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

**Reserved on 19th July, 2018
Pronounced on 10th September, 2018**

+ **CRL.A. 1105/2017**

RAMESH @ GUDDU Appellant
Through: Mr. Chetan Lokur, Advocate
(DHCLSC) with Mr. Nitish
Chaudhary, Advocate.

versus

STATE Respondent
Through: Mr. Hirein Sharma, APP.

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

JUDGMENT

VINOD GOEL, J.:

1. This appeal is directed against the judgment dated 13th July, 2017 passed by the Court of learned Additional Sessions Judge, Dwarka Districts Courts, South West District, New Delhi ('ASJ') in SC No.132/2015 arising out of FIR No.356/2012, P.S. Bindapur whereby the appellant was convicted for the offence punishable under Section 302/201 IPC and the order on sentence dated 29.07.2017 whereby the appellant was sentenced to undergo life Imprisonment along with a

fine of Rs.3,000/- u/s 302 IPC; and Rigorous Imprisonment (RI) for five years along with a fine of Rs.2,000/- for the offence punishable u/s 201 IPC and in case of default of payment of fine, the appellant was to undergo RI for six months. Both the sentences were directed to run concurrently. The Ld. ASJ recommended to DLSA for the payment of compensation to the legal heirs of deceased u/s 357A Cr.P.C.

2. On 03.11.2012 at about 12.50 pm, information was provided by HC Sita Ram, PS Dabri (PW8) by telephone to PS Bindapur about foul smell coming from a room situated at the 1st Floor of the House No.A-787, JJ Colony, Pankha Road, Delhi. A DD No.16A (PW8/K) was recorded and the same was assigned to Sub Inspector (SI) Ashok Kumar (PW15) who left for the spot along with Constable (Ct.) Kamal Chand (PW21). Upon reaching the spot, the room was found locked. In the meanwhile the crime team headed by the SHO Surender Kumar (PW22) and other senior police officials also arrived there. The lock was broken and on opening the door, a headless body was found lying below the bundle of clothes on the right side of the room. The body, as found, was in a white coloured vest and black & white striped underwear. The clothes of the deceased and other personal articles/belongings were recovered and seized. The dead body was sent to the mortuary of DDU Hospital for preservation through Ct. Sudhir (PW25). The *rukka* (Ex.PW26/B) was prepared and sent through Ct. Kamal Chand (PW21). An FIR No.356/2012 was

registered under Section 302/201 IPC. One plastic bottle and lock of the room were sealed with the seal of SD and were seized vide seizure memo Ex.PW12/A. Blood sample and earth control were lifted on a gauze by Inspector Subhash (PW29) vide seizure memo (Ex.PW12/B). A blood stained mat, pillow and bed-sheet were also sealed in a *pulanda* and seized vide seizure memo (Ex.PW12/C). The appellant was arrested on 16.11.2012 vide arrest memo (Ex.PW12/D) at his native place i.e. Village Panchwati, District Gorakhpur (UP). He was interrogated. He made a disclosure statement (Ex.PW13/A). Pursuant to the disclosure statement, the appellant got recovered two mobile phones out of which one phone was of China make with the battery No. JAI-BL-3C and the other phone was of SAMSUNG, one purse containing two railway tickets and a card issued by the Gramin bank, one black colour bag which contained a photocopy of the passport of the deceased Nitin Kumar Singh, one jeans pant, one white colour shirt, one gray colour pant and a bag containing Rs.20,000/- in cash, all of which was in the denomination of Rs.500 each. All these articles were converted into *pulanda* and sealed with the seal of SD and taken into possession vide seizure memo Ex.PW12/F.

3. After completion of the investigation, charge sheet was filed against the appellant before the link MM on 14.02.2013. After making due compliance of Section 207 Cr.P.C., the Ld. MM committed the case to the Court of Sessions on 11.04.2013.

4. The Ld. ASJ framed the charges against the appellant under Section 302/201 IPC on 07.05.2013 to the effect that he had committed the murder of Nitin Kumar Singh prior to 03.11.2010 at an unknown time at House No.A-787, JJ Colony, Pankha Road, Delhi and thereby committed the offence punishable under Section 302 IPC. He was also charged with the offence punishable under Section 201 IPC for causing certain evidence connected with the said offence to disappear with an intention to save himself.

5. To bring home the guilt of the appellant, the prosecution examined 30 witnesses.

6. The Ld. ASJ put the incriminatory evidence to the appellant u/s 313 Cr.P.C. While replying to the question whether he and the deceased were previously known to each other, the appellant replied *"I never met with the deceased. However, I talked to him only once on mobile phone when my brother was leaving Delhi for Nigeria"*. He admitted that his brother Jagdish was sent to Nigeria by the deceased. He stated that he was not using any mobile phone in Delhi. He further stated that in his entire life, he had stayed in Delhi for only 3-4 days when he had come to see off his brother. He stated that he never got issued mobile No.82850-82350 and did not know if the mobile No.99589-60414 was issued in the name of the deceased at House No.21, Kotla village, New Delhi. Upon being asked if he had called the deceased thrice on his said mobile number on 31.10.2012 (as per CDRs Ex.PW10/C and

Ex.PW11/C), the appellant replied “*I had never used the said mobile*”. He stated that he was not present at the said premises in JJ Colony, Pankha Road after 7:15 pm on 31.10.2010 as at that time his wife was hospitalized in Gorakhpur and he was there to take care of her. He stated that since 28.10.2010 he had been present in Gorakhpur and was falsely implicated.

7. The appellant examined DW1 ASI Dhanpat Sharma and DW2 Ct. Sanjay in his defence.

8. It is argued by the Ld. counsel for the appellant that the judgment of the Trial Court suffers from inherent infirmities. He urged that during the interrogation neither the weapon of the offence nor the head of the body could be recovered, which sufficiently raises a doubt. He argued that the depositions of PW1 to PW4 to prove the tenancy of the appellant on the premises in question are not substantiated by any documentary evidence. He submitted that the testimony of PW2 and PW3 are unbelievable as they did not know the name of the appellant while renting him a room. He submitted that there are contradictions in the testimony of these four witnesses and no reliance can be placed upon their testimony. It is further argued that the last seen theory as put forth in the deposition of PW4 is not believable as his statement suffers from several improvements.

9. *Per contra*, it is submitted by the Ld. APP for the State that the Trial Court has passed the impugned judgment and order on sentence after

due appreciation of evidence and there is no infirmity or illegality in the judgment.

10. We have heard the Ld. counsel for the appellant and the Ld. APP for the State.

TENANCY OF THE APPELLANT

11. The Ld. ASJ has relied upon the testimony of Rita Devi (PW3), corroborated by her *jethani* Sheela Devi (PW2), wherein she stated that she rented out the 1st Floor of the property bearing House No.A-787, JJ Colony, Pankha Road, Delhi to the appellant, where the body of the deceased was found. He noticed that their testimonies are further corroborated by the depositions of Rajender Kumar, Cable Operator (PW1) and another tenant on the second floor of the said premises Bhupat Prasad (PW4).

12. Rita Devi (PW3) has testified that she is owner of the said house and her *jethani* Sheela Devi (PW2) resides in the adjoining house. She identified the appellant to be the person who approached her for renting him a room about a year ago while she was with her *jethani*. She stated that the rent was agreed @ Rs.2200/- per month and the appellant informed her that he was working as a *Raj Mistri* and sought time of about 3-4 days to hand over his identity proof. It is elicited in her cross-examination that she is an illiterate person and did not inquire about the name and address of the appellant. The appellant assured them that he would be supplying his ID proof very shortly.

She stated that on the next morning the appellant brought his articles like cylinder, television, utensils, etc. She noticed the appellant going for his work and sometimes returning after 2-3 days. She denied the suggestion that the room in question was let out to the deceased.

13. The statement of Smt. Rita Devi (PW3) is corroborated by the statement of her *jethani* Smt. Sheela Devi (PW2). She testified that her *devrani* Smt. Rita Devi (PW3) has been residing in the adjoining House No. 786. She also identified the appellant present in the Court to be the person who approached her *devarani* to rent him a room about a year ago. It has further come in her evidence that a room was agreed to be let out to the appellant @ Rs.2200/- per month. She stated that on the next day, the appellant occupied the room. On her asking, the appellant assured to provide his identity proof within 3-4 days.

14. It has come in her cross-examination that they did not ask the name of the appellant while renting out the room. She stated that upon making inquiries, the appellant told them that he is from Gorakhpur and is presently residing at Bindapur. Like Smt. Rita Devi (PW3) even Sheela Devi (PW-2) has denied the suggestion that room was let out to the deceased and not to the appellant. She stated that the appellant brought cylinder, television, utensils and tools of *raj mistri*. She had seen the appellant 2-3 days after letting out the room.

15. The Ld. ASJ noticed that the legal requirement of informing the police to verify the credentials of the tenant may not be known to PW3, who is an illiterate person belonging to the lower middle class of the society and more interested in renting out the property than getting the tenant verification done. He found the deposition of Rita Devi (PW3) and Sheela Devi (PW2) to be genuine to the extent that they were assured by the appellant that he will furnish his identity proof in a few days time.

16. The testimonies of Rita Devi (PW3) and Sheela Devi (PW2) are corroborated by the testimony of Rajender Kumar (PW1), who is working under the Cable Operator at Ishika Cable Network, Uttam Nagar, New Delhi. He identified the person whose photograph (Ex.PW1/A) was shown to him to have approached them, for installation of cable connection at the premises 786-787, 1st Floor JJ Colony, Uttam Nagar near bus stand, New Delhi.

17. The testimonies of Rita Devi (PW3) and Sheela Devi (PW2) are further corroborated by the deposition of another tenant Bhupat Prasad (PW4) who has been in occupation of the 2nd Floor of the said property. PW4 deposed that he has been residing as a tenant on the second floor of the said House of Rita Devi (PW3) at a rent of Rs.1800/- per month for the last 7/8 years. He identified the appellant to be the person who started residing on the first floor of the said

property. In his cross-examination he denied that the appellant was neither the tenant of PW2 and PW3 nor occupied the said room.

18. The Ld. ASJ noticed that no documentary evidence like rent agreement/cable installation receipt, etc. were produced by the prosecution but found the oral testimonies of PW1 to PW4 inspiring confidence to prove that a room on the first floor of the said property was rented out by Rita Devi (PW3) to the appellant about 15 days prior to the incident in question.

APPELLANT AND DECEASED KNOWN TO EACH OTHER

19. It is the case of the prosecution that the deceased and the appellant were known to each other and they had stayed together in Delhi for quite some time. To prove the relationship between the appellant and the deceased, the prosecution examined Nitin Dutta (PW6) and the father of the deceased, Amod Kumar Singh (PW7). Nitin Dutta (PW6) testified that he knew the deceased i.e. Nitin Kumar very closely since 2008 as they had joined Marina Trading LLC in Dubai on the same day. They were good friends and shared a room for 11 months while staying in Dubai. After leaving his job, Nitin Dutta (PW6) came back to India and after 7/8 months, the deceased came back to Delhi. He stated that the deceased started residing at Kotla village. He further stated that he went to Nigeria where the brother of the appellant namely Jagdish was also working as a Technician in the same company. He spent four months in Nigeria and then came back

to Moradabad. He testified that deceased continued to reside in the same house in Kotla and he was in regular touch with him over the phone. PW6 disclosed the mobile number of the deceased as 99589-60414. He testified that the appellant was like a servant to the deceased and resided with the deceased at Kotla village. He further stated that the appellant met him at Moradabad in October 2012 for some work of the deceased. It is elicited in his cross-examination that the brother of the appellant was also sent to Nigeria by the deceased. He stated that all the persons including Jagdish (brother of the appellant) who were sent to Nigeria by the deceased had some bitterness towards the deceased as they felt that the deceased had charged them money for their travel expenses despite the employer company bearing their travel expenses.

20. It is further elicited from the cross-examination of PW6 that the appellant met him at Moradabad Railway Station probably on 09/10.10.2012 and even though he had never seen him before, he was able to locate him by calling him on his mobile number 99562-61066.

21. In the cross-examination of PW6, the appellant did not dispute that PW6 met him at Moradabad in October 2012 or that they knew each other or the brother of the appellant was sent to Nigeria by the deceased or that deceased and appellant were known to each other and that the appellant was deputed by the deceased for some work at Moradabad. The appellant did not dispute that PW6 called him at

Mobile No.9956261066. The Hon'ble Supreme Court in **Sarwan Singh v. State of Punjab, (2003) 1 SCC 240** held that whenever an accused had failed to cross-examine any witness on any part of his testimony, the same must be believed to be true unless proved otherwise. Relevant paragraph of this judgment is reproduced below:

“9. Incidentally, in the early nineties, terrorist activities were on a peak in the border districts of Punjab and it has practically been an axiomatic truth in the area in question that no one would in fact come out of the residential houses after dusk unless perforced at 3 o'clock in the morning. **There exists no other evidence nor even there being any suggestion of existence of any other factor for such perforced outing at 3 a.m. It is a rule of essential justice that whenever the opponent has declined to avail himself of the opportunity to put his case in cross-examination it must follow that the evidence tendered on that issue ought to be accepted. A decision of the Calcutta High Court lends support to the observation as above.** [See in this context *A.E.G. Carapietv. A.Y. Derderian* [AIR 1961 Cal 359] (opinion of P.B. Mukherjee, J., as he then was).]”

22. Apart from the deposition of PW6, the father of the deceased, Amod Kumar Singh (PW7) testified that his deceased son had returned from South Africa on 31.10.2012 and they had a conversation on the same day. He stated that from the next day, when he tried to call his son, he found the phone of his son to be switched off. Being worried, on 3.11.2012, he went to the house of the appellant where he met

Jagdish Sharma, the brother of the appellant, and upon inquiring the whereabouts of his son, he did not provide him any information and rather misbehaved with him. It is elicited in his cross-examination that his son had informed him about the appellant to be a very good cook. He denied the suggestion that the appellant was just formally introduced to the deceased being a native of the village.

23. From the depositions of Nitin Dutta (PW6) and Amod Kumar Singh (PW7) the Ld. ASJ found that the appellant and the deceased were known to each other and they had stayed together in Delhi for quite some time. This fact is also corroborated by the scientific/technical evidence i.e. Call Detail Records ('CDR') of the mobile number of the appellant (82850-82350) and the deceased (99589-60414) showing frequent communication between these mobile numbers on the date of incident i.e. 31.10.2012. The CDR of the said mobile number of the appellant is Ex.PW10/C and of the deceased is Ex.PW11/C. Prior to that, a call was also made by the deceased on 05.06.2012 to another phone No.99562-61066 of the appellant, which was revealed by Nitin Dutta (PW6) and reflected in the CDR (Ex.PW11/C). These call records between the appellant and the deceased sufficiently corroborate the depositions of Nitin Dutta (PW6) and Amod Kumar Singh (PW7) that the deceased and the appellant were known to each other.

LAST SEEN EVIDENCE

24. It is the case of the prosecution that on 31.10.2012 at about 7.35 pm the deceased was present at the place of the incident with the appellant. The Post-mortem report (Ex.PW16/A) opined the time of the death of the deceased as approximately 2½ days on the date of recovery of the dead body. Admittedly, the body was recovered on 03.11.2012 at about 1 pm which indicates that Nitin Kumar was murdered on the intervening night of 31.10.2012/01.11.2012. It is noticed by the Ld. ASJ from the testimony of Bhupat Prasad (PW4) that on 31.10.2012 at about 7.35 PM when he returned from his office he found a fair complexioned person conversing on his mobile phone at the place of the incident and the appellant was sitting beside him.

25. In the cross-examination of PW4, it is revealed that he had seen the deceased twice in the same evening, though, he had disclosed to the police that he saw the deceased only once. He saw the deceased wearing shorts and under shirt (vest). He did not hear any scream or shout from the first floor on the night of 31.10.2012 but on the next day he found the room of the appellant to be locked. The Ld. ASJ found that the testimony of Bhupat Prasad (PW4) is corroborated by the technical evidence relating to the CDRs and mobile phone locations of the appellant and the deceased. Sh. Shishir Malhotra (PW10), Nodal Officer, Aircel Limited proved the Consumer Application Form (CAF) Ex.PW10/B, CDR (PW10/C) and Cell ID Chart Ex.PW10/D of the mobile phone of the appellant (82850-

82350). Further, Vishal Gaurav (PW11), Nodal Officer, Bharti Airtel Ltd, proved the CAF (Ex.PW11/B) and CDR and Cell ID Chart (PW11/C) of the mobile phone of the deceased (99589-60414). The records have the necessary certification as required under Section 65B of the Indian Evidence Act as Ex.PW10/E and Ex.PW11/A respectively.

26. The Ld. ASJ found from the CDRs of both the said mobile phones that there had been communication between these mobile phones five times on 31.10.2012. It shows that the deceased Nitin Kumar called the accused at 9.27 am when he was at the IGI Airport and the appellant was at Pankha Road. At the time of second call at 9.55 am the deceased reached Uttam Nagar, whereas the recipient i.e. the appellant remained in the same area. The deceased made the third call to the appellant at 12.47 pm when both their locations were in East Delhi. At the time of 4th and 5th call made by the appellant to the deceased at 7.09 pm and 7.11 pm, both of them were in the same area i.e. Navada/Vipin Garden, Dwarka Mor. The record further reveals that the appellant made his last three calls at 20:43:30, 22:00:27 and 22:04:44 hours from the area in which place of incident is situated. The deceased Nitin Kumar made his last four calls to different numbers at 21:02:57, 21:37:24, 21:52:13 and 22:20:08 hours from the same area. Both of the mobile phones were switched off thereafter and not used. The appellant has not put his defence to either of the prosecution witnesses particularly PW10, PW11, PW4 and PW29 that

he was in Gorakhpur on 31.10.2012 or that he or the deceased did not call each other. He did not take any step to prove his plea of *alibi* by examining either his wife or the Doctor who treated his wife in the Hospital at Gorakhpur. In such a situation mere denial by the appellant of the usage of his mobile phone No.82850-82350 is not sufficient to rebut the case of the prosecution. Therefore, there is no illegality or perversity in the findings of the Ld. ASJ that the appellant and the deceased were not only known to each other but were also in regular touch with each other and on the fateful night they stayed together at the place of incident.

RECOVERY

27. The Ld. ASJ noticed from the depositions of HC Mahender (PW12), Constable Amarjeet Singh (PW13) and Insp. Subhash Chand (PW29) that on 16.11.2012 they reached village Jhangha, District Gorakhpur (UP) and then accompanied the local police to village Panchdevari and arrested the appellant from a place near his house vide arrest memo PW12/D. His personal search was conducted vide search memo Ex.PW12/E. Pursuant to the disclosure statement (PW13/A) the appellant got recovered his two mobile phones, one being a Chinese make and the other being a SAMSUNG make, one purse containing two railway tickets, a card issued by the *gramin* bank, one black colour bag which was found to contain one specs cover having the inscription of Sprint, one photocopy of the passport of the deceased (Nitin Kumar Singh) valid till 30.05.2016 issued from Patna

(Bihar), one jeans pant, one white colour t-shirt, one grey colour pant, one shirt bearing strips and Rs.20,000/- cash in the denomination of Rs.500/- each. These were converted into a *pulanda* and sealed with the seal of SD and taken into possession vide memo Ex.PW12/F. This recovery has been proved by the depositions of Subhash Chand (PW29), HC Mahender (PW12) and Ct. Amarjeet Singh (PW13). The prosecution has also examined the public witness to the recovery proceedings, Mintu (PW14), a relative of the appellant wherein he stated that no recovery was effected by the police. PW14 admitted that he was present at the house of the appellant at the time the appellant was arrested. PW14 also admitted that the seizure memo Ex.PW12/F and Ex.PW12/J bears his signature at point-X. The father of the deceased i.e. Amod Kumar Singh (PW7) has identified the sunglasses and the bag belonging to his son during the TIP proceedings Ex.PW7/C. In his deposition, PW7 has explained that his son visited his native place in May, 2012 and remained there for about 18/19 days and for that reason he could identify the articles during the TIP proceedings. The Trial Court observed that since the deceased had returned from the foreign country on the date of the incident itself, the recovery of cash amount of Rs.20,000/- from the appellant is quite probable. The Ld. ASJ believed the evidence of recovery of articles from the house of the appellant to have been recovered at his instance. From the testimony of PW4 and the CDRs, it is already established that on the fateful night of 31.10.2012 the deceased and the appellant were together at the place of incident and the dead body of the

deceased was found from the said premises on 03.11.2012. The place of incident was found locked on 01.11.2012 and thereafter the dead body was taken out after breaking the lock on 03.11.2012. The Ld. ASJ found that as per the crime scene report (Ex.PW9/A), only a plastic bottle and a plastic bucket were found in the room apart from the body, and the bed sheet, pillow and mat put on it. The Ld. ASJ noticed that other articles of the appellant i.e. utensils, television and cylinder, etc. were removed and head of the dead body was destroyed and dead body was hidden in a planned manner only to avoid detection of the identity of the culprit and the victim. Since the appellant and the deceased were together on the fateful night of 31.10.2012 and the headless body of the deceased was found there on 03.11.2012 with the room locked, the onus was on the appellant to furnish an explanation u/s 106 of Evidence Act as to what happened there on the said night. It is rightly observed by the Ld. ASJ that it is not the case that any other person used to reside with the appellant in the said premise or any other person had come to that place on 31.10.2012 or till the recovery of the dead body.

MEDICAL EVIDENCE

28. The post-mortem on the body of the deceased was conducted by Dr. B.N. Mishra (PW16) who proved the post mortem report Ex.PW16/A. He observed that the head was sharply cut completely from the body and missing from the trunk of the body at least at the level of 6th cervical vertebra. The whole structure of the neck exposed

as cut ends including bonny components and surface of the plane shows smearing of the blood admixed with putrefied secretions. There were two-three incised wounds of size 3 cm x 0.5 cm x muscle deep to 2 cm x 1 cm x muscle deep present on the both palms, which were classified as defence injury. He found the cause of death to be “*due to shock caused by decapitation of head by sharp edged weapons like heavy knife etc.*” He observed that all the injuries were ante mortem in nature and the manner of death was homicide.

29. The headless body was identified by Sh. Amod Kumar Singh and Sh. Samrat Singh Mani (cousin). DNA examination conducted by FSL report Ex.PW30/A concluded Amod Kumar Singh (PW7) and Smt. Ahilya Devi to be the biological father and mother of the deceased respectively.

30. In ***Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116***, a three-Judge Bench of the Supreme Court, in a case of circumstantial evidence like the present one, laid down the law as to when in a case of circumstantial evidence charge can be said to have been established. Five points enumerated in said case are summarised as under:

(i) The circumstances from which the conclusion of guilt is drawn should be fully established. The accused must be, and not merely may be guilty, before a court can convict and the mental distance between “may be” and “must be” is long and divides vague conjectures from sure conclusions;

(ii) 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;

(iii) The circumstances should be of a conclusive nature and tendency;

(iv) They should exclude every possible hypothesis except the one to be proved; and

(v) 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.

31. The Ld. ASJ observed that though the prosecution has not been able to prove the motive clearly but found some clue from the evidence on the record. It is noticed from the depositions of Nitin Dutta (PW6) that the brother of the appellant was sent by the deceased to Nigeria and all the persons including Jagdish (brother of the appellant) who were sent by the deceased to Nigeria, had some bitterness towards the deceased as they felt that all the expenses for their travel to Nigeria were borne by the concerned company and still the deceased had charged the money from them. The appellant has also admitted in his statement u/s 313 Cr.P.C. that his brother Jagdish was sent to Nigeria by the deceased and he talked to the deceased on mobile phone when his brother was leaving Delhi for Nigeria. However, the Ld. ASJ found that since the prosecution has established all the ingredients of the offence on the basis of the convincing evidence, absence of proof of motive cannot be of much importance

and the appellant still can be convicted. The Ld. ASJ has placed reliance upon decision **Tarsem Kumar Vs. The Delhi Administration AIR 1994 SC 2585** observing that *“of course, if each of the circumstances proved on behalf of the prosecution is accepted by the Court for the purpose of recording a finding that it was the accused who committed the crime in question, even in absence of proof of a motive for commission of such a crime, the accused can be convicted.”*

32. In view of the circumstances, the Ld. ASJ found that it was the appellant who had killed the deceased by severing his head with a sharp object. Though the weapons of the offence could not be recovered but that in itself is not going to give any benefit of doubt to the appellant. Since the scene of crime was in exclusive occupation of the appellant and on the fateful night it was the deceased and appellant who were there in terms of depositions of Bhupat Prasad (PW4) corroborated by the Call Details Record (CDR) and thereafter recovery of the headless body of the deceased on 03.11.2012. The Ld. ASJ found that it was only the accused, who had the opportunity and the reason to destroy the evidence with the intention to save himself from being identified as the perpetrator of the crime and concluded that there remained no doubt that it is the appellant who destroyed the evidence after committing murder of deceased Nitin Kumar.

33. After going through evidence we found that the letting out of the room on the 1st Floor of Property i.e. A-787 has been proved by the depositions of PW3 and PW2 and corroborated by PW1 (official of the Cable Operator) and by the deposition of Bhupat Prasad (PW4). It is also established from the depositions of Nitin Dutta (PW6) and Amod Kumar (PW7) that the deceased and the appellant were known to each other and they used to be in frequent conversation with each other. It is also established from the deposition of Bhupat Prasad (PW4) that it was the deceased who was seen lastly at 7.30 pm on 31.10.2012 at the place of crime and his deposition is corroborated by the technical scientific evidence of Call Detail Records (Ex.PW10/C & Ex.PW11/C). Pursuant to the disclosure statement, the appellant got recovered the sunglasses and photocopy of his passport from his house. The headless body of the deceased was identified by his father (PW7) and Samrat Singh Mani (cousin). DNA test of the deceased matched with PW7 and his wife. There is consistency in the facts established by the prosecution only with the hypothesis of the guilt of the appellant which are conclusive in nature and the chain of evidence is so complete so as not to leave any reasonable ground for the conclusion consistent with the innocence of the appellant.

34. In *State of W.B. v. Mir Mohammad Omar* (2000) 8 SCC 382, the Supreme Court, while interpreting the burden of extent of proof on prosecution, observed as under:

“31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty.

36. In this context we may profitably utilise the legal principle embodied in Section 106 of the Evidence Act which reads as follows:

‘106. Burden of proving fact especially within knowledge.— When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.’

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

35. In *Trimukh Maroti Kirkan v. State of Maharashtra* (2006) 10 SCC 681, which is a case similar in nature to the present one, the Supreme Court has held as under:

“15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.”

36. In ***Narendra Singh v. State of M.P.* (2004) 10 SCC 699**, it has been held that even in a case where a plea of *alibi* is raised, the burden of proof remains on the prosecution, and it has been further observed that presumption of innocence is a human right.

37. In ***Suresh v. State of Haryana* (2015) 2 SCC 227**, wherein, the court discussing the issue in para 9, observed:

“9. ... No doubt, the burden of proof is on the prosecution and Section 106 is not meant to relieve it of that duty but the said provision is attracted when it is impossible or it is proportionately difficult for the prosecution to establish facts which are strictly within the knowledge of the accused.”

38. Further, in the case of ***Kuldeep Singh v. State of Rajasthan* (2000) 5 SCC 7**, a three-Judge Bench of this Apex Court has held that:

“18. ... in a case of circumstantial evidence when the accused offers an explanation and that explanation is found to be untrue, then the same offers an additional link in the chain of circumstances, to complete the chain.”

39. Similar view has been taken by the Supreme Court in ***Rumi Bora Dutta v. State of Assam (2013) 7 SCC 417***, wherein it has been accepted that a false answer offered by the accused when his attention is drawn to the circumstances, it renders a circumstance to be of inculcating nature i.e. in such a situation a false answer can also be counted as providing a missing link for completing the chain.

40. In ***Sharad Birdhichand Sarda (supra)*** it was also held that a false explanation or false plea taken by the accused can be used as an additional link in the chain of circumstantial evidence subject to satisfaction of three essential conditions, namely, (i) various links in the chain of evidence led by the prosecution have been satisfactorily proved, (ii) the said circumstance points to the guilt of the accused with reasonable definiteness, and (iii) the circumstance is in proximity to the time and situation.

41. Earlier, in the case of ***Deonandan Mishra v. State of Bihar (1955) 2 SCR 570***, the Supreme Court observed that:

“9. ...It is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable

likelihood of the innocence of the accused. But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain.”

42. The plea of *alibi* was taken by the appellant. He made no attempt to prove his defence and this has become an additional link in the chain of the circumstances which unerringly point to his guilt. The chain is so complete as not to leave any reasonable doubt for conclusion consistent with his innocence.

43. We do not find any reason to differ from the view recorded by the Ld. ASJ. The appeal is dismissed with no order as to costs.

(VINOD GOEL)
JUDGE

(S. MURALIDHAR)
JUDGE

SEPTEMBER 10th, 2018
“sandeep”