

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRA-D-635-DB of 2014
Date of Decision: 1.10.2019**

RahulAppellant

Versus

State of U.T., ChandigarhRespondent

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present:- Mr. A.P.Kaushal, Advocate with
Mr. Gurbir S. Sandhu, Advocate
for the appellant.

Mr. Rajiv Sharma, Standing Counsel
for U.T., Chandigarh.

HARNARESH SINGH GILL, J.

The present appeal has arisen out of the judgment of conviction dated 11.2.2014 and order of sentence dated 17.2.2014, vide which appellant was convicted under Section 302 IPC in FIR No. 465 dated 16.12.2011 registered at Police Station Sector-39, Chandigarh, for committing the murder of Kavita Sahu and Gaurang Sahu, and sentenced as under:-

U/s 302 IPC	To undergo imprisonment for life i.e. till the rest of his natural life and to pay fine of Rs. 25,000/- and, in default of payment of fine, to further undergo imprisonment for two years
U/s 302 IPC	To undergo imprisonment for life i.e. till the rest of his natural life and to pay fine of Rs. 25,000/- and, in default of payment of fine, to further undergo imprisonment for two years

The above substantive sentences of imprisonment were ordered to run concurrently.

As per prosecution story, Malti Devi got recorded her statement on 16.12.2011 that she and her husband were Teachers by profession. Her husband was posted at Mewat, Haryana and she was posted in Sector-17, Panchkula. They had two children i.e. elder daughter Kavita, about 17 years of age, was the student of Guru Nanak Public School, Sector-36, Chandigarh, whereas her younger son Gaurang Sahu was the student of Govt. Model Senior Secondary School, Sector-37, Chandigarh. On that day, she had left the home at 8.30 A.M. for duty and both the children were at home it being their holiday. On her return at about 3.00 P.M., she found her daughter in the pool of blood with a cut on her neck and when she went upstairs, she found her son also in the pool of blood and his neck also had a cut. All the articles in the room were lying scattered. Statement of Malti Devi got recorded on 16.12.2011, at 6.00 P.M., reads as under:-

“Stated that I am resident at the above noted address with family. I and my husband Umesh Shahu are J.B.T. Teachers in Haryana. My posting is at Govt. High School, Sector-17, Panchkula (Primary Wing) and my husband posted at Mewat. He used to come home after a week or 10 days. We have two children. Elder is Kavita aged about 17 years who was studying in Guru Nanak Public School, Sector-36, Chandigarh in 10+2 class and son Gorang was studying in Govt. Model Sr. Sec. School, Sector 37-B, Chandigarh in 10th class. Today both my children had a holiday. I left both of them at about 8.30 A.M. at house and went on my duty. At about 3.00 P.M. when I reached house from my duty, I saw that door of the house was half opened and the luggage of the house was scattered and my daughter was lying straight drenched in the blood on the bed in the bed room and both of her legs were hanging and neck was slashed with sharp edge weapon and a lot of blood was scattered on the floor and a broken knife was lying in the blood. The articles and bangles were scattered on the floor. Blood spots were also on the walls. When I

saw towards my son Gorang, he was not found there and then went on the upper room and saw that he was lying drenched in the blood on the bed. His neck was also slashed with sharp edge weapon and luggage was also scattered there. I immediately narrated the entire scene to my father Gopal Parshad on phone. My father and brother came to my house. They gave the information to the police about this occurrence and you came at the spot. Due to some enmity some unknown persons killed my both children by slashing their neck with sharp edge weapon. Legal action may kindly be taken against them.”

The articles from the scene of occurrence were taken into possession and were sealed with seal of ‘CS’. The dead bodies were sent for post-mortem examination. Statements of the witnesses were recorded. During investigation, they were sent to CFSL, Sector-36, Chandigarh. Search for suspect i.e. appellant-Rahul was launched, who was later arrested on 17.1.2012.

After completion of investigation and necessary formalities, challan was presented. On 30.5.2012, the case was committed for trial.

Vide order dated 7.6.2012, charge was framed against the appellant under Section 302 IPC to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution had examined as many as 21 witnesses.

Malti Devi, who was the complainant and the mother of both the children, stepped into the witness box as PW-15 and stated that after her duty when she had come back home, she found her children in the pool of blood and sharp edged injuries were present on their necks. Her brother and sister-in-law also came there. After

sometime, police had arrived at the place of occurrence from where the police had picked up a knife and other articles including bed sheets, pillow, quilt, brassier of Kavita (victim) and brown sweater of Gaurang (victim). She stated in her cross-examination that she did not suspect anybody with regard to the crime.

PW-8 Sidharath Vashisht stated that he had been playing cricket from 11.30 A.M. till 3.00 P.M. but he had not seen anybody going to the house of the complainant, whereas victim Kavita had informed him several times that Rahul, who was her uncle in relation had often harassed her after consuming liquor or drugs. Later, PW-8 was declared hostile and when cross-examined by the Public Prosecutor, he denied that while playing cricket on 16.12.2011, he had noticed Rahul coming on foot from Shivalik Public School side and was going towards their locality wearing a blue colour pullover, but while coming back, he was having brown colour shawl (Loi).

In CRM-M No. 21468 of 2012, filed by Malti against 17 respondents, including Sidharath Vashisth (PW-8), following flaws were raised:-

“(i) On 27.12.2011 police took Sh Amar Chand and his family members i.e. respondent Nos. 6 to 9 and kept them in their custody for seven days from 27.12.2011 to 2.1.2012 but they are not named anywhere in police record. Petitioner with the help of her father named as Sh. Gopal Prasad and her husband, is in possession of proof that respondent No. 6 and his family members were in police custody during the aforementioned period. Respondent No 6 is a JBT Teacher in GMS, Kundi, Distt. Panchkula and his attendance register clearly shows that there is tampering in the attendance register started from 14.12.2011 to 2.1.2012. The true coloured photocopy of the attendance record showing the tempering in attendance register is attached and the true relevant typed extract is attached herewith as Annexure P.1.

(ii) That Kaushal i.e. respondent No. 7 one of the accused and brother of main accused named as Rahul stated before police in the presence of husband of the petitioner that after committing the murder, Rahul came to Kaushal and he helped Rahul in changing his blood stained clothes. Kaushal being busy in helping as well as in hiding the accused Rahul is substantiated from the fact that he did not come at the place of occurrence as well as at the time of cremation and throughout this period, he remained in touch with the main accused Rahul. This fact can be verified through call details which police failed to do. Respondent No. 15 i.e. Amanjot, Inspector told clearly that all these persons are involved in the deep rooted conspiracy of murder and attributed main role. Respondents No. 14 to 17 ensured the petitioner to unearth this deep rooted conspiracy by arresting all the persons involved.

(iii) On 1.1.2012 and 2.1.2012, respondent No 14 to 17 and some others visited/raided the places of relatives of the accused accompanied by the respondents No. 6 to 9 and also by the husband of the petitioner. Police respondents raided in Delhi at the following places of the following persons:-

1.	Mahipal Singh S/o Late Sh. Partap Singh, Indira Jheel, Sultan Puri, Delhi.
2.	Jaswant Singh S/o Sh. Om Parkash, H. No. 15-C, Indira Jheel, Sultan Puri, Delhi.
3.	Hari Shankar, E-150/6, Hari Nagar Extension, Jatipur Road, Badarpur Delhi-44.
4.	Gopal Das S/o Late Sh. Partap Singh, Indira Jheel, Sultan Puri, Delhi.
5.	Padam, Nangloi, Delhi.
6.	Chitra W/o Late daughter in law of Hari Singh, Village Tilpat, Faridabad.
7.	Hari Shankar, E-150/6, Hari Nagar Extension, Jatipur Road, Badarpur, Delhi-44.
8.	Nirto, Nangloi, Delhi.
9.	Girraj Bhudev, Nangloi, Delhi.
10.	Daulat Ram, # Jagdamba Market, Aman Vihar, Delhi.
11.	Satte, Near Lokes Cinema, Nangloi, Delhi.

Here it is relevant to mention at this juncture that this whole process done by police has been concealed and it has further been concealed by police that what these aforementioned sons stated about the incident. However, it

is further relevant to mention here that some persons clearly stated to the police that it is Amar Chand and his family who have committed the aforementioned offence.

(iv) On 26.12.2011 when Amar Chand attended the kirya (rasam pagri) of the children of the petitioner with the permission of police, he was coming back with the other members of the family, he was in continuous contact with the main accused Rahul. During the course of journey from Mewat to Raipurani at night, when all the relatives were sleeping in the taxi, Amar Chand called Rahul from his phone and kept on talking with Rahul even by name and this conversation was heard by Ms. Anjali who is of 13 years and was not sleeping in the taxi and later on she explained the aforementioned conversation between Amar Chand and Rahul to her family members and accordingly family members explained the same to the police but police did not take into consideration.

(v) The highhandedness of the police did not stop here and the lust of police comes to such an extent that in order to get the award money of Rs 2 Lacs, special investigation team members forgot all the rules and regulations. Amar Chand informed the crime branch Chandigarh that Rahul is in Mumbai. Police party left for Mumbai to arrest Rahul, without prior permission of the higher officials and a team of Chandigarh Police went to Mumbai by Go Air flight (flight No. 8143) on 15.1.2012. The members of police team visited to Mumbai are given below:-

<i>Sr. No.</i>	<i>Name of the Officer</i>	<i>Seat No.</i>	<i>Reached Mumbai</i>
<i>1.</i>	<i>Sh. Amanjot Singh (I.O.)</i>	<i>13-D</i>	<i>At 13.50 P.M.</i>
<i>2.</i>	<i>Constable Durjan Singh</i>	<i>13-F</i>	<i>At 13.50 P.M.</i>
<i>3.</i>	<i>Head Constable Kanwar Pal</i>	<i>13-E</i>	<i>At 13.50 P.M.</i>

The following are the details of the returning of police officials and Rahul the main accused by Go Air flight (flight No. 8141) dated 16.1.2012.

<i>Sr. No.</i>	<i>Name of the Officer</i>	<i>Seat No.</i>	<i>Reached Mumbai</i>
<i>1.</i>	<i>Sh. Amanjot Singh (I.O.)</i>	<i>17-B</i>	<i>11:10 A.M.</i>

2.	Constable Durjan Singh	17-C	11:10 A.M.
3.	Head Constable Kanwar Pal	17-F	11:10 A.M.
4.	Tejas Rahul (Name changed)	17DB	11:10 A.M.

Police team came into contact with Rahul in Mumbai and there police settled with Rahul and tempered with whole investigation afterwards. Rahul the main accused was nabbed in Mumbai on 15.1.2012 and the police returned back to Chandigarh on 16.1.2012 at 11:10 A.M. As the police was in hurry to fetch the award amount of Rupees two lacs, declared on Rahul so they deviated from their duty to inform the Mumbai Police. Which is totally unlawful. They dared to show Rahul being arrested from Saha, Distt. Ambala, Haryana. This action of Chandigarh Police is very senous and shameful and clearly shows the poor investigation.

(vii) During the course of remand, Rahul clearly stated to the Police in presence of the husband and father of the petitioner that Rahul completed this incident with the help of his father named as Amar Chand (respondent No. 6), his brothers named as Kaushal and Naresh (respondent No. 7 and 8 respectively) his mother named as Tarawati (respondent No. 9), and his companion gangster in drug mafia names as Sidharth, Naveen, Rishu and Rajat (respondents No. 10 to 13 and who were the main supplier of information regarding the presence of deceased children of the petitioner at their residence on 16.12.2011)."

PW-1 Dr. Ajay Kumar, Assistant Professor, Department of Forensic Medicines, being member of the Board constituted for conducting post-mortem on the dead body of Gaurang on 17.12.2011 along with Dr. Parijat EMO (PW-4). PW-4 also conducted post-mortem on the dead body of Kavita. There were 13 injuries on the body of Guarang and 8 injuries on the body of Kavita. As per diagram with both the post-mortem reports, the place of injuries on the body of both the victims is nearly similar.

The following external injuries were found on the body of Gaurang :-

- (1) *Incised Stab wound .2x0 .3x3.5 CM over the left Nipple, obliquely placed with lower inner angle obtuse, upper outer angle acute, Margins Clean cut.*
- (2) *Incised stab wound .2x0 .3x3.5 cm placed, obliquely placed with inner angle obtuse, upper outer angle acute and is placed 0.7 CM below injury No. 1. Margins clean cut.*
- (3) *Incised stab wound, 2.5 x 3 x 4.5 CM, Obliquely placed with a tailing of 2.5 CM present on the lower inner angle, being 10 CM to left of midline and placed 10 CM below the level of Injury No. 1.*
- (4) *Incised stab wound, 2.3x 0.3 x 5 CM vertically placed 3 CM to Upon appearance, the accused was supplied with complete copies of challan as envisaged under Section 207 Cr.P.C. free of costs. of injury No. 1, the upper angle is obtuse, showing fishtailing, and Lower Angle acute, Margins Clean cut.*
- (5) *Incised stab wound, 2 x 0 .3 x 6 CM obliquely placed with lower inner angle acute and upper angle merging with injury No. 6, Margins clean cut.*
- (6) *Incised Stab wound 3.5 x 0.3 x 6 CM, obliquely placed with lower inner angle merging with upper angle of injury No.5 obtuse, upper outer angle is acute, margins clean cut.*
- (7) *Incised wound 7.5 x 1 x 0.5 CM, Horizontally placed over the outer lower aspect of left knee joint.*
- (8) *Horizontal cut throat injury measuring 13.5 x 4.5 present on right side front of neck starting from a Point 4CM below the right ear lobe and extending to the right side front of Neck, to Lie 3 CM below the mid-point of the ramus of the left mandible, the left side of the injury shows 4 bifurcations approximately 1 CM Apart. However, on the right side there is only one angle, the third bifurcation on the left side showed an extension of 4.5 CM towards left side horizontally underlying muscles and trachea vessels cut through and through as well as the esophagus at this level.*

- (9) *Incised wound, 1.8 x 0.5 x 0.3 CM present on the left side upper portion of the neck 0.5 cm above left end of injury No. 1.*
- (10) *Incised wound, 2.0 x 0.3 cm present over the web of the third and fourth finger of right hand.*
- (11) *Multiple incised wounds (defence) present over outer side right ring finger varying to 1.5 x 0.5 x 0.3 cm to 1.5 x 0.5 x 0.3 cm.*
- (12) *Incised wound (defence) 6x0.5 x 1 cm over the base of the index, middle and ring fingers over palmar aspect of left hand.*
- (13) *Incised wound (defence) 3 x 0.5 x 1 cm over the web of thumb and index finger of left hand.”*

The following injuries were found on the dead body of Kavita:-

- (1) *Horizontal Cut throat injury measuring 11x4-4.5 cm present on right side front of neck starting from a point 3.5 CM below the right ear lobe and extending to the right side front of neck, to lie 3 CM below the midpoint of the ramus of the left mandible. The left side of the injury shows 3 extensions approximately 1 CM apart and the total width at its left end is 3.2 cm. However on the right side there is only angle. The upper portion of the right side shows tailing of 1.5 cm corresponding to the upper bifurcation at the left side. The lower portion on the right side shows a tailing of 0.5 cm corresponding to the 3rd bifurcation on the left side. Underlying muscles and trachea, vessels cut through and through as well as the esophagus at this level.*
- (2) *Incised wound horizontally placed 6 x 0.5 Cm skin deeper present exactly 0.5 cm below injury No. 1. Tailing present towards the left side.*
- (3) *Incised wound 1 x 0.2 cm present 0.8 cm above injury No. 1 on the left side obliquely placed inner angle lower than the outer, tailing of 0.3 cm present towards right lower end.*
- (4) *Obliquely placed superficial linear incised wound 0.8 cm in size with tailing present on upper right side upto 1.2 CM. The lower margin being 1.8 CM below injury No. 2.*
- (5) *Incised wounds (defence) over the palmar aspect of middle phalynx of all the four fingers and on the distal phalynx of little, middle, index fingers as well as the distal phalynx of*

the thumb, varying in size from 1 to 1.2 CM, on the right hand.

- (6) Superficial linear incised wound obliquely placed 1 x 1.0 cm in size, present on the outer aspect of right wrist just proximal to the level of the thumb.*
- (7) Obliquely placed linear incised wound 0.5 CM in size with tailing of 3 CM on the upper aspect, present, 8 cm proximal to the right wrist.*
- (8) Incised wounds (Defence) present on the proximal and Middle Phrlynx of the left index finger and proximal Phrlynx of left middle finger.*

PW-10 Kirpa Dutt deposed that he had reached the house of his sister Malti after the occurrence as he had received the phone call at 3.00 P.M. and had identified the bodies of both the victims during inquest proceedings.

PW-12 Dr. Ashok Kumar, EMO, who had conducted medical examination of appellant on 25.1.2012, deposed regarding having taken the blood sample of appellant Rahul.

PW-13 Joginder Singh deposed that on 24.1.2012, he had been sitting in his liquor vend in village Bagwali when police of the Chandigarh Crime Branch had informed him that appellant had committed the murder and in his presence, the appellant had got recovered a black colour bag from the bushes which contained a pant, shirt and shawl (loi).

PW-18 Sub Inspector Rajbir Singh deposed that on 20.2.2011, he had been handed over 29 sealed parcels by MMHC Sukhchain Singh. He had deposited it on the said very date with CFSL and on return he had handed over RC with receipt to MMHC. He further stated that another sealed parcel containing shirt, jeans pant and brown colour 'Loi' was delivered to him on 25.1.2012 which he had also deposited with CFSL. He also deposed that during the period the

parcels remained with him, neither he had tampered with the same nor he had allowed anybody to do the same.

PW-20 Dr. Davinder Kapil, who was running a Clinic under the name of Sharma Clinic, deposed that in December 2011, the appellant had come to his Clinic for the first aid due to injury on his left hand ring finger. He further deposed that when he had asked the appellant about the injury, he had disclosed that he had suffered the injury with some iron bar. He deposed that the said injury had been found to have been suffered by a sharp edged weapon.

PW-21 Inspector Amanjot Singh, who was the Investigating Officer, deposed that he had recorded the statement of Sidharth @ Ashish and thereafter, they had started searching for the appellant. He deposed that on his directions, SI Rajbir had deposited the sealed parcels with CFSL. On 24.12.2011, he along with the police party had gone to Delhi where they met with Jaswant Singh, a relative of the accused. They had shown him photograph of sweater, whereupon Jaswant Singh had disclosed that the sweater belonged to the appellant. He had recorded his statement. He further deposed that during examination of the persons in the area of Raipur Rani and Barwala, it was revealed that the appellant had been seen in the area of Raipur Rani, Barwala, Dosarka, Saha, Bindalpur etc. Accordingly, they had gone to Saha and deputed four teams and put them on different roads. While he along with his team was conversing with Avtar Singh, SI Nafe Singh indicated towards a person coming towards them. On getting indication, he along with his team had apprehended the accused, who disclosed his name as Rahul. The accused was arrested vide memo Ex. P.39 and he was taken to Police Station, Saha. On 20.1.2012, the appellant suffered a disclosure statement (Ex.PS) about his involvement in the crime, which was reduced into writing. During interrogation, the accused had disclosed

that the knife used in the crime had been purchased by him from a shop which he could identify. The said disclosure statement (Ex.PU) was reduced into writing. On 24.1.2012, on interrogation, the accused suffered a disclosure statement that the blood stained clothes, which he had been wearing, were hidden by him in a black colour bag in the bushes in the area of village Bagwali, while going to Raipur Rani. On the basis of said disclosure statement, the appellant had got recovered the bag from the bushes. The bag was put into a cloth parcel and was sealed with seal bearing impression 'AS'. The sealed parcel along with sample seal was taken into possession vide memo Ex. P-41 and the same was deposited with MMHC PS 39, Chandigarh.

The learned Additional Sessions Judge vide judgment dated 11.2.2014 and order dated 17.2.2014, convicted and sentenced the appellant, as referred to above. Hence, the present appeal by the appellant.

We have heard learned counsel for the appellant as well as the learned State counsel and with their able assistance, have gone through the record.

Learned counsel for the appellant has argued that there is no eye witness in the present case. As per prosecution, PW-8 Sidharath Vashisht was declared hostile. Even if his statement is taken into consideration, he was playing cricket on 16.2.2011 and did not see the appellant coming out of the house of the victim and later he said that he had seen the appellant in blue and white pullover and after sometime, when he saw the appellant going back, he was having a 'loi'. But the prosecution has failed to establish as to who had owned that 'loi'. Neither Malti Devi (PW-15) stated that the 'loi' had been taken from her house by the appellant nor she had stated that it belonged to her.

As per counsel for the appellant, in her testimony, Ms. Sunita, Senior Scientific Officer from CFSL stated that the blood stains picked from the place of crime were not presented properly as DNA was present but not at the detection level.

It is also argued that the appellant (a relative of the victims), had troubled Kavita (deceased) but Kavita had never made any complaint to her parents. It could not be proved as to what was the reason that Kavita had only informed her neighbour Sidharath Vashisht (PW-8) about it, whereas as per common prudence and general understanding, she was expected to disclose such thing to her parent(s). As per learned counsel for the appellant, the arrest of appellant at Saha Chowk was also fabricated. Rather the appellant was brought from Mumbai by Inspector Amanjot Singh and this witness while appearing as PW-21 did not deny that he had gone to Mumbai on 16.1.2012. So much so, even the documents placed on record were also fabricated. It is also argued that Sidharath Vashisht had resiled from prosecution case. Even the evidence of PW-9 Ravi Mittal cannot be relied upon as the knife was not shown to him. Therefore, it is possible that some other knife was shown to the shopkeeper Ravi Mittal (PW-9) and the disclosure statement (Ex. PS) allegedly suffered by the appellant, is not admissible in evidence.

It is still further argued that as per the Investigating Officer, there was human hair in the hand of victim Kavita, but no evidence had been placed on record to that effect nor any comparison had been got done, as deposed by PW-4 Dr. Sunita, a Scientist from CFSL.

As per the counsel for the appellant, there was an old injury on the ring finger of left hand of the appellant and there was a cutting on the document by the Investigating Officer from 25 days to

30 days. Thus, the circumstantial evidence relied upon by the prosecution cannot be made the basis for convicting the appellant.

On the other hand, learned counsel for U.T., Chandigarh has submitted that even if there was no eye witness of the crime, the appellant being a relative of the victim had a bad eye on deceased Kavita and had committed her gruesome murder. He further argued that Sidharath Vashisht stated that victim Kavita had told him regarding the acts of the appellant and the said witness had seen the appellant. It is further argued that the report of the experts prove the involvement of the appellant and the weapon used by the appellant while committing the crime, was recovered from the scene which was purchased by him from Ravi Mittal (PW-9) and more so, he had as identified the appellant in the Court.

Learned counsel for the U.T., Chandigarh has also argued that the blood stained 'loi' had been recovered in the presence of an independent witness. Even as per the disclosure statement of the appellant, he had sustained an injury on his left hand while committing crime and his getting first aid from Dr. Davinder Kapil (PW-20). This clearly prove the act of the appellant in committing the murder of brother and sister for his lust as being an addict, he had remained admitted in a de-addiction centre of PW-11 Avtar Singh.

We have no hesitation to draw a conclusion that prosecution has failed to bring home the guilt of the appellant beyond the shadow of reasonable doubt. In the present case, blood stains were duly collected from the scene of crime. On the other hand, it was deposed by Ms. Sunita, Scientist from the office of CFSL that the blood stains picked from the place of crime had not been properly presented as on that sample DNA were present but not properly presented. Thus, no conclusion was drawn. Even Ravi Mittal (PW-9) could not prove the purchase of the knife from his shop by the

appellant. The injury on the person of the appellant (i.e. on the ring finger of his left hand), alleged to have been occurred during scuffle, could not be proved as there is cutting on the file by the Investigating Officer from 25 days to 30 days and as per Ex. D2, opinion of the Doctor, the injury was old one.

It is the case of the prosecution that there were blood stains on the 'loi' recovered pursuant to the disclosure statement of the appellant on 24.1.2012 whereas the blood sample of the appellant was drawn on 25.1.2012. This factor creates a dent in the prosecution story. Though, there is no eye witness in the present case, nobody had seen the appellant going to the house of the complainant nor anybody had seen him leaving the house. The prosecution had failed to compare the blood stains to establish the guilt of the appellant. Even if the alleged 'loi' was taken by the appellant from the house of the complainant after crime, nobody while appearing in the witness box, had stated as to whom the 'loi' belonged, neither could it be established that the 'loi' belonged to Malti-complainant.

The Apex Court in ***Pohalya Motya Valvi versus State of Maharashtra, 1979 AIR (SC) 1949***, while dealing with the issue of circumstantial evidence, has held as under:-

“18. The last circumstance relied upon by the High Court is that Dhoti [Article 11](#) put on by the appellant when he was arrested was stained with human blood. Evidence on this point is that there were some small stains of blood on the Dhoti of the appellant. Bloodstains on the dhoti of an agriculturist would hardly provide any incriminating evidence. Even if it is held proved that there were some small bloodstains on the dhoti of the appellant that by itself would not provide evidence of a conclusive nature against the appellant.

x x x x x

21. What then remains against the appellant? The only thing said to have been established is that when the

appellant was detained by the investigating officer he had put on a dhoti which had some scattered stains of human blood. Discovery of a bloodstained spear alleged to have been used in causing injuries to the deceased, on the information given by the appellant being found to be unconvincing, the only circumstance proved is one of recovery of a bloodstained dhoti of the appellant. Applying the test of circumstantial evidence this is wholly insufficient to bring home the charge.”

In **Ramchandra Sao and another versus State of Bihar, 1999 AIR (SC) 1974**, the Apex Court has held as under:-

*“We have heard learned counsel and we have also examined the available records. In our view, the circumstances above enumerated are not enough to maintain the conviction of the appellants. The father and the son had been living together all along and Smt. Asha Devi was the lone female who had been inducted into the family. The act of appellant No. 2 in catching hold of the arm of her daughter-in-law was viewed as an amorous suggestion and the deceased was successful in having a Panchayat convened for the purpose. The Panchayat, as said before advised separate residents for the father and son. Despite such suggestion father and son lived together and so did the deceased with them. There is no evidence that there was any untoward incident thereafter. Had there been any it would have been complained about. The appellants were living in a neighbourhood. If the deceased was murdered in the house as suggested and her dead body was thrown away at some distance, it is difficult to believe that the appellants could do so stealthily without attracting the attention of the neighbours either at the time of the homicidal death or when carrying and disposing of the dead body by throwing it in a well. **The presence of blood-stains on the floor of the room of the house and the shawl by themselves are not such circumstances to establish that the deceased was killed in the room of the house or that those blood stains were matching, with the blood group of the***

deceased. *During the course of the investigation, efforts were made to match the blood group but unsuccessfully. No report came from the expert. The recovery of the dead body from the well even was not at the instance of the appellants by means of disclosure statements. Rather the dead body surfaced on its own and was noticed by the villagers. Thus in nutshell the only incriminating circumstance which can be said to have been established is that there was perhaps motive for appellant No. 2 to avenge himself for the accusation made against him by the deceased. Even so the deceased could have met homicidal death in other ways and not necessarily at the hands of the appellants. When links in the chain of circumstances are missing, we cannot jump to the conclusion that the assailants of the deceased could be no other than the appellants, thus, in our view, it is unsafe on the aforementioned circumstances to maintain the conviction of the appellants, we thus extend to them the benefit of doubt, we, therefore, order the appellants' acquittal. The appeal is thus allowed, upsetting the judgment and order of the High Court as also that of the Court of Session. The appellants shall, as a result, be set at liberty forthwith."*

The prosecution has failed to prove the link evidence, which could establish and bring home the guilt of the appellant. As delineated in the aforesaid judgments of the Hon'ble Supreme Court, the link evidence has to be in tandem conclusively pointing towards the crime committed by none other than the accused. As far as the case of the prosecution that victim Kavita informed her neighbor Sidharath Vashisht (PW-8) regarding harassment to her by the appellant, who was her uncle in relation, rather than informing her parents, the prosecution could not prove as to why victim Kavita would inform her neighbour, when it was but natural for her to inform her parents at the first instance. Still further, the prosecution was not able to prove that the appellant was an addict.

It is well settled principle of criminal jurisprudence that the prosecution is required to prove its case against the accused beyond the reasonable doubt.

In ***K.M. Nanwati versus State of Maharashtra AIR 1962 SC 605***, the principle of law laid down was to the effect that it is the cardinal principle of criminal jurisprudence that the accused is presumed to be innocent and, therefore, the burden lies on the prosecution to prove his guilt beyond the reasonable doubt. The prosecution is under legal obligation to prove each and every ingredient of the offence beyond any doubt unless otherwise so provided by any statute. This general burden never shifts and it always rests on the prosecution. At the conclusion of the trial, the prosecution can succeed only in discharging its burden in proving the case against the accused. Strongest of the suspicion, does not constitute the proof required.

In ***Sharad Birdhichand Sarda versus State of Maharashtra AIR 1984 SC 1622***, while dealing with the circumstantial evidence, Hon'ble High Court held that the onus was on the prosecution to prove that the chain is complete and the infirmity or lacuna in the prosecution cannot be cured by a false defence or plea. The conditions precedent before conviction could be based on circumstantial evidence laid down by the Court and must be fully established. The Court laid down the following conditions precedent which should be fully established before conviction could be based on circumstantial evidence:-

- “1. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established,*
- 2. The facts so established should be consistent with the hypothesis of guilt and 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.

In ***Padala Veera Reddy versus State of A.P. 1990 (20***

RCR (Crl.) 26 (SC), it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:-

- “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.”*

In the light of the above principles, the Court must proceed to ascertain whether the prosecution has been able to

establish the chain of circumstances to prove guilt of the accused beyond the reasonable doubt.

In our opinion, in the present case, the chain of evidence is not complete, which could prove the guilt of the appellant beyond the reasonable doubt.

Hence, the appeal is allowed and the impugned judgment of conviction dated 11.2.2014 and order of sentence dated 17.2.2014 are set aside. The appellant is ordered to be set free if not required in any other case.

Since the main appeal has been decided, the pending CRMs, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

1.10.2019
Gurpreet/ds

Whether speaking /reasoned : Yes/No

Whether Reportable : Yes/No