

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPEAL NO. 29 OF 2017

Ganpat Shetye,
son of Pandurang Shetye,
aged 29 years, male, Indian
National, resident of
H.No.84, Madla Wado,
Virnoda, Pernem, Goa
presently lodged at Modern Central
Jail, Colvale, Bardez Goa. Appellant.

Versus.

1. State,
(As represented by the Officer
in charge Mapusa Police Station),
Mapusa, Goa.

2. The Public Prosecutor,
High Court Building,
Altinho, Panaji, Goa. Respondent.

Mr. Deepak Girme, with Mr. Nigel Fernandes, Advocate for the
Appellant.

Mr. S. R. Rivankar, Public Prosecutor for the State.

***Coram : M.S. Sonak &
C.V. Bhadang, JJ.***

Reserved on : 15th November, 2019.
Pronounced on : 20th November, 2019.

JUDGMENT: (Per M.S. SONAK, J.)

This appeal is directed against the Judgment, Order and sentence dated 31st March, 2017/1st April, 2017, made by the Additional Sessions Judge, at Mapusa, by which the Appellant is convicted for the offence punishable under Section 302 of the Indian Penal Code (IPC) and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for three years. Relying upon ***Kartar Singh vs. State of Haryana***¹, the learned Additional Sessions Judge has directed that the benefit of set off under Section 428 of the Code of Criminal Procedure (CrPC) is not to be extended to the Appellant.

2. In this case, the Appellant was charged of having committed the murder of his own wife Sneha, to which he pleaded '*not guilty*' and claimed to be tried. Accordingly, the Prosecution examined 32 witnesses in support of the charge. Upon completion of the Prosecution evidence, the statement of the Appellant under Section 313 of the CrPC came to be recorded. In fact, the Appellant in the present case, filed a written statement under Section 313 of the CrPC, as well in response to the question as to whether he had anything further to say in the matter. The Appellant, however, chose to lead no defence evidence. The learned Additional Sessions Judge,

¹ AIR 1982 SC 1433

vide impugned Judgment and Order dated 31.3.2017, convicted the Appellant for the offence under Section 302 of the IPC. Further by a separate order dated 1.4.2017, the Appellant was sentenced to undergo life imprisonment, as aforesaid. Hence, the present Appeal.

3. Mr. Deepak Girme, learned Counsel for the Appellant, at the very outset, submits that this is a case based almost entirely upon circumstantial evidence and, therefore, the principles relating to appreciation of circumstantial evidence, as laid down in several cases by the Hon'ble Apex Court, were required to be followed by the learned Additional Sessions Judge. He submits, however, that such principles have been ignored and the conviction recorded against the Appellant is, therefore, required to be set aside.

4. Mr. Girme has, thereafter, proceeded to point out the contradictions and omissions in the depositions of the Prosecution witnesses, in order to urge that such depositions be discarded. Mr. Girme has also proceeded to demonstrate how, according to him, the circumstances listed out by the learned Additional Sessions Judge have not been proved by the Prosecution, beyond reasonable doubt and, how, in any case, proved circumstances failed to form the chain of evidence so complete as not to leave any reasonable ground for the conclusion inconsistent with the innocence of the Appellant. Mr. Girme, on the basis of this, submits that this is a case where the

Prosecution has attempted to fabricate the evidence and consequently adverse inference will have to be drawn against the Prosecution. For all these reasons, Mr. Girme submits that the conviction recorded against the Appellant warrants interference.

5. Mr. Girme, in the context of the evidence of Dilip Pednekar (PW.1), who is the father of the deceased Sneha, pointed out that PW.1 was informed by the police at about 8.00 p.m. on 26.4.2011 about the murder and, yet PW.1 failed to inform PW.3, his wife and the mother of the deceased about the same even up to 9.00 p.m. Mr. Girme submits that this is unnatural conduct, which renders the testimony of PW.1 quite unbelievable. He pointed out that the deposition as to the alleged quarrel between the Appellant and the deceased, 15 days prior to the incident was not even referred to in the FIR and constitutes material omission. There are discrepancies with regard to the SMSs allegedly sent by the deceased to PW.3 and the deposition of PW.1, on this issue is hear-say evidence. For all these reasons, Mr. Girme submits that the deposition of PW.1 is required to be discarded. Upon such discarded evidence, Mr. Girme submits that there is no evidence to sustain the conviction recorded against the Appellant.

6. Mr. Girme submits that PW.2 Tulshidas Dhawaskar, Police Official speaks about some incident of quarrel between the Appellant

and the deceased about 15 days prior to the incident, which was allegedly resolved by him at the Police Station. Mr. Girme points out that there is no record in the Police Station which was produced by this witness. He points out that PW.21, another Police Official in the same Police Station who also speaks about this incident, categorically states that there was a record maintained in the Police Station regards this incident. Mr. Girme submits that these are material contradictions. He submits that non-production of the record invites adverse inference against the Prosecution.

7. Mr. Girme submits that the evidence of Sarika (PW.3), mother of the deceased also warrants no reliance. He points out that PW.3 deposes about SMS from the deceased, little before 7.00 p.m. on 26/4/2011. The mobile phone of PW.3 was not attached by the Police. The explanation offered by PW.3 that the mobile phone failed down and broke, is quite unacceptable. Mr. Girme points out that if the phone broke, the SIM card would be quite intact. Non-production of the SIM card, warrants drawal of adverse inference against the Prosecution. Mr. Girme points out that if the deceased used to usually come home by 7.00 p.m. each day, the statement of PW.3 that the deceased, only on the said date sent a SMS that she was with the Appellant and was returning home, is quite suspicious and doubtful. Mr. Girme submits that benefit of such doubt must go

to the Appellant in the present case.

8. Mr. Girme points out that the Panch witnesses in the present case were not respectable persons from the locality, since they had criminal cases registered against them. He points out that even these Panch witnesses speak about the Police persons at the scene of offence even before the Panchanama. On these basis, Mr. Girme submits that the possibility of tampering at the scene of offence cannot be ruled out.

9. Mr. Girme submits that the reliance placed by the Additional Sessions Judge on the evidence of Hassina Mulla (PW.5) was quite unwarranted, because the evidence discloses that on the fateful day this witness was not even present at the office of the deceased and, therefore, she had no clue about what transpired on the said date. He points out that even the identification of the Appellant by this witness almost 3 years after the date of the incident was, by no means, reliable. In any case, he points out that such evidence is very weak evidence, on the basis of which no conviction can be sustained.

10. Mr. Girme pointed out that the deposition of Dr. Maitreyee Kamat (PW.6) is quite untrustworthy. He points out that even the learned Additional Sessions Judge has disbelieved this witness when it

comes to the alleged extra-judicial confession of the Appellant. He points out that this witness had even failed to bring the Medico Legal Case papers with her at the time of her deposition. He submits that the learned Additional Sessions Judge, therefore, erred in placing reliance upon the evidence of PW.6 in the present case

11. Mr. Girme submits that the deposition of Atmaram Bhagat (PW.8), salesman at the shop from which the Appellant is alleged to have purchased the knife, is totally untrust worthy. He submits that for cogent reasons, learned Additional Sessions Judge has rejected the evidence of footage from the CCTV. He submits that it is inconceivable that PW.8 should be in a position to identify the Appellant after 3 years of the date of the incident as being the person who purchased the knife on the fateful day. He submits that the Prosecution clearly attempted to fabricate the evidence in relation to the CCTV footage and, such evidence has correctly been discarded by the learned Additional Sessions Judge. In these circumstances, the learned Additional Sessions Judge erred in relying upon the evidence of PW.8, which evidence should have been discarded for all purposes. Mr. Girme submits that the learned Additional Sessions Judge has quite rightly rejected the evidence of Bhiva Kerkar (PW.9) for the circumstance of '*last seen together theory*'. He submits that the Additional Sessions Judge should have further drawn an adverse

inference against the Prosecution for attempting to plant false witnesses in the matter. Inasmuch as it has not been done, the impugned conviction warrants interference.

12. Mr. Girme submits that in this case, the Prosecution has failed to establish the precise time of death. He points out that several witnesses of the Prosecution have turned hostile and withstood the cross examination on behalf of the Prosecution. He points out that there is undue delay in sending the specimen for analysis at the CFSL, for which there is no explanation whatsoever offered. He points out that such unexplained delay gives rise to legitimate inference of tampering, or at least legitimate inference that the Prosecution had ample opportunity to tamper with the samples. He relies on *State of Maharashtra vs. Prabhu Barku Gade*²; *Bhalchandra Shinde vs. The State of Maharashtra*³ and *Deoraj Suvarna vs. The State of Maharashtra*⁴ in support of the proposition that unexplained delay in sending samples for examination calls for adverse inference to be drawn against the Prosecution.

13. Mr. Girme points out to the several errors in the conduct of the Test Identification (TI) Parade and submits that no credence

² 1995 (2) BomCR 188

³ 2003 (2) MLJ 580

⁴ 1994 Cr.L.J. 3602

whatsoever was required to be given to the TI Parade in the present case. He submits that the recoveries allegedly made in the present case are not at all reliable. As regards the recovery, as contemplated under Section 27 of the Indian Evidence Act, he submits that the learned Additional Sessions Judge clearly erred in treating such recoveries as relatable to Section 27 of the Indian Evidence Act. In support of this proposition, Mr. Girme relies on *Satrughna vs. State of Orissa*⁵.

14. Mr. Girme submits that the Prosecution, in the present case, has not investigated properly involvement of Varunkumar (PW.27) in this entire matter. He points out that the record indicates that there were exchanges of SMSs through calls between the deceased and the said Varunkumar. He points out that one of the SMSs was sent at 22.32 hours on 26/4/2011, when it is the case of the Prosecution that the dead body of the deceased was found at 7.30 p.m. on 26/4/2011. He submits that this is materially sufficient to hold that the mobile hone of the deceased was tampered with by the Police. He submits that no sufficient credence has been given to the established circumstance and Varunkumar's (PW.27) delayed crucial SMS from the deceased despite the knowledge that the deceased had died in somewhat unnatural circumstances. He submits hat the material on record is, by no means, consistent only with the

⁵ 1994 Cr.LJ 846

conclusion of guilt of the Appellant. He submits that since this aspect has not been appropriately considered by the learned Additional Sessions Judge, the conviction cannot be sustained.

15. Mr. Girme submits that the evidence of the so called Nodal Officer is vitiated for several reasons. He submits that there is no proper certification as contemplated by Section 65-B of the Indian Evidence Act. He submits that only truncate records have been produced and no proper explanation has been offered in regard to the SMS sent from the mobile phone of the deceased after 10.30 p.m. on 26/4/2011. Mr. Girme points out that the tower location on the fateful day suggests that the Appellant was at Nachinola at about 7.50 p.m. and the deceased was at Mapusa, at about 7.55 p.m. when the distance between the two places is about 7 to 8 kms. He submits that the learned Additional Sessions Judge has failed to give due credence to this vital circumstance which is clearly consistent with the innocence of the Appellant.

16. Mr. Girme submits that this is a case where the Appellant, along with his brother, presented themselves to the Pernem Police Station. He submits that this was the earliest opportunity at which the Prosecution was required to register an FIR. But, the same was not done. He submits that non-registration of the FIR by the Police at the earliest opportunity, when the accused person was at the Police

Station, vitiates the trial as held in ***Balaji vs. State of Maharashtra***⁶.

17. Mr. Girme submits that in this case, the burden of explaining the injuries on the person of the Appellant was entirely on the Prosecution and the Prosecution has failed to discharge the same. He points out that the explanation furnished by the Appellant in his statement under Section 313 CrPC has not at all been considered by the learned Additional Sessions Judge and such non-consideration vitiates the conviction recorded against the Appellant. In support thereof, Mr. Girme relies upon ***Prasanta Biswas vs. The State of West Bengal***⁷ and ***Reena Hazarika vs. State of Assam***⁸.

18. Finally, relying upon ***Rajiv Singh vs. State of Bihar***⁹ Mr. Girme submits that the principles relating to evaluation of circumstantial evidence have not at all been applied by the learned Additional Sessions Judge and, therefore, the conviction recorded against the Appellant warrants interference by this Court.

19. For all the aforesaid reasons, Mr. Girme submits that the conviction recorded against the Appellant be set aside and the Appellant be acquitted of the offence of which he was unduly charged

⁶ SC Cri. Appeal No.1398 of 2011

⁷ CRA 256 OF 2007

⁸ CRA 1330 OF 2018

⁹ SC CRIA 1708 of 2015

by the Prosecution.

20. Mr. S. R. Rivankar, learned Public Prosecutor defends the conviction and sentence on the basis of the reasoning reflected in the Judgment and Order made by the learned Additional Sessions Judge. He points out that the so called discrepancies sought to be highlighted by the Appellant are trivial, inconsequential and in fact hallmarks of truth. He submits that it is impossible for all the witnesses to be clearly consistent and the nature of the so called discrepancies in the present case are so trivial that the same have been quite correctly discarded by the learned Additional Sessions Judge. Mr. Rivankar submits that the principles relating to evaluation of the circumstantial evidence have been correctly applied by the learned Additional Sessions Judge and there is no infirmity in the view taken. He points out that the statement under Section 313 of the CrPC, voluntarily given by the Appellant, has been duly considered by the learned Additional Sessions Judge. Upon consideration of such statement, it is quite evident that the Appellant has raised a false defence, which is quite correctly taken into consideration by the learned Additional Sessions Judge in order to supply the missing link, if any, in the case of the Prosecution. Mr. Rivankar submits that this is a case where the Prosecution has established beyond reasonable doubt that the Appellant and the

Appellant alone was the author of the crime and there is really no case made out to interfere with the conviction recorded against the Appellant or the sentence imposed upon the Appellant which, in any case, is a bare minimum prescribed under the IPC. For all these reasons, Rivankar submits that this Appeal may be dismissed.

21. As was quite correctly pointed out by Mr. Girme, learned Counsel for the Appellant, and Mr. Rivankar, learned Public Prosecutor for the State, this is a case which rests almost entirely, upon the circumstantial evidence.

22. Accordingly, it is necessary that this Court is alive to the principles of evaluating of circumstantial evidence as have been set out in the case of ***Sharad Birdhichand Sarda vs. State of Maharashtra***¹⁰. In paragraphs 152, 153 and 154 of the Report, this is the manner in which the Hon'ble Apex Court has explained the principles in this regard :

“152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh 1952 SCR 1091. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the

¹⁰ (1984) 4 SCC 116

cases of Tufail (Alias) Simmi v. State of Uttar Pradesh (1969) 3 SCC 198 and Ramgopal v. State of Maharashtra (1972) 4 SCC 625. It may be useful to extract what Mahajan, J. has laid down in Hanumant case (supra):

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

153. *A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:*

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra (1973) 2 SCC 793) where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

Certainly, it is a primary principle that 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.

(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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

23. The learned Additional Sessions Judge, in recording the conviction of the Appellant has relied upon the following circumstances :

(i) Motive of the crime;

(ii) Message received by the mother of the deceased on her mobile phone from the deceased Sneha at about 6.45 p.m. stating that she was with the Appellant, on her way home;

(iii) The injuries on the right hand of the Appellant, out of

which one of the injuries was a grievous, in which the underlying muscle fiber between the thumb and the index finger were cut, accompanied by bleeding.

(iv) Blood stains on the Dio Scooter used by the Appellant at the relevant time, when the offence is alleged to have taken place;

(v) Blood stains on the clothes, shoes and socks of the Appellant;

(vi) The CDR and the SDR showing places from where the mobile calls were made by the Appellant and the deceased;

(vii) Purchase of the knife by the Appellant on the date of the incident from Isani Shop at Mapusa market.

24. In addition to the aforesaid circumstances, the learned Additional Sessions Judge has noted that the explanation offered by the Appellant in his statement under Section 313 CrPC was patently false and such false explanation/defence can be the basis for drawing an adverse inference against the Appellant and also to provide for missing link, if any, in the chain of circumstances, pointing out to his guilt.

25. In the present case, it is necessary to make it clear at the very outset that there is an overwhelming evidence on record, including, in particular, the medical evidence which establishes that

the death of Sneha was homicidal. Mr. Girme, learned Counsel for the Appellant did not even bother to challenge this finding. Accordingly, it can safely be held that the Prosecution has proved, beyond reasonable doubt, that the death of Sneha, on 26.4.2011, was homicidal in nature.

26. The circumstance relating to motive has been established beyond reasonable doubt by the Prosecution through the evidence of PW.1-the father of the deceased, PW.3 –the mother of the deceased, PW.2 and PW.21, the two Police Officials who are examined as witnesses in the matter. PW.1 and PW.3, the parents of the deceased have deposed as to how the Appellant was staying along with them and their daughter Sneha and their two minor children aged 5 and 8 years, at the Ashram set up and operated by them. They have deposed that the Appellant used to take Dio and harass the deceased. Then they have deposed that on one occasion, the Appellant even slapped PW.3, his mother-in-law because she attempted to intervene in a dispute between the Appellant and the deceased Sneha. They have deposed of the quarrel 15 days prior to the incident, when the Appellant took away the minor son to his place at Virnoda. They have deposed that one of the major causes for dispute was because the deceased Sneha was insisting to live at the Ashram from where she could manage her family responsibilities, as well as her job in Panjim

and the Appellant was insisting that they move to his place at Virnoda.

27. PW.2 and PW.21 have also deposed to the incident of quarrel, on account of the Appellant taking away the minor child to Virnoda. A minor discrepancy where PW.2 states that no record was maintained at the Police Station and PW.21 states that some record was maintained is, by no means, sufficient to discard the testimony of either PW.2, or PW.21 which, otherwise, is quite consistent and inspires confidence. The aspect of motive has been established beyond reasonable doubt by the Prosecution, in the present case.

28. Mr. Rivankar, learned Public Prosecutor also attempted to argue from the suggestions put on behalf of the Appellant to the witness Varunkumar (PW.27) that the Appellant apparently suspected some improper relationship between the deceased Sneha and the said Varunkumar. Mr. Rivankar submits that from the material brought on record by the defence itself, there is reference to yet another motive and the same is also required to be considered by the Appellate Court. According to us, it is not necessary to go into this issue, because there is overwhelming evidence by which the Prosecution can be said to have proved the motive for the commission of this crime, beyond reasonable doubt.

29. The second circumstance, relied upon by the learned Additional Sessions Judge, is the SMS sent by the deceased Sneha at about 6.49 p.m. on 26/4/2011 to her mother PW.3 stating that she was with the Appellant and were together on their way home. Although it is true that the mobile phone of PW.3 has not been produced on record, the CDR and the SDR details produced on record, through the nodal officers of the Cell Phone Companies, duly backed by certification under Section 65-B of the Indian Evidence Act, in relation to the mobile phone of the deceased Sneha, establish beyond reasonable doubt that such a message was indeed sent by the deceased Sneha to her mother, PW.3 at about 6.49 p.m. on the fateful day.

30. The contention of Mr Girme that there was no reason for the deceased to send such a SMS to her mother, when the deceased used to normally return home by 7 p.m., in order to breastfeed the minor child, is certainly not a ground to discard the evidence on record. Similarly, non-production of the mobile phone of PW.3, is not a circumstance sufficient to draw any adverse inference against the Prosecution in this case. There is positive evidence about the SMS from the mobile phone of the deceased at 6.49 p.m. The deposition of PW.3 is quite clear and to some extent, there is corroboration from the deposition of PW.1, as well. The learned

Additional Sessions Judge has analysed this aspect, in substantial details, and all the contentions raised on behalf of the Appellant, which have now been reiterated by Mr. Girme, have been duly considered. According to us, there is no infirmity in the reasoning of the learned Additional Sessions Judge, so as to warrant taking any different view, in so far as this circumstance is concerned. Accordingly, we agree with the learned Additional Sessions Judge that even this circumstance has been proved by the Prosecution beyond reasonable doubt.

31. The third circumstance, which according to us is quite a vital circumstance, is the injuries upon the Appellant. We are satisfied that the Prosecution has clearly linked these injuries to the offence of murder of the deceased. Further, the Appellant has not only failed to explain these injuries, but the Appellant has also gone to the extent of taking a totally false defence in his statement under Section 313 of the CrPC. In these circumstances, the learned Additional Sessions Judge was quite justified in not only drawing an adverse inference against the Appellant, but further holding that if there be any missing link, the same stands supplied. For this, the learned Additional Sessions Judge has adverted to several rulings of the Hon'ble Apex court in this regard.

32. The Prosecution, in the present case, mainly by the medical

evidence, has succeeded in establishing that the death of Sneha took place some time between 7.00 p.m. and 7.30 p.m. on 26/4/2011. There is no doubt that the Appellant, along with his brother, presented themselves before the Pernem Police at about 9.00 p.m., on the same day. The evidence on record also clearly establishes that soon after *i.e.* at about 10.10 p.m., the Appellant was examined by Dr. Maitreyee Kamat (PW.6) at the Community Health Centre at Pernem.

33. Dr. Maitreyee Kamat (PW.6) has deposed that the Appellant had two injuries on his body. One was incised wound measuring 4 X 1 X 0.5 cms. on the right hand in the web space between the thumb and the index finger of the right hand of the Appellant. She has deposed that these injuries could be inflicted by a sharp weapon and it was fresh *i.e.* less than one hour duration. She has, thereafter, corrected herself to state that what she meant by '*fresh*' was that the injury was within a period of about 6 hours from the time of examination. She deposed that the injury was a grievous injury, where the underlying muscle fiber was cut and there was active bleeding.

34. Dr. Kamat (PW.6) has deposed that such injuries are possible if one holds a knife with right hand and the grip slips and comes into contact with the sharp end of the knife. PW.6 was

shown the knife (MO.15) and she stated that the injuries found on the Appellant by her at the time of her examination, could be caused by such a knife as it has one sharp end.

35. No serious dent was made to the deposition of PW.6. Though much is sought to be made to the initial statement of PW.6 that the injury, in question, was of less than one hour's period, it is necessary to note that PW.6 both, in her examination in chief, as well as in her cross examination, corrected herself/offered an explanation as to what she meant by a fresh injury. She clearly deposed that the injury was less than 6 hours duration. Nothing much turns from non-production of the MLC register. In the present case, it is pertinent to note that a suggestion was put to this witness that the injury found on the person of the Appellant was caused by the police whilst the Appellant was in custody. However, it is further pertinent to note that no such allegation was made at the time of recording of statement under Section 313 of the CrPC. of the Appellant. There is no reference to this aspect in the 313 CrPC statement voluntarily furnished by the Appellant. In fact, in this statement, the Appellant states that he remembers picking up a knife which was lying by the side of his wife and in the process, he might have cut himself in the palm of the hand.

36. The Appellant was also examined by other Doctors in the

present case and even these Doctors have deposed to the nexus between the injuries on the person of the Appellant and the knife (MO.15) which was found at the scene of offence. There is ample evidence that this was the knife with which the deceased was stabbed multiple times, which led to her death. The Appellant, far from making any dent, has in his 313 CrPC statement, in terms, stated that he picked up the knife which was lying by the side of the dead of his wife and in the process might have himself in the palm of the hand. This means that the Appellant has, at least, admitted handling of the knife in question. The defence that the Appellant might have accidentally cut himself with the knife when he was handling the same after lifting the same from the side of his wife's dead body, is too far-fetched to deserve any acceptance. From the nature of the injuries established beyond reasonable doubt, it is inconceivable that such injuries could be sustained by accidental handling of the knife, not to mention in the circumstances in which the knife was alleged to have been handled by the Appellant. This is, therefore, a clear case where the Prosecution has explained the injuries on the person of the Appellant. This is also a clear case where the Appellant has failed to offer any explanation for such injuries or rather the Appellant has taken patently false defence, for which adverse inference has correctly been drawn by the learned Additional Sessions Judge.

37. Suffice to hold that the incriminating circumstance of injuries on the person of the Appellant has been established by the Prosecution beyond reasonable doubt.

38. The Prosecution has brought on record that blood stains were found on the Dio Scooter used by the Appellant. The expert evidence clearly proves this aspect beyond reasonable doubt though it is true, as urged by Mr. Girme, that the blood group is inconclusive. There is overwhelming evidence that this the Dio scooter which belonged to the father-in-law of the Appellant or the father of the deceased-PW.1, was being used by the Appellant. There is evidence of office colleague of the deceased one Hassina Mulla (PW.5), who has deposed on this aspect. The evidence of PW.1 and PW.3, in-laws of the Appellant and parents of the deceased, on this aspect, is quite credit worthy and inspires confidence. In these circumstances, some explanation was due from the Appellant on the aspect of blood stains on the Dio Scooter, which was attached from the possession of the Appellant, on the very next day, since the same was parked at his house in Virnoda. The circumstance that the blood groups were found to be inconclusive does not dilute the matter. Human blood was found on the seat of the Dio Scooter and this incriminating circumstance has been proved by the Prosecution beyond reasonable doubt.

39. Same is the position regards the blood stains on the clothes of the Appellant. For the reasons similar to the above, as also for the reasons which are recorded, in detail, by the learned Additional Sessions Judge, there is absolutely no case made out to hold that this circumstance was not proved beyond reasonable doubt by the Prosecution. Again, the explanation of the Appellant in his 313 CrPC statement that he remembers that he did try to take his deceased wife in his arms, is really no explanation which inspires confidence to explain the blood stains on his clothes. This circumstance which is no doubt incriminating, has been proved by the Prosecution beyond reasonable doubt.

40. The circumstance relating to tower location has been relied upon by the learned Additional Sessions Judge. There is no merit in the contention of Mr. Girme that the nodal officers of Cell Phone Companies were not examined in this matter, or that there was no proper certification under Section 65-B of the Evidence Act, in so far as this aspect is concerned. The discrepancies about the locations at Nachinola and Mapusa have been properly explained by the Prosecution witnesses. Based upon such discrepancies, it is not possible to say that this circumstance has not been established by the Prosecution beyond reasonable doubt. Such discrepancies do not go to the root of the matter or such discrepancies are of not such nature

as to discard the evidence in its entirety. Accordingly, even this circumstance can be said to be proved by the Prosecution beyond reasonable doubt.

41. In this case, it is necessary to note that the Prosecution has investigated into the alleged role of Varunkumar (PW.27) and the criticism that it has not, is not justified. The reason as to why the statement of Varunkumar was recorded only after two years, has been explained by the Prosecution. The occasion to record such statement arose only after CDR and SDR in respect of Sneha's mobile were obtained and they disclosed that several calls were exchanged between the deceased Sneha and said Varunkumar (PW.27). Although the Prosecution could have produced better evidence in this regard, there is ample material which establishes that said Varunkumar was in Delhi on the fateful day and, therefore, it is not correct to say that the role of Varunkumar (PW.27) was not properly investigated by the Prosecution.

42. There is some discrepancy with regard to one SMS which is said to have emanated from the mobile phone of the deceased Sneha at about 10.30 p.m., when it is the case of the Prosecution that dead body of Sneha was discovered at 7.30 p.m. on 26/4/2011. Again, though some further explanation was necessary from the Prosecution, the nodal officers have deposed that for reasons like

congestion, receiving phone being shut, etc. a message which is sent earlier can be received at later point of time. Although the explanation may not be altogether satisfactory, we are satisfied that there is overwhelming evidence on record which establishes several of the incriminating circumstances beyond reasonable doubt. Therefore, this circumstance, though not properly explained by the Prosecution, can hardly detract from the conclusion drawn by the learned Additional Sessions Judge. Therefore, this circumstance can hardly be regarded as a missing link in the case of the Prosecution. However, even if it is assumed that there is slight discrepancy, the same makes no dent in the case of the Prosecution, which is otherwise established beyond reasonable doubt.

43. On the aspect of purchase of the knife as well, we agree that the CCTV evidence was quite correctly discarded by the learned Additional Sessions Judge in the present case. In the first place, there was no proper certification as contemplated under Section 65-B of the Evidence Act. Secondly, the discrepancy about the date is also not very properly explained, though the Prosecution did lead evidence on the aspect of error. The TI Parade was also quite correctly not relied upon by the learned Additional Sessions Judge. We agree that there are certain infirmities in the conduct of the TI Parade, and on the basis of the same it may not be sufficient to rely

upon the same. However, if the evidence of PW.8 is otherwise perused, it cannot be said that the same deserves to be completely discarded. In any case, even if the identification by PW.8 is to be kept aside, there is other evidence on record which establishes the incriminating circumstances against the Appellant beyond reasonable doubt.

44. Though, we do not agree with Mr. Girme that there are any missing links as such in the present matter, we note that the Hon'ble Apex Court in the case of *Joseph vs. State of Kerala*¹¹, *Anthony D'Souza vs. State of Karnataka*¹², *Munna Kumar Upadhyaya vs. State of Andhra Pradesh*¹³ and *Rohtash Kumar vs. State of Harayana*¹⁴ has held that where an accused gives no explanation or gives a false explanation in the course of recording of 313 CrPC statement, the Court will be justified in drawing an adverse inference and such inference shall become an additional circumstance to prove the guilt of the accused and also provide for a missing link in chain of circumstances pointing out to his guilt.

45. In the present case, as noted earlier, the explanation furnished by the Appellant in his statement under Section 313 CrPC is found to be patently false and unbelievable. Accordingly, the

¹¹ (2000) 5 SCC 197

¹² AIR 2003 SC 258

¹³ 2012 Cri. L.J. 3068

¹⁴ 2013 All MR (Cri) 2620 (SC)

principles laid down in the aforesaid decisions of the Hon'ble Apex Court will certainly apply and the learned Additional Sessions Judge was entitled to proceed on these lines whilst recording the conviction against the Appellant.

46. The other discrepancies pointed out by Mr. Girme really make no dent to the overwhelming evidence on record, which establishes the incriminating circumstances against the Appellant beyond reasonable doubt. This is a case where the investigation could have been slightly better. However, this is not a case where the Prosecution has undertaken some defective investigation or any evidence is sought to be fabricated by the Prosecution. Besides, the Hon'ble Apex Court has time and again held that some defects in investigation or some lapses on the part of the Investigating Officers cannot constitute a good ground for acquitting the accused persons, provided there is other evidence on record which points out to the guilt of the Accused person, beyond reasonable doubt. In fact, the Hon'ble Apex Court has held that it is the duty of the Courts to steer through some falsehoods or inconsistencies, in order to reach to the truth of the matter.

47. For all the aforesaid reasons, we are quite satisfied that the incriminating circumstances, listed out by the learned Additional Sessions Judge, have been fully established by the Prosecution by

applying the test of proof beyond reasonable doubt. We are also satisfied that the facts so established are consistent with the hypothesis of the guilt of the Appellant and the Appellant has not at all succeeded in explaining them on any other hypothesis. The circumstances, in the present case, are conclusive in nature and have a tendency to point out to the guilt of the Appellant and excluded the possibility of innocence. Chain in the present case is so complete as leaves no specific ground for the conclusion consistent with the innocence of the Appellant. The evidence on the record is sufficient to conclude that in all human probability the act of murder has been committed by the Appellant. Since all the five golden principles in relation to evaluation of circumstantial evidence stand fulfilled in the present case, we detect no error in the view taken by the learned Additional Sessions Judge.

48. This is also not a case where we can say that the samples sent to the CFSL have been tampered by the Prosecution. No doubt, there was some delay in sending all these samples. However, this is not a case where the seals were found to be tampered. In any case, in the facts of the present case, nothing much turns on the samples sent to the CFSL, except the samples of clothes. Again, here the CFSL reports speak about presence of human blood. This, coupled with the medical evidence, particularly in the context of injuries upon the

person of the Appellant and the injuries upon the person of the deceased, really do not make any dent to the Prosecution case. Besides, in this case, the Appellant in his 313 CrPC statement has taken a defence which is found to be patently false. The decisions in the cases of *Prabhu Barku Gade*; *Bhalchandra Shinde*; and *Deoraj Suvarna* turn on their peculiar facts. In the said decisions, there was some possibility of tampering with the samples and it is in these circumstances that the observations were made about the unexplained delay in sending samples for examination. In the facts of the present case, the Appellant cannot seek to draw any advantage from these rulings.

49. The conviction recorded against the Appellant is not vitiated because the FIR was not registered at the stage when the Appellant and his brother presented themselves before the Pernem Police Station. The investigations were on and soon thereafter the FIR was registered. The decision in *Balaji* (supra) again turns upon the peculiar facts therein and such facts are, by no means, comparable to the facts in the present case.

50. The principle that the explanation furnished by an accused in the course of recording of 313 CrPC statement must be taken into account by the Sessions Judge, admits of no dispute whatsoever. However, in the present case, such explanation has been taken into

account and, therefore, it cannot be said that the principles laid down in *Prasanta Biswas* (supra) or *Reena Hazarika* (supra) have been deviated from by the learned Additional Sessions Judge. *Rajiv Singh* (supra) simply reiterates the principles laid down by the Hon'ble Apex Court in *Sharad Birdhichand Sarda* (supra). Since the said principles have been considered, as well as adhered to by the learned Additional Sessions Judge, it cannot be said that there is no consideration of the principles in *Rajiv Singh* (supra).

51. We note that the so called discrepancies pointed out by Mr. Girme are, really, not discrepancies that go to the root of the matter or make any significant dent to the Prosecution case. Based upon such minor, trivial and inconsequential discrepancies, the focus of the evidence, which is to be read and construed in its entirety, cannot be lost. As noted earlier, in this case, the Prosecution, by means of cogent evidence, has established beyond the reasonable doubt the incriminating circumstances by applying the principles in the context of evaluation of circumstantial evidence, the Prosecution, has, in the present case, clearly succeeded in proving the guilt of the Appellant, beyond reasonable dent.

52. However, we do detect one significant error in the order made by the learned Additional Sessions Judge denying the benefit of set off to the Appellant by relying upon the case of *Kartar Singh*

vs. State of Haryana (supra). Although no submissions were made by the learned Counsel for the Appellant on this aspect, we consider it our duty to correct this error now that the same has been noticed by us.

53. The learned Additional Sessions Judge, by relying upon *Kartar Singh vs. State of Haryana* (supra) has held that the benefit of set off under Section 428 of CrPC is not to be extended to the Appellant. In the latter decision of the Constitution Bench in ***Bhagirath vs. Delhi Administration***¹⁵ has specifically overruled *Kartar Singh vs. State of Haryana* (supra). The Constitution Bench has explained its earlier ruling in *Gopal Vinayak Godse Vs. State of Maharashtra 1961 ALL MR Online 9 (SC)*, which is the decision relied upon in *Kartar Singh vs. State of Haryana* (supra). The Constitution Bench has held that the benefit under Section 428 of CrPC can be extended subject to the provisions contained in Section 433A of CrPC and provided that orders have been passed by the Appropriate Authority under Section 432 or Section 433 of the CrPC.

54. Since the aforesaid decision was not noted by the learned Additional Sessions Judge, the direction that the benefit of set off under Section 428 of the CrPC cannot be extended to the Appellant

¹⁵ (1985) 2 SCC 580

in the present case is liable to be set aside and substituted with the direction that the Appellant, in the present case, will be entitled to benefit of set off under section 428 of CrPC only in the event appropriate authority makes order for remission or commutation under Section 432 or 433 of the CrPC, subject, no doubt, to the provisions contained in Section 433A of the CrPC and not otherwise.

55. In addition to the aforesaid, we find that the in-default sentence of rigorous imprisonment for three years for failure to pay fine of Rs.10,000/- is also quite excessive. Therefore, we substitute the same by in-default penalty of rigorous imprisonment for six months, instead of three years. We also direct that in case the fine is recovered, the same be made over to the two minor children of the Appellant, who are, in the present case, the real victims of the crime.

56. In addition to the aforesaid, we direct the State Government to consider award of suitable compensation to the two children of the Appellant and his deceased wife, in terms of the scheme already formulated by the State Government. The Appropriate Authority of the State Government to take a decision in this regard within a period of two months from today and file a compliance report before the Member Secretary, Goa State Legal

Services Authority. Depending upon the status of the compliance, the Member Secretary to take further and suitable steps in the matter.

57. The Appeal is, accordingly, disposed of with the following order :

a) The conviction of the Appellant, as recorded by the learned Additional Sessions Judge in the impugned Judgment and Order dated 31st March, 2017/1st April, 2017 is, hereby, upheld;

b) The in-default penalty of rigorous imprisonment for three years for failure to pay the fine of Rs.10,000/- is substituted with rigorous imprisonment for a term of six months;

c) The direction made by the learned Additional Sessions Judge that the Appellant will not be entitled to the benefit of set off under Section 428 of the CrPC is set aside and substituted by a direction that the Appellant will be entitled to the benefit of set off under Section 428 of the CrPC only in the event the Appropriate Authority makes an order for remission or commutation under Sections 432 or 433 of the CrPC subject, no doubt, to the provisions contained in Section 433-A of the CrPC and not otherwise.

d) Save and except the aforesaid modifications, the impugned Judgment, Order and sentence dated 31st March, 2017/1st April,

2017 made by the Additional Sessions Judge, at Mapusa is upheld and shall, accordingly, operate;

e) The State Government is directed to grant compensation to the two minor children of the Appellant and his deceased wife, under suitable victim compensation scheme, as formulated by the State Government, within two months from today. Necessary compliance report to be filed before the Member Secretary, Goa State Legal Services Authority, within three months from today. The Member Secretary to thereafter take suitable steps in regard to the issue of victim compensation in the present matter.

58. The Appeal is disposed of in the aforesaid terms.

C.V. Bhadang, J.

M.S. Sonak, J.