door. To support his arguments, the counsel has referred to the PCR Form Ex.PW13/A in which it has been mentioned that Vinod Kumar had sent a message in which it has been mentioned that Rekha had informed that the room was locked by Shibu. It was further submitted that PW3-Shiv Kumar is also known as Shibu, and happened to be real son of PW2-Rekha and the deceased.

31. To deal with the above contention, we have gone through the PCR form Ex.PW13/A, statement of PW13-HC Lalta Prasad, testimony of PW2-Rekha and of PW6-Vinod Kumar. PW13-HC Lalta Prasad had deposed that on 25.06.2007, he was working as HC at PCR Control Room. At about 11.28 p.m., he had received a call regarding commission of murder at house no.6/207, Trilok Puri. He filled up the PCR Form, Ex.PW13/A and flashed the message.

32. PCR Form Ex.PW13/A shows that on 25.06.2007, an information was received by the Police Control Room to the effect that a murder took place at Block No.6, House No.6/207,

Trilok Puri. Further at about 2345 hours, a report was received from the Van that Rekha, wife of Pooran Singh met at the spot who informed that Shibu had closed the door. It is apparent from the PCR Form Ex.PW13/A that the informant was one Vinod Kumar. So far the information allegedly given to police by Rekha regarding closing of door by Shibu is concerned, PW2-Rekha in her testimony had denied the same. She has categorically stated that “...*It is incorrect to suggest that when PCR van officials came, I told them that ‘Shiv Kumar ne ek kamra band kar rakha hai’.* There is complete denial by PW2-Rekha that on the day of incident she had made any such statement to the police that Shibu had closed the door, though she stated that Shiv Kumar was also known as Shibu.

33. Vinod Kumar (PW6) was the informant on whose information PCR Form Ex.PW13/A was filled up. In his testimony before the Court, PW6-Vinod Kumar has stated that when he went to the spot, he saw one black bora (sack) from which the blood was flowing towards the latrine under the staircase. On seeing this, he asked the people not to touch the bora and made a call to the police on no.100. Though he has admitted having informed the police on no.100 about the incident taken place at the spot, but he had not stated anything with regard to recording of any statement of Rekha in his presence by the police, or him informing to the police about the room being locked by Shibu. Rather, the defence has cast a

suspicion about the informant himself and making any such information to the police which led to filling up of form Ex.PW13/A. A suggestion was given by the appellant to the effect that he had not made any such call to the police : “...*It is incorrect to suggest that I did not make any telephone call over no.100 and am deposing falsely at the instance of family members of deceased.*” PW6-Vinod never stated that he made any such statement to the police. From the perusal of entire evidence, the submission made by the counsel for the appellant does not find any basis, reason being that the PCR Form Ex.PW13/A is based upon the hearsay statement of witness Vinod Kumar (PW6). This fact was put to PW2-Rekha who categorically denied making any such information to PW6-Vinod Kumar. Vinod Kumar was never questioned that he had made the statement to the effect that such information was given to him by PW2-Rekha. Rather a suggestion was given to PW6-Vinod Kumar that he had not made any call to the police. So, the contention that PW2-Rekha informed PW6-Vinod Kumar, and Vinod Kumar informed the police that Shibu had put a lock on the room, which was recorded in PCR Form Ex.PW13/A does not find any legally admissible substance or basis.

34. Further contention of the learned counsel for the appellant is that the chain of circumstances in the present case is incomplete and if the prosecution has failed to complete the

chain, no conviction can be based. Undoubtedly, it is true that in cases based on circumstantial evidence, the prosecution is bound to prove beyond reasonable doubt every chain of circumstances and the circumstances so alleged should be proved from which no other inference than that of the guilt of the accused can be made out. While dealing with the similar situation, the Hon'ble Supreme Court in ***C. Chenga Reddy and Ors. v. State of A.P. (1996) 10 SCC 193*** held as under:

“21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In the present case the courts below have overlooked these settled principles and allowed suspicion to take the place of proof besides relying upon some inadmissible evidence.”

Further in the case of ***Shivu and Anr. v. Registrar General, High Court of Karnataka and Anr. (2007) 4 SCC 713***, it was held as:

“12. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See *Hukam Singh v. State of Rajasthan* (1977) 2 SCC 99; *Eradu v. State of Hyderabad* (AIR 1956 SC 316), *Earabhadrapa v. State of Karnataka* (1983) 2 SCC 330, *State of U.P. v. Sukhbasi* (1985 (Supp.) SCC 79), *Balwinder Singh v. State of Punjab* (1987) 1 SCC 16 and *Ashok Kumar Chatterjee v. State of M.P.* (1989 Supp. (1) SCC 560). The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In *Bhagat Ram v. State of Punjab* AIR 1954 SC 621, it was laid down that where the case depends upon the conclusion drawn from circumstances, the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.

Further, in the case of ***Padala Veera Reddy v. State of A.P. and Ors.*** 1989 Supp. (2) SCC 706, it was laid down that

in a case of circumstantial evidence such evidence must satisfy the following test:

(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 the 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. (See *Gambhir v. State of Maharashtra* (1982) 2 SCC 351).

35. In the case at hand, we are of the view that the prosecution has successfully established all the circumstances against the appellant like, his presence at the place of incident, locking of room of the deceased by the appellant, admission of guilt in the form of extra-judicial confession, recovery of weapons of offence inside the room, recovery of key at the instance of the appellant, and report of FSL expert to the effect that the lock put up on the door of the room could be opened

from the recovered key. There is no missing link of events and from the circumstances brought on record, we are of the view that the only inference which can be incurred is the guilt of the appellant in commission of murder of his father.

36. In view of the above discussion, we are of the view that the prosecution has successfully established the charge of commission of murder of the deceased by the appellant/convict. There is no merit in the instant appeal. Thus, the judgment of conviction and the order on sentence passed by the trial court are accordingly upheld.

37. Consequently, the appeal is hereby dismissed.

P.S. TEJI, J

VIPIN SANGHI, J

JANUARY 19, 2018

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