

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

(1) CRA-D-779-DB of 2017 (O&M)

Reena

.... Appellant

Versus

State of Punjab

..... Respondent

(2)

CRR-3284 of 2017

Hitesh Anand

.... Petitioner

Versus

State of Punjab and another

..... Respondents

Reserved on : 30.05.2019

Date of decision : 31.05.2019

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Vinod Ghai, Senior Advocate, with
Ms. Kanika Ahuja, Advocate,
for the appellant in CRA-D-779-DB of 2017.

Mr. S.P.S. Tinna, Addl. A.G., Punjab.

Mr. Shaurya Puri, Advocate, for
Mr. P.S. Ahluwalia, Advocate,
for the complainant in CRA-D-779-DB of 2017 and
for the petitioner in CRR-3284 of 2017.

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RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in CRA-D-779-DB of 2017 and CRR-3284 of 2017, therefore, these are taken up together and being disposed of by a common judgment.

2. The appeal and criminal revision are instituted against judgment and order dated 28.07.2017, rendered by learned Additional Sessions Judge, Ludhiana, in Sessions Case No. 80 dated 05.11.2012, whereby appellant Reena who was charged with and tried for the offence punishable under Section 302 IPC, was convicted and sentenced thereunder to undergo rigorous imprisonment for life and to pay fine of ₹ 10,000/-, and in default of payment of fine to further undergo rigorous imprisonment for one.

3. The case of the prosecution, in a nutshell, is that Inspector Manjinder Singh (PW.4), the then SHO Police Station Sarabha Nagar, Ludhiana along with other police officials was on patrolling duty on 17.07.2012. Hitesh Anand (PW.1) appeared before the Investigating Officer. He got recorded his statement, Ex.PA, on the basis of which FIR was registered. According to the averments made in the statement, he was doing the business of surgical goods. He had gone out of the house in connection with some work. His father Narinder Kumar Anand, aged about 61 years, his wife Reena (present accused) and his daughter Reva, aged about 7 years, were present. On the roof of the house, four labourers had come to do the construction work. At about 4.30 PM, his wife Reena made a phone call to him and told that Narinder Kumar Anand and Reva had been caused injuries by some unknown person. They were in injured condition.

He came to the house. He found that in the room, which was on one side of the house, his father Narinder Kumar Anand and his daughter Reva were lying in injured condition in a pool of blood. Both of them had extensive injuries which appeared to be caused by sharp edged weapon. He lifted the dead body of his father and placed in the lobby of the house. Reva had also died. He suspected that some unknown person had committed murder of his wife and daughter by causing serious injuries. The complainant further stated that he narrated the incident to his neighbour Khushwant Singh. He accompanied by Khushwant Singh was going to inform the police. The Investigating Officer met him. In these circumstances, his statement was recorded. FIR was registered. The Investigating Officer visited the spot. Inquest report of the dead body of Narinder Kumar Anand , Ex.PB, was prepared. Inquest report of deceased Reva, Ex.PC, was also prepared. Rough site plan of the place of occurrence was prepared. Blood stains with the help of cotton swab were collected from the spot, where the dead bodies were lying. Half burnt bed sheet and pillow were also taken into possession vide memo Ex.PF. The dead bodies were sent for post mortem examination. On 19.07.2012, accused Reena was produced before the police by Dr. Pawan Dhingra (PW.3). She had made extra judicial confession before him. She was arrested and interrogated. At her instance, one *Hathora* (hammer), *Tesi* and one blood stained lady suit were recovered. Two hand written notes were also recovered. Specimen signatures of the accused were obtained. Report of the FSL was received. The investigation was completed and challan was put up after completing all the codal formalities.

4. The prosecution examined as many as 18 witnesses in support

of its case. The accused was also examined under Section 313 Cr.P.C. She denied the case of the prosecution. According to her, she was falsely implicated. The accused was convicted and sentenced, as noticed here-in-above. Hence, CRA-D-779-DB of 2017 has been filed by the accused against her conviction and sentence. Complainant Hitesh Anand has filed CRR-3284 of 2017 for enhancement of sentence of the accused and grant of compensation to him.

5. Learned counsel appearing on behalf of appellant Reena has vehemently argued that the prosecution has failed to prove its case against his client. Learned counsel appearing for the State has supported the judgment and order of the learned Court below. Learned counsel appearing on behalf of the complainant has argued that the sentence of appellant Reena be enhanced and the complainant be awarded adequate compensation.

6. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

7. PW.2 Dr. Pardeep Kumar testified that post mortem on the bodies of Narinder Kumar Anand and Reva was conducted by a Board of Doctors, consisting of three doctors, including himself. He led his evidence by way of affidavits Ex.PW.2/A and Ex.PW.A/B. As per the contents of affidavit Ex.PW.2/A, they had noticed the following injuries on the body of Reva :-

- i. Lacerated wound 1.75” x 1” bone deep present on left frontal region near hair line just to left of midline. The underlying bones fractured.
- ii. Lacerated wound 1.25” x 0.5” bone deep present on left

temporo parietal region on anterior end. The underlying bone fractured.

- iii. Lacerated wound 1.25" x 0.5" bone deep present on occipital region on right side. The underlying bone fractured.

On exploration of skull/injuries No.1, 2 , 3, there was present # of skull bones corresponding to injuries No.1,2 and 3. On further exploration subdural hematoma present. On further exploration meninges and vessels lacerated and congested and hematoma present all over the brain matter.

The viscera of the deceased was sent for chemical analysis to the Chemical Examiner to the Govt. of Punjab, Kharar. The report dated 19.09.2012 showed that no poison was detected in the contents of exhibits I, II, III, IV and V and the same was sent to the SHO PS Sarabha Nagar, Ludhiana vide Despatch No. 21176/2012 dated 27.09.2012 along with original Chemical Examiner report and police papers duly signed 1-24. The cause of death in their opinion was due to haemorrhage and shock as a result of head injury which was sufficient to cause death in ordinary course of nature. All the injuries were ante-mortem in nature. The time interval between injuries and death was immediate and between death and post mortem was about 19 hours 15 minutes. As per the contents of affidavit Ex.PW.2/B, they noticed the following injuries on the body of Narinder Kumar Anand :-

- i. Lacerated wound 5.75" x 3.25" bone deep present on the occipital in its middle. The parts of underlying skull bone missing and brain matter coming out of the wound.
- ii. Lacerated wound 1.25" x 0.5" scalp deep present on left parietal region near hairline.

The viscera of the deceased was sent for chemical analysis to the Chemical Examiner to the Govt. of Punjab, Kharar. The report dated 19.09.2012 showed that no poison was detected in the contents of exhibits I, II, III, IV and V and the same was sent to the SHO PS Sarabha Nagar, Ludhiana vide Despatch No. 21139/2012 dated 27.09.2012 along with original Chemical Examiner report and police papers duly signed 1-24. The cause of death in their opinion was due to haemorrhage and shock as a result of head injury which was sufficient to cause death in ordinary course of nature. All the injuries were ante-mortem in nature. The time interval between injuries and death was immediate and between death and post mortem was about 18 ½ hours.

8. PW.1 Hitesh Anand deposed that on 17.07.2012, he left his house at 11.00 AM. His father Narinder Kumar Anand, aged about 61 years, and accused Reena were present in the house. His daughter, namely Reva, used to go to school at about 8.00 AM and used to come back to her house at about 2.00 PM. She was aged about 7 years old. On 17.07.2012, four labourers were engaged to do the construction work on the roof of his house. At about 4.30 PM, accused called her on his cell phone. She told him that Narinder Kumar Anand and Reva were lying in serious injured condition in the room in the house. He proceeded towards his house. He reached the house. He saw his father's body was lying on the bed in a side room in pool of blood. The body of his daughter Reva was lying on the floor in the pool of blood. Both had received injuries on their heads with sharp edged weapon. He called his neighbour. They took the body of his deceased father in the lobby and found that he was already dead. Then he tried to take

his daughter Reva for treatment. He found that she was already dead. He saw that his deceased daughter Reva was holding long hair in her right hand. His statement was recorded vide Ex.PA. Police came on the spot and inspected the dead body of his daughter Reva. The long hair from the right hand of his daughter Reva were taken into possession. The police also lifted the blood from the places where the dead bodies were lying and converted into parcel. The bodies were sent for post mortem examination. The post mortem was conducted on 18.07.2012. Thereafter, on 19.07.2012, he went to Haridwar to immerse the ashes. When he came back from Haridwar on 19.07.2012 in the night, police met him in his house and told that his wife Reena had been arrested on the allegation that she had committed the murder of his father and daughter by *Tesi* and hammer. The police told him that firstly Reena confessed before Pawan Dhingra and later on, he produced Reena before the police. The police also told him that Reena accused got recovered one hand written paper, *Tesi*, hammer and one Naswari colour suit stained with blood. After the police left, his friend Sangeet Sharma came to his house and told him that he had a programme of having lunch with him. However, the same did not materialize as he was busy. Sangeet Sharma told him that at about 3.00 PM, when he had reached his house, Reena met him. At that time, Reena was perplexed. His friend Sangeet Sharma also told him that when he asked Reena about her father-in-law namely Narinder Kumar, she told that he was not at home since the morning. Sangeet Sharma further told him that at that time, there were blood stains on the Naswari suit worn by Reena. Sangeet Sharma came back from Delhi on 19.07.2012 in the evening and told him about the above talk

between him and Reena. His supplementary statement was recorded on 28.09.2012 by the police, wherein he stated that his sister Shilpi got married with Nitin Kumar on 29.04.2007. His mother, namely Savita Anand, died in the year 1992 due to blood cancer. His father re-married with Chandani in the year 1992. Chandani died natural death. He was married with Leena in December, 2002. One daughter, namely Reva, was born from the wed lock, on 21.05.2005. Leena died on 27.09.2005. His daughter was aged about 4 months at that time. She was brought up by his in-laws at Amritsar. In November, 2011, he re-married with accused Reena. Reena was divorcee at that time. She had also issue from her first marriage with Ashish Ohri. Reena got divorce in the year 2008. Her behaviour was not good from day one in the house with their family. He brought his daughter in March, 2012 to Ludhiana from Amritsar. His daughter started studying in a school at Ludhiana. He was doing surgical work in Pindi Street and Samrala Chowk. His father retired as Manager from FCI. His father wanted to transfer his property and cash in the name of Reva to secure her future. Reena was upset about it. He used to tell her that everything would normalise. They had employed labour to raise construction at the instance of Kuldeep Singh on 17.07.2012. Thereafter, on 17.07.2012 at about 10.45 AM, he along with his father went to OBC, Pakhowal Road, Vishal Nagar, Ludhiana. Thereafter, he dropped his father at his house at about 11.00 AM. Then, he went to Phillaur in connection with his work. He received phone call from Kuldeep Singh at about 4.26 PM that accused Reena had relieved the labour from the house suddenly and the material which was prepared for construction purpose would be damaged. He received a call from accused Reena at about

4.30 PM that there was fire in their house. Reva and Narinder Kumar Anand were lying in injured condition. He came back from Haridwar on 19.07.2012 to his house at night. The police told him that accused Reena had committed the murder of his father and his daughter. He was conversant with the handwriting of accused Reena as she used to write in Hindi in his presence. He proved letter Ex.PB. It was written by Reena. He identified her signatures on its backside at point Mark A. He also identified her specimen signatures Ex.PD. When he left the house, Reena was wearing Naswari colour suit in the morning on 17.07.2012. When he came back in the evening, she was not wearing that suit which she was wearing earlier. In his cross-examination, he deposed that his previous statement was recorded vide Ex.PA on 17.07.2012. His supplementary statement was recorded by the police on 28.09.2012. He had gone to the Police Station on 28.09.2012 in the after-noon. The police had not called him. In his previous statement Ex.PA, he did not mention that Reva was holding long hair in her right hand. He admitted that he was diploma holder in Engineering. He was not an handwriting expert. His father retired in October, 2011 from Food Corporation of India. The retirement benefits to the tune of ₹ 30 lacs to ₹ 35 lacs were received by his father from the Department. His father invested this amount in the shape of FDRs in the banks. His father might have done some other business with the said money. He did not remember the approximate amount deposited in the shape of FDRs. The amount was deposited in different banks. His father was operating saving bank accounts with the banks but he did not know the names of those banks and account numbers. He did not know the exact amount lying deposited in the name of

his father in the banks at the time of his death. He also admitted that a case under Section 306 IPC was registered against him and his father and other relatives qua the death of Chandani. He did not know any person in the name of Pawan Dhingra. He did not know if Pawan Dhingra visited their house on 17.07.2012. Voluntarily stated, he met Pawan Dhingra on 19.07.2012 for the first time. The police did not search their house on 17.07.2012. He had no business dealings or other dealing with Pawan Dhingra. He did not know if Pawan Dhingra visited his house on 18.07.2012. He went to Haridwar in the morning on 19.07.2012. He could not tell the time when he reached Haridwar on 19.07.2012. He did not know the name of Pandit of his family at Haridwar. He did not meet any Pandit at Haridwar and did not get entry about the purpose of his visit on 19.07.2012. He did not sign any register.

9. PW.3 Dr. Pawan Kumar Dhingra is material witness. According to him, he knew accused Reena for the last 2/3 years. Reena used to visit his clinic along with her parents for the purpose of taking treatment. On 18.07.2012, he came to know about the murder of Narinder Kumar Anand and his grand-daughter Reva. He came to know that Narinder Kumar Anand and Reva were family members of Reena. He attended the cremation of Narinder Kumar Anand and Reva in the after-noon on 18.07.2012. Number of people had gathered. In the evening, he went to the house of Reena to share the grief. He could not meet Reena and her family members at the time of cremation. He met Reena in her house. At that time, she was perplexed. Accused Reena asked to talk with him in a separate room. She took him to a vacant room of the house. He asked her about the reason for

being perplexed. Accused Reena confessed before him that she had committed the murder of Narinder Kumar Anand and his grand-daughter Reva on 17.07.2012 with the help of small hammer and *Tesi*. Reena further confessed and told him that her father-in-law Narinder Kumar wanted to transfer entire property in the name of his grand-daughter Reva. She was not liking this step. Reva was step daughter of accused. Accused Reena further told him that the police had come to know about the murderer and the police would beat her. She requested him to produce her before the police. On 19.07.2012, he joined his routine work. Accused Reena met him in his clinic. She asked him the reason of not meeting her. He replied that he became busy in his work. Accused Reena further told him that the police was looking for her. She had come to his clinic by escaping from the notice of the police. He produced her before the police as the police was already present in her in-laws house. His statement was recorded. Personal search of the accused was carried out. The police interrogated accused in his presence. She made disclosure statement about the concealment of small hammer and *Tesi*. The disclosure statement is Ex.PW.3/C. Reena took the police to the roof of the house. She got recovered small hammer and *Tesi* from the heap of sand and cement. She also got recovered her suit and her hand written note from the bed lying in the room. These were taken into possession vide memo Ex.PW.3/D. In his cross-examination, he deposed that his two statements were recorded by the police under Section 161 Cr.P.C., vide Ex.DX and Ex.DY. He was confronted with the contents of his statements Ex.DX and Ex.DY. In his further cross-examination, he deposed that Hitesh Anand was not earlier known to him. He met him for the first

time on 19.07.2012. He did not know the profession or work of Hitesh Anand. He visited the house of Hitesh Anand on 18.07.2012 in the evening. It was not dark by that time. He could not tell the exact time of his visit to the house of Hitesh Anand. Voluntarily stated that it was after the cremation. He did not disclose the confession of accused Reena to any person present in the house of complainant Hitesh Anand. Voluntarily stated that no body was known to him, except Reena. He talked with Reena in the house of Hitesh Anand for half an hour to one hour. He did not visit Police Station Sarabha Nagar, Ludhiana, on 18.07.2012. He came back to his house after talking with Reena on that day. He did not disclose confession of Reena to any other person including his family members on 18.07.2012. He did not try to inform the police on the said date from his house. Reena came to him on 19.07.2012 in the after-noon. He could not tell the exact time. He produced the accused before the police between 5.00 PM to 7.00 PM on 19.07.2012. No record of OPD patients was maintained in their hospital. The record of those patients was maintained who remained as indoor patient. The manual slip was issued for OPD patients. The computer was used to issue slips to the indoor patient. Whenever Reena visited their hospital, no receipt for payment was issued to her being OPD patient. No record of the payment by accused Reena was maintained in their hospital. A manual register was maintained in their hospital for recording the names of OPD patients. Voluntarily stated that name of Reena was not entered in the said register as she was known to him and no payment was received from her. He further admitted in his cross-examination that on 18.07.2012, the accused disclosed to him only about the commission of crime by her but did

not disclose where the clothes, hammer and *Tesi* were concealed by her. He was not a Panch, Sarpanch, Municipal Councillor or MLA.

10. PW.4 Inspector Manjinder Singh deposed that he was posted as SHO at Police Station Sarabha Nagar on 17.07.2012. Hitesh Anand came to him. He got recorded his statement vide Ex.PA. Thereafter, he went to the place of occurrence. Two dead bodies i.e. one of a child and another of an old man, were lying. He prepared the inquest reports Ex.PB and Ex.PC. He collected the hair from the hand of deceased child Reva and converted the same into parcel. On 19.07.2012, he again visited the place of occurrence. One doctor produced the accused before him. The accused made confession before him. She also confessed that she had kept concealed hammer and *Tesi* under the sand lying on the roof of the house. She further confessed that she had also kept concealed blood stained clothes in the box of the bed. The recoveries were effected. He also sent SI Manjit Singh to Ilaqa Magistrate for taking hair sample of the accused for comparison purpose. The accused refused for the same. The Ilaqa Magistrate passed order Ex.PL. The remaining investigation was conducted by another Investigating Officer. In his cross-examination, he admitted that on 18.07.2012, he had not conducted search of the house. He very specifically stated that at the time when he visited the house on 19.07.2012 at 10.00/10.15 AM, Hitesh Anand was present in the house. The interrogation of accused Reena was completed upto 9.00/9.15 PM. Thereafter, immediately, they left for effecting recoveries.

11. PW.5 HC Manjit Singh deposed that the Investigating Officer prepared inquest reports on the dead bodies of Narinder Kumar Anand and

Reva. Blood was lifted from near the dead bodies. One burnt pillow and bed sheet were lifted from the spot and converted into sealed parcel. Inspector Manjinder Singh collected the hair from the hand of deceased child Reva and the same was put in a small pouch. He joined the police party on 19.07.2012. Accused Reena was produced by Pawan Kumar. Her arrest memo was prepared. She was interrogated. Blood stained clothes, hammer and *Tesi* were got recovered. In his cross-examination, he categorically stated that on 19.07.2012, the police party headed by Inspector Manjinder Singh, of which he was also a member, reached the house of Hitesh Anand in connection with investigation of the present case at 10.30 AM. When the police party reached the house of Hitesh Anand, accused Reena was already present there. Pawan Kumar Dhingra was also already present in the house of Hitesh Anand. Pawan Kumar Dhingra produced accused Reena at the house of Hitesh Anand on 19.07.2012 at about 11.30 AM.

12. PW.6 Kuldeep Singh prepared the scaled site plan Ex.PW.6/A.

13. PW.7 Gurmeet Singh, Reader, deposed that on 28.07.2012, he was serving as Reader in the court of Shri Muneesh Arora, the then learned Chief Judicial Magistrate, Ludhiana. On that day, he recorded the statement of accused Reena Anand, whereby she refused to give sample of her own hair. The statement is Ex.PW.7/A. He also recorded the statement of Reena, Ex.PW.7/B. He identified the specimen signatures sheet on which accused Reena Anand had signed. The order sheet is Ex.PD.

14. PW.8 SI Charan Singh testified that he was posted at PS Sarabha Nagar, Ludhiana, on 17.07.2012. He along with Inspector Manjinder Singh was present at canal bridge, Pakhowal Road, Ludhiana.

One Hitesh Anand came on the spot. He made statement. The same was sent to Police Station for registration of the case. The police visited the spot. Blood was lifted from nearby the dead body of Narinder Kumar Anand and put into a plastic container and converted into parcel. One bed sheet and pillow were also lifted from the spot and converted into parcel. Blood was lifted from near the dead body of Reva.

15. PW.9 HC Jatinder Kumar had taken the photographs of the place of occurrence. The photographs are Ex.PW.9/1 to Ex.PW.9/12.

16. PW.14 DSP Dharampal deposed that he went to the court of Chief Judicial Magistrate, Ludhiana, on 25.08.2012 for taking the sample of hair of accused Reena for comparison. The Magistrate passed the order Ex.PW.7/D and ordered the accused to give her specimen signatures and sample of hair. The accused refused to give her hair sample. However, she gave her consent to give her specimen signatures in English.

17. PW.16 Nitin Kumar testified that he received a telephone call from Hitesh Anand in the evening time on 17.07.2012, that his daughter Reva and his father Narinder Kumar Anand were murdered in the house. He left his work. He reached the house of Hitesh Anand along with his wife. The police had also reached the spot. The police inspected the dead bodies. The police also filled up inquest reports. His supplementary statement was also recorded by the police on 20.08.2012. In his cross-examination, he deposed that he received the call on his telephone from Hitesh Anand in the evening on 17.07.2012. He did not remember the exact time when he reached the house of Hitesh Anand. When he reached the house of Hitesh Anand, at the same time Hitesh Anand had reached along with the police.

Many people had assembled there. He had not mentioned in his statements Ex.PW.16/A and Ex.PW.16/B recorded by the police on 17.07.2012 about the long woman hair being recovered from the right hand of deceased Reva. In his supplementary statement, he got recorded that hair was recovered from the hand of deceased Reva.

18. PW.17 Dr. Ashwani Kalia deposed that the questioned signatures of Reena in English on two documents i.e. Ex.PB and Ex.PC were marked as Q1 and Q2. The admitted signatures of Reena in English on Oriental Bank of Commerce documents were marked as A1 to A8, i.e. on Ex.PE, Ex.PF, Ex.PG, Ex.PH, Ex.PJ, Ex.PK, Ex.PL and Ex.PM. The specimen signatures of Reena Anand in English language are on sheets i.e. mark S1 to S10 on Ex.PD. He carefully and thoroughly examined the questioned signatures Q1 and Q2 and compared them with the relevant standard signatures from the original documents in all aspects of handwriting identification and detection of forgery. He concluded that the person who wrote the standard signatures marked A1 to A8 and S1 to S10 also wrote the questioned signatures Q1 and Q2.

19. PW.18 Munish Arora deposed that on 21.07.2012, he was posted as Chief Judicial Magistrate, Ludhiana. An application was moved by Manjit Singh ASI for getting permission to take the hair of accused Reena. He passed order Ex.PW.18/A. He further deposed that an application was filed for getting the specimen signatures of accused Reena. He passed order dated 27.08.2012 vide Ex.PL. Accused Reena gave her specimen signatures in the court. He attested the same. The accused refused to give sample of her hair.

20. According to the FSL report Ex.PW.14/B, Kameez, Pyjama and Chunni were stained with human blood. However, no blood group was mentioned. As per the Chemical Examiner reports Ex.PW.2/G and Ex.PW.2/J, no poison was detected in the contents of exhibits I, II, III, IV and V.

21. The case of the prosecution hinges on the extra judicial confession made by the appellant before PW.3 Dr. Pawan Kumar Dhingra. According to him, he knew Reena wife of Hitesh Anand for the last 2/3 years. She used to visit his clinic along with her parents for the purpose of her treatment. On 18.07.2012, he came to know about the murder of Narinder Kumar Anand and his grand-daughter Reva. He came to know that Narinder Kumar Anand and Reva were family members of the appellant. He attended the cremation of both the deceased persons in the after-noon on 18.07.2012. Number of people had attended the cremation ceremony. In the evening of 18.07.2012, he went to the house of the appellant to share the grief. He could not meet the appellant and her family members at the time of cremation. He met the appellant in her house. At that time, she was perplexed. She asked to talk with him in a separate room. She took him to a vacant room in the house. He asked her the reason for being perplexed. She confessed before him that she had committed the murder of Narinder Kumar Anand and his grand-daughter Reva on 17.07.2012 with the help of small hammer and *Tesi*. She also confessed that her father-in-law Narinder Kumar wanted to transfer entire property in the name of his grand-daughter Reva. She did not like this step. She requested him to produce her before the police. On 19.07.2012, he joined his routine work. The appellant came to

him in his clinic. She told that the police was looking for her. She be produced before the police. He produced her before the police in the house of Hitesh Anand. The police interrogated her. Recoveries were made. PW.3 Dr. Pawan Kumar Dhingra deposed that the appellant was his patient. He testified that he met the appellant on 18.07.2012 in the evening. At that time, she was perplexed. She confessed about the murder. Thereafter, she visited his clinic on 19.07.2012. In case, the appellant had made an extra judicial confession before him, he should have brought this to the notice of the police on 18.07.2012 immediately. In his cross-examination, he admitted that he had talked with the appellant in the house of Hitesh Anand for half an hour to one hour, and till the visit of the appellant to his clinic on 19.07.2012, he did not inform the police about her confession. He had also not narrated this incident to his family members. Surprisingly, according to him, no record of OPD patients was maintained in their hospital. The record of indoor patients was maintained. A manual slip was issued for OPD patient and computer was used to issue slip to the indoor patient. No record of payment made by the appellant was maintained in their hospital. A manual register was maintained for recording the names of OPD patients. He had not charged any amount from the appellant. It is not believable that no record of OPD patients was maintained and no payment was accepted from the appellant. There is no whisper by PW.3 Dr. Pawan Kumar Dhingra about ailment of the appellant. The family members of the appellant do not belong to Ludhiana. Thus, there was no occasion for them to be treated by PW.3 Dr. Pawan Kumar Dhingra. The police had visited the place of occurrence on 17.07.2012. The house was not searched. The alleged

recoveries were made only on 19.07.2012, on the basis of disclosure statement made by the appellant regarding concealment of hammer, *Tesi*, her clothes and hand written note. In his cross-examination, PW.3 Dr. Pawan Kumar Dhingra categorically admitted that he was not a Panch, Sarpanch, Municipal Councillor or MLA. The extra judicial confession is ordinarily made before a man of authority. It is a weak evidence. In his statement recorded by the police on 19.07.2012, vide Ex.DX, PW.3 Dr. Pawan Kumar Dhingra had categorically stated that he was working in hospital. Hitesh Anand was close to him due to surgical work and they had good relation with each other family. However, in his deposition before the court, he categorically deposed that he did not know PW.1 Hitesh Anand. In his cross-examination, he deposed that he met Harish Anand for the first time on 19.07.2012 at late night.

22. Their Lordships of the Supreme Court in **Thimma vs The State of Mysore, AIR 1971 SC 1871** have held that an extra judicial confession made to one who is not a person in authority and which is free from any suspicion as to its voluntary character and has also a ring of truth in it is admissibility in evidence against the accused and deserves to be acted upon. But in the process of proof of a confession the Court must be satisfied that it is voluntary, it does not appear to be the result of inducement, threat or promise as contemplated by the section and the surrounding circumstances do not indicate that it is inspired by some improper or collateral consideration suggesting that it may not be true. The Court must scrutinize all the relevant factors, such as, the person to whom the confession was made, the time and place of making it, the circumstances in which it was

made and finally the actual words. Their Lordships have held as under :-

“9. The trial court was not favourably impressed by the testimony of Ganga (P.W. 4) though it felt convinced that on the day following the disappearance of the deceased he had knowledge both of the commission of the offence and of the place where the dead body was lying. That court did not rely on his testimony in regard to the extra-judicial confession because it was considered incredible. The High Court on appeal disagreed with the trial court in its appreciation of the evidence of P.W. 4. According to the High Court the evidence of P.W. 4 was corroborated by the evidence of P.W. 13 and P.W. 25. The extra-judicial confession was, therefore, held to be admissible and trust Worthy. Before us it was contended, that the extrajudicial confession said to have "been made to P.W. 4 is inadmissible and in any event without corroboration in material particulars from independent source it is unsafe to act upon it. It was emphasised that P.W. 4 was at one stage of the investigation suspected of complicity in this murder and, therefore, he should be treated no better than an accomplice. In our opinion, this criticism is not justified. An unambiguous confession, if admissible in evidence, and free from suspicion suggesting its falsity, is a valuable piece of evidence which possesses a high probative force because it emanates directly from the person committing the offence. But in the process of proof of an alleged confession the court has to be satisfied that, it is voluntary, it does not appear to be the result of

inducement, threat or promise as contemplated by section 24, Indian Evidence Act and the surrounding circumstances do not indicate that it is inspired by some improperly or collateral consideration suggesting that it may not be true. For this purpose, the court must scrutinise all the relevant factors, such as, the person to whom the confession is made, the time and place of making it, the circumstances in which it is made and finally the actual words. In the case in hand it is quite clear that P.W. 4 is not a person in authority. There can thus be no question of any inducement, threat or promise rendering the confession irrelevant. Nor has any cogent reason been suggested why the appellant should have made an untrue confession to P.W. 4 within 24 hours of the disappearance of the deceased. On the other hand, the appellant appears to have been impelled by some inner urge to take the assistance of P.W. 4, his real nephew, to go to the place of occurrence to see as to what had happened to the dead body of his victim. Such behaviour cannot be considered unnatural. The confession appears to us to be free from any taint which would throw suspicion on its voluntary character and it has a ring of truth in it. The fact that during the investigation P.W. 4 was suspected of being involved in the murder would also not cast any doubt on the voluntary character of the confession or on its true nature because it is the knowledge of P.W. 4 derived from this very confession which perhaps invited suspicion on him. We do not consider this to be a

cogent ground for holding that P.W. 4 had any motive to concoct the story of confession. This confession is, therefore, admissible in evidence and being true, deserves to be acted upon. The words used are quite clear and 'admit of no doubt of the appellant's guilt. And then though the evidence of P.W. 4 does not need any corroboration we find that corroboration in material particulars is forthcoming on the record. The existence of the dead body and all the other articles at the place where they were later found and the evidence of Basappa (P.W.13) which proves the visit of the appellant and P.W. 4 to the spot on Saturday following the disappearance of the deceased furnish strong corroboration. The High Court was thus quite right in relying on the extra-judicial confession made to P.W. 4. The confessions said to have been made to P.W. 31 and to Abdul Rahman (P.W. 22) stand on a different footing. Both the courts below have not considered it safe to rely on these confessions and we do not find any sufficient reason for disagreeing with them."

23. Their Lordships of the Supreme Court in **Jagta vs State of Harayna, AIR 1974 SC 1545** have held that the evidence about an extra-judicial confession in the nature of things is a weak piece of evidence and if the same is lacking in probability there would be no difficulty in rejecting the same. Their Lordships have held as under :-

"14. So far as the alleged extra judicial confession of the accused is concerned, the prosecution has relied upon the evidence on Ram Singh (PW 4). After having been taken through

the evidence of that witness, we find the same to be lacking in credence and devoid of any ring of truth. The police was admittedly present in the office of the cooperative society in village Farmana on the morning of January 15, 1972. We find no reason as to why the accused, instead of surrendering himself before the police, should go to the house of Ram Singh in village Farmana, blurt out a confession before him and ask him to produce the accused before the police. Nothing has been shown to us as to why the accused could not himself go and appear before the police. We have mentioned above that an attempt has been made in this case to introduce the story of the recovery of ornaments belonging to Phul Pati deceased from the accused. The attempt of the investigating agency to introduce a false story about the removal of the ornaments of the deceased and their recovery from the accused would in our opinion, also affect the credibility of the evidence regarding the extra judicial confession alleged to have been made to Ram Singh PW. The evidence about an extra judicial confession is in the nature of things a weak piece of evidence. If the same is lacking in probability as it is in the present case, there would be no difficulty in rejecting the same. We are, therefore, not prepared to place any reliance upon the evidence regarding the extra judicial confession of the accused.”

24. Their Lordships of the Supreme Court in **Lakhanpal vs The State of Madhya Pradesh, AIR 1979 SC 1620** have held that it is unsafe to

rely on the evidence of extra-judicial confession made to a person, who has never told about this to any one else though he met number of persons on the date of occurrence. Their Lordships have held as under:

“4. So far as the first circumstance is concerned in the facts of this particular case it is not sufficient to prove conclusively that the appellant committed the murder of the deceased. According to Public Witness Bhagwandas, the father of the appellant, the sowing was stopped at 4 o'clock in the evening. In the circumstances, therefore, if the appellant would have attacked the deceased he being a young man of 17 years would have undoubtedly put up stiff resistance in order to protect himself and in all probability would have caused some injuries on the person of the appellant also. For these reasons, therefore) the mere fact that the appellant and the deceased were together in the field does not lead to the irresistible inference that the appellant must have murdered the deceased. As regards the extra-judicial confession made by the appellant before Sukhial, we are unable to believe the version given by the witness Sukhial. While being examined as a witness in the Sessions Court he had clearly stated that no confession was made before him. His attention was however drawn to his statement made by him before the committing Magistrate where he had admitted that he saw the appellant running and on being questioned the appellant told him that he had committed a mistake and had killed his brother due to a quarrel. In cross-examination the witness

admitted that he did not narrate this story of the murder to anybody. He made the disclosure for the first time when he was called to the police station. The witness met a number of persons on that day but he did not mention the factum of the confession to any one of them. Secondly the evidence shows that he was not known to the appellant and therefore we find it difficult to believe that the appellant would make a confession to a person who was not known to him at all. For these reasons, therefore, we find it wholly unsafe to accept the evidence of the extra-judicial confession of the appellant to Public Witness Sukhial. Another important circumstance which negatives the prosecution case is that no motive whatsoever for the appellant to kill his brother has been either alleged or proved. Further the deceased appears to have received as many as 12 incised wounds on various parts of the body and this could not have been done by the appellant alone unless he was accompanied by other friends. We are clearly of the view that the prosecution has not proved the case against the appellant beyond reasonable doubt. We, therefore, allow this appeal, set aside the judgment of the High court and acquit the appellant of the charges framed against him. The appellant may now be released forthwith."

25. Their Lordships of the Supreme Court in **Narayan Singh and others vs State of M.P. AIR 1985 SC 1678** have held that it would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Their

Lordships have held as under :-

“7. Apart from this there is the evidence of PWs 5 and 9 who state on oath that one of the accused admitted before them that he had murdered the deceased. The learned Sessions Judge has brushed aside their evidence by presuming that their statements constituting an extrajudicial confession is a very weak type of evidence. This is a wrong view of the law. It is not open to any Court to start with a presumption that extra judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession in the instant case, after perusing the evidence of PWs 5 and 9 we are unable to find anything which could lead to the conclusion that these independent witnesses were not telling the truth. The evidence of these two witnesses (PWs 5 and 9) which lends support to the evidence of PW 11 was sufficient to warrant the conviction of the accused. The Sessions Judge has committed a grave error of law in analysing and appreciating the evidence of PWs 5 and 9 and brushing them aside on untenable grounds.”

26. Division Bench of the Orissa High Court in **Moti Gouduni vs State, 1982 Cri.L.J. 2342** has held that the evidence of witnesses with regard to an extra-judicial confession must not lack plausibility and must inspire the confidence of the court before the same is accepted. Division Bench has held as under :-

“9. P.Ws. 2 and 3 are the witnesses who have testified about the extra-judicial confession said

to have been made by the appellant before them. The evidence relating to extra-judicial confession, in the very nature of things, is a weak piece of evidence, as observed by the Supreme Court in the case of State of Punjab v. Bhajan Singh. The evidence of witnesses with regard to an extra-judicial confession must not lack plausibility and must inspire the confidence of the court before the same is accepted. A Division Bench of this Court consisting of one of us, in the case of Buti alias Gunasagar behera v. State of Orissa 53 Cut LT 130 : 1982 Cri Lj 938 has held that the value of the evidence as to the extra-judicial confession like any other evidence depends upon the veracity of the witnesses to whom it is made and it is not an invariable rule that the court should not accept the evidence if not the actual words but the substance is given by the witnesses. Reliance had been placed on the principles laid down by the Supreme Court in the cases of Mulk Rai v. State of Uttar Pradesh AIR 1959 SC 902 : 1959 Cri LJ 1219 and Maghar Singh v. State of Punjab .”

27. In his earlier statement made before the police on 17.07.2012, PW.1 Hitesh Anand had not made even a whisper about the motive. However, when his statement was recorded on 28.09.2012, he had attributed motive to the appellant that she was upset about the factum of the property being transferred by his father in the name of Reva. PW.1 Hitesh Anand in his cross-examination deposed that he did not remember if he produced any document of title relating to the estate of his father during the investigation of this case. He did not remember the names of banks or their branches

where his father was having saving accounts. He did not remember the names of the banks or branches from where he got transferred the amount deposited in the name of his father in his name as nominee. He did not remember the names of the banks, in which his father deposited amount in the shape of FDRs out of retirement benefits. Similarly, supplementary statement of PW.16 Nitin Kumar was recorded on 20.08.2012 vide Ex.DBB, where for the first time, he had attributed specific motive to the appellant. He is brother-in-law of complainant Hitesh Anand. Supplementary statement of PW.1 Hitesh Anand was recorded on 28.09.2012 and that of Nitin Kumar was recorded on 20.08.2012.

28. The prosecution has also placed reliance upon the hand written notes, Ex.PB and Ex.PC. According to Ex.PB, allegedly written in Hindi by the appellant, she had written details that Labour came at 9.45 AM; Papa, Hitesh went to bank at 11.00 AM; came back from bank at 11.15 AM; Papa had tea at 11.30 AM; Papa went to his room and watched TV at 12.00 PM; labour went to eat food at 12.15 PM; Papa slept at 12.30 PM; hammer hit on head of Papa and he fell unconscious, then she had not gone to the room from 12.45 PM to 1.00 PM. Reva came back from school and changed her clothes in her room at 1.45 PM; she cooked food and served at 2.15 PM; Reva went to Papa room and saw Papa in pool of blood, then Reva fell on the floor and she hit *Tesi* on her forehead, then she put the room on fire by phenyl, she picked the phenyl from the back side area, she rolled the dusting cloth over stick and burnt the fire at 3.30 PM. Then she had gone to pay tuition fee to the tutor at 4.05. She came back home at 4.20 PM and checked water. Then she visited Sukhman house at 4.30 PM. At 4.45 PM, she came

back home. In Ex.PC, the appellant allegedly wrote that Reva irritates her saying that she was not her real mother. Her mother resides in Amritsar. Papa asked her to make drink for him once or twice every time. Every time he asked her to accompany him to see movie. 1-2 times, she did not like his actions. Whenever, she slept on her bed, some times he came and slept on the same bed. She did not feel it right. 3-4 times, he even touched her. 1-2 times she felt that he touched her unintentionally, but due to 3-4 time occurrences, she did not like it. It is common sense that no woman would maintain the minute details that when labour came, and how her father-in-law and daughter were killed. Ex.PB and Ex.PC are in Hindi. However, signatures of the appellant were in English, which were got compared with the specimen signatures put by the appellant at the time of opening bank account.

29. PW.1 Hitesh Anand has categorically stated that he had gone to Haridwar in the morning of 19.07.2012. However, PW.4 Inspector Manjinder Singh categorically stated in his cross-examination that when he visited the house of Hitesh Anand on 19.07.2012, Hitesh Anand was present in the house. Thus, the version given by Hitesh Anand that he had gone to Haridwar on 19.07.2012 is not believable. He could not give the name of Pandit of his family. He could not tell when he reached Haridwar on 19.07.2012. He did not get entry in the register of Pandit at Haridwar about the purpose of his visit on 19.07.2012.

30. The motive attributed to the appellant is that her father-in-law wanted to transfer his property in the name of his grand-daughter Reva. In his cross-examination, PW.1 Hitesh Anand categorically admitted that his

father had simply decided to transfer his assets in the name of his daughter Reva, but till his death, he had not taken any legal step to transfer his assets in the name of Reva.

31. According to PW.1 Hitesh Anand, his friend Sangeet Sharma had also visited his house on 17.07.2012 to attend lunch with him. Sangeet Sharma found the appellant perplexed. He asked about the reason. He had noticed blood stains on the Naswari suit worn by the appellant. Sangeet Sharma was never examined. PW.1 Hitesh Anand in his first statement before the police, vide Ex.PA on 17.07.2012, had stated that he along with his neighbour Khushwant Singh was going to inform the police. On the way, he met the police. Khushwant Singh was never examined. The prosecution case is also that PW.1 Hitesh Anand had engaged labourers through Kuldeep Singh. Kuldeep Singh had informed him in the evening of 17.07.2012 that his wife had told the labourers to go. Neither any labourer who was working in the house of Hitesh Anand nor Kuldeep Singh was examined.

32. The prosecution has also placed reliance upon the statement made by PW.1 Hitesh Anand vide Ex.D1. This statement was made on 28.09.2012 and his earlier statement was made on 17.07.2012. He also admitted in his cross-examination that his father performed two marriages during his life time. The name of his mother was Smt. Savita Anand. She was first wife of his father. She died in the year 1992. His father solemnized second marriage with Chandani in the year 1992. She died a natural death. He admitted that a case under Section 306 IPC was registered against him and his father and their relatives, qua the death of Chandani, i.e. the second

wife of his father. He also admitted that brother of Chandani had filed a criminal complaint under Section 302 IPC against him, his father, his previous father-in-law and mother-in-law namely Vinod Kumar Mahajan and Usha Mahajan. He also deposed that he had no business dealings or other dealing with Pawan Kumar Dhingra. He did not know if Pawan Kumar Dhingra visited his house on 18.07.2012. He could not tell the exact time when he met Pawan Kumar Dhingra in the presence of the police on 19.07.2012 in his house after he came back from Haridwar. He became semi-unconscious after hearing from the police about the statement of Pawan Kumar Dhingra. He went to Haridwar in the morning on 19.07.2012. Vinod Kumar Mahajan, his first father-in-law and his cousin Amit accompanied him to Haridwar. Neither Vinod Kumar Mahajan nor Amit was examined. He did not even remember the time for which Pawan Kumar Dhingra and police stayed in his house on 19.07.2012. He also did not know that Pawan Kumar Dhingra had visited his house in the evening on 18.07.2012. He specifically stated that he met Pawan Kumar Dhingra for the first time on 19.07.2012. The police did not search his house on 17.07.2012. Police also came to his house on 18.07.2012. In case, Pawan Kumar Dhingra had visited the house of Hitesh Anand on 18.07.2012, his presence could not remain unnoticed, more particularly when he had proclaimed that he talked to the appellant in a separate room of the house of the complainant for more than half an hour. PW.1 Hitesh Anand also admitted in his cross-examination that he had not mentioned in his statement Ex.PA that deceased Reva was holding long hair in her hand. PW.3 Pawan Kumar Dhingra in his statement made before the police deposed that he had business dealings with

PW.1 Hitesh Anand, but denied the same when he appeared before the court.

33. As far as statement of PW.17 Dr. Ashwani Kalia is concerned, he had not seen the handwriting of the appellant, but had only compared the questioned signatures on the notes Ex.PB and Ex.PC vis-a-vis the signatures put by the appellant at the time of opening account in the Oriental Bank of Commerce. The notes Ex.PB and Ex.PC are in Hindi.

34. The recoveries of hammer and *Tesi* were alleged made from the roof of the house of the complainant, but no independent witness was associated, though it has come on record that house of the complainant was situated in a thickly populated area.

35. Learned counsel appearing on behalf of the State has vehemently argued that the appellant had refused to give sample of her hair for comparison. The case of the prosecution is that hair was recovered from the hand of deceased Reva. But there is no mention of the same in column No.15 of the inquest report of Reva, Ex.PC. This theory of the police has been introduced later on.

36. Learned counsel appearing on behalf of the State has also argued that recovery of hammer and *Tesi* was at the instance of the appellant. The fact of the matter is that the police had visited the house of complainant Hitesh Anand on 17.07.2012 and 18.07.2012. At that time, house of the complainant was not searched. The search was carried out only on 19.07.2012.

37. The case of the prosecution is based upon circumstantial evidence. The chain must be complete and the circumstances must

specifically point towards guilt of the accused. The motive also plays important role when the case is based on circumstantial evidence. The prosecution has failed to prove motive.

38. Their Lordships of Hon'ble Supreme Court in ***Dandu Jaggaraju vs. State of Andhra Pradesh, (2011) 14 Supreme Court Cases 674*** have held that in a case relating to circumstantial evidence, motive is often a very strong circumstance which has to be proved by the prosecution. Their Lordships have held as under:-

“9. It has to be noticed that the marriage between P.W. 1 and the deceased had been performed in the year 1996 and that it is the case of the prosecution that an earlier attempt to hurt the deceased had been made and a report to that effect had been lodged by the complainant. There is, however, no documentary evidence to that effect. We, therefore, find it somewhat strange that the family of the deceased had accepted the marriage for about six years more particularly, as even a child had been born to the couple. In this view of the matter, the motive is clearly suspect. In a case relating to circumstantial evidence, motive is often a very strong circumstance which has to be proved by the prosecution and it is this circumstance which often forms the fulcrum of the prosecution story.”

39. Their Lordships of Hon'ble Supreme Court in ***Pudha Raja and another vs. State, represented by Inspector of Police, (2012) 11 Supreme Court Cases 196*** have held that the motive assumes great significance and importance in case of circumstantial evidence and absence of motive puts

court on its guard and causes it to scrutinize each piece of evidence very closely in order to ensure that suspicion, emotion or conjecture do not take the place of proof. Their Lordships have held as under:-

“16. Furthermore, in such a case, motive assumes great significance and importance, as the absence of motive puts the court on its guard and causes it to scrutinize each piece of evidence very closely in order to ensure that suspicion, emotion or conjecture do not take the place of proof. The evidence regarding existence of motive which operates in the minds of assailants is very often, not known to any other person. The motive may not even be known, under certain circumstances, to the victim of the crime. It may be known only to the accused and to none other. It is therefore, only the perpetrator of the crime alone, who knows as to what circumstances prompted him to adopt a certain course of action, leading to the commission of the crime.”

40. Their Lordships of Hon’ble Supreme Court in ***Rishi Pal vs. State of Uttarakhand, (2013) 12 Supreme Court Cases 551*** have held that while motive does not have a major role to play in cases based on eye witness account of incident, it assumes importance in cases that rest entirely on circumstantial evidence. Their Lordships have further held that essence of requirements that must be satisfied in cases resting on circumstantial evidence is that not only should circumstances sought to be proved against the accused be established beyond reasonable doubt, but also that such circumstances form so complete a chain, as leaves no option for court,

except to hold that accused is guilty of offences with which he is charged.

Their Lordships have held as under:-

“14. The second aspect to which we must straightaway refer is the absence of any motive for the appellant to commit the alleged murder of Abdul Mabood. It is not the case of the prosecution that there existed any enmity between Abdul Mabood and the appellant nor is there any evidence to prove any such enmity. All that was suggested by learned counsel appearing for the State was that the appellant got rid of Abdul Mabood by killing him because he intended to take away the car which the complainant-Dr. Mohd. Alam had given to him. That argument has not impressed us. If the motive behind the alleged murder was to somehow take away the car, it was not necessary for the appellant to kill the deceased, for the car could be taken away even without physically harming Abdul Mabood. It was not as though Abdul Mabood was driving the car and was in control thereof so that without removing him from the scene it was difficult for the appellant to succeed in his design. The prosecution case on the contrary is that the appellant had induced the complainant to part with the car and a sum of Rs.15,000/-. The appellant has been rightly convicted for that fraudulent act which conviction we have affirmed. Such being the position, the car was already in the possession and control of the appellant and all that he was

required to do was to drop Abdul Mabood at any place en route to take away the car which he had ample opportunity to do during all the time the two were together while visiting different places. Suffice it to say that the motive for the alleged murder is as weak as it sounds illogical to us. It is fairly well-settled that while motive does not have a major role to play in cases based on eye-witness account of the incident, it assumes importance in cases that rest entirely on circumstantial evidence. [See Sukhram v. State of Maharashtra (2007) 7 SCC 502, Sunil Clifford Daniel (Dr.) v. State of Punjab (2012) 8 SCALE 670, Pannayar v. State of Tamil Nadu by Inspector of Police (2009) 9 SCC 152]. Absence of strong motive in the present case, therefore, is something that cannot be lightly brushed aside.

XXX XXX XXX

19. It is true that the tell-tale circumstances proved on the basis of the evidence on record give rise to a suspicion against the appellant but suspicion howsoever strong is not enough to justify conviction of the appellant for murder. The trial Court has, in our opinion, proceeded more on the basis that the appellant may have murdered the deceased-Abdul Mabood. In doing so, the trial Court over looked the fact that there is a long distance between 'may have' and 'must have' which distance must be traversed by the prosecution by producing cogent and reliable evidence. No such evidence is unfortunately forthcoming in the instant case. The legal position on the subject is well settled and does

not require any reiteration. The decisions of this Court have on numerous occasions laid down the requirements that must be satisfied in cases resting on circumstantial evidence. The essence of the said requirement is that not only should the circumstances sought to be proved against the accused be established beyond a reasonable doubt but also that such circumstances form so complete a chain as leaves no option for the Court except to hold that the accused is guilty of the offences with which he is charged. The disappearance of deceased-Abdul Mabood in the present case is not explainable as sought to be argued before us by the prosecution only on the hypothesis that the appellant killed him near some canal in a manner that is not known or that the appellant disposed of his body in a fashion about which the prosecution has no evidence except a wild guess that the body may have been dumped into a canal from which it was never recovered.”

41. Since the case is based upon circumstantial evidence, it was necessary for the prosecution to prove the entire chain and all the circumstances must categorically point towards guilt of the accused. Their Lordships of the Supreme Court in **Balu Sonba Shinde Vs. The State of Maharashtra**, 2002 (7) SCC 543, have summarised the principle of circumstantial evidence. Their Lordships have held as under :-

*“3. The word of caution introduced in the judgment of this Court about five decades ago in that direction however still stands as an acceptable guide. This Court in **Hanumant***

Govind Nargundkar & Anr. v. State of Madhya Pradesh (AIR 1952 SC 343) stated:

"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."

4. Subsequently, the Constitution Bench of this Court in ***MG Agarwal and Anr. vs. State of Maharashtra (AIR 1963 SC 200)*** in the similar vein and without any contra note stated the law with utmost lucidity in the manner noted below:

"It is a well established rule in criminal jurisprudence that circumstantial evidence can be reasonably made the basis of an accused person's conviction if it is of such a character that it is wholly inconsistent with the innocence of the accused and is consistent only with his guilt. If the

circumstances proved in the case are consistent either with the innocence of the accused or with his guilt, then the accused is entitled to the benefit of doubt. There is no doubt or dispute about this position. But in applying this principle, it is necessary to distinguish between facts which may be called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to the proof of basic or primary facts, the Court has to judge the evidence in the ordinary way, and in the appreciation of evidence in respect of the proof of these basic or primary facts there is no scope for the application of the doctrine of benefit of doubt. The court considers the evidence and decides whether that evidence proves a particular fact or not. When it is held that a certain fact is proved, the question arises whether that fact leads to the inference of guilt of the accused person or not, and in dealing with this aspect of the problem the doctrine of benefit of doubt would apply and an inference of guilt can be drawn only if the proved fact is wholly inconsistent with the innocence of the accused and is consistent only with his guilt."

5. *Similar however is the opinion of this Court in **Pawan Kumar v. State of Haryana [2001 (3) SCC 628] : 2001 (2) RCR (Crl.) 161 (SC)** in which one of us (U.C. Banerjee, J.) was a*

party. The opinion of the Court runs as under :

*"Incidentally, success of the prosecution on the basis of circumstantial evidence will however depend on the availability of a complete chain of events so as not to leave any doubt for the conclusion that the act must have been done by the accused person. While, however, it is true that there should be no missing links, in the chain of events so far as the prosecution is concerned, but it is not that every one of the links must appear on the surface of the evidence, since some of these links may only be inferred from the proven facts. Circumstances of strong suspicion without however any conclusive evidence are not sufficient to justify the conviction and it is on this score that great care must be taken in evaluating the circumstantial evidence. In any event, on the availability of two inferences, the one in favour of the accused must be accepted and the law is well settled on this score, as such we need not dilate much in that regard excepting however, noting the observations of this Court in the case of **State of U.P. Vs. Ashok Kumar Srivastava (AIR 1992 SC 840) : 1992 (3) RCR (CrL) 63 (SC)** wherein this Court in paragraph 9 of the report observed:-*

"This Court has, time out of number, observed that while appreciating circumstantial evidence the Court must

adopt a very cautious approach and should record a conviction only if all the links in the chain are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negated on evidence. Great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. The circumstance relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt. But this is not to say that the prosecution must meet any and every hypothesis put forward by the accused however far-fetched and fanciful it might be. Nor does it mean that prosecution evidence must be rejected on the slightest doubt because the law permits rejection if the doubt is reasonable and not otherwise."

*The other aspect of the issue is that the evidence on record, ascribed to be circumstantial, ought to justify the inference of the guilt from the incriminating facts and circumstances which are incompatible with the innocence of the accused or guilt of any other person. The observations of this Court in the case of **Balwinder Singh Vs. State of Punjab (AIR 1987 SC 350)** lends concurrence to*

the above."

42. The prosecution has failed to prove its case against appellant Reena beyond reasonable doubt.

43. Accordingly, CRA-D-779-DB of 2017 is allowed. The impugned judgment of conviction and the order of sentence dated 28.07.2017 rendered by the trial court are set aside. The appellant be released forthwith.

44. Since CRA-D-779-DB of 2017 has been allowed, CRR-3284 of 2017 has become infructuous. Same is, accordingly, dismissed as having rendered infructuous.

**(RAJIV SHARMA)
JUDGE**

May 31, 2019
ndj

**(HARINDER SINGH SIDHU)
JUDGE**

Whether speaking/reasoned	Yes
Whether Reportable	Yes