

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

+ CRL.A. 78/2019

Reserved on: 06.03.2019

Date of decision: 05.04.2019

IN THE MATTER OF:

LUCKY NOEL

..... Appellant

Through: Ms. Rakhi Dubey, Advocate
(DHCLSC)

versus

STATE OF DELHI

..... Respondent

Through: Mr. Amit Gupta, APP for State.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

HIMA KOHLI, J.

1. The appellant is aggrieved by the judgment dated 25.9.2018, passed by the learned Additional Sessions Judge in Sessions Case No.441011/2016, arising from FIR No.151/2013, PS Chhawla whereunder, he has been convicted under Section 302 IPC for the murder of his mother, Venus Noel. In terms of the order on sentence dated 27.9.2018, the appellant has been sentenced to undergo imprisonment for life with a fine of Rs.2,000/- and in default of payment of fine, directed to undergo simple imprisonment for a period of six months.

2. The investigation in the present case commenced on 26.5.2013, when the appellant arrived at PS Chhawla alongwith his wife and reported that he had left his mother at her home on the first floor of House No.1, A Block, Qutub Vihar, Goyla Dairy, Najafgarh, New Delhi on 25.5.2013, but on visiting her on 26.5.2013, he found the premises locked. The said complaint was reduced into writing vide DD No.29A and marked to SI Vikas Yadav, who along with Constable Naveen Kumar accompanied the appellant to the above premises. Inquiries were made from the neighbourhood but nothing could be ascertained by the police. On arriving at the residence of Venus Noel, the appellant broke open the lock in the presence of the police. On entering the house, the dead body of a lady was found lying on the floor, which was identified by the appellant as that of his mother. The statement of the appellant was recorded by SI Vikas Yadav, who prepared the *rukka* and handed it over to Constable Naveen Kumar at around 5 P.M. for getting the case registered. FIR No.151/2013 was registered on the same day at PS Chhawla at 6.10 P.M. and thereafter, the investigation was marked to Inspector Ashok Kumar, who reached the spot with the staff. On conclusion of the investigation, the charge sheet was filed and vide order dated 11.0.2013, the trial court framed charge against the appellant under Section 302 IPC.

PROSECUTION EVIDENCE

3. To bring home the guilt against the appellant, the prosecution has examined 28 witnesses in all. Sh. Wilfred Noel, husband of the deceased, appeared as PW-1 and deposed that he and his wife were staying on the first floor of premises No.1, A Block, Qutub Vihar, Goyla Dairy,

Najafgarh, New Delhi for four years prior to the crime; that he had four children, i.e., two sons and two daughters. The appellant, who is the younger son, was residing with his family in Trans Yamuna for the past five years. Similarly, the elder son, Deepak Noel (PW-2) and his family were residing separately; that two months before the incident, the appellant's wife had left for Jhansi to undergo training in a nursing course and he had shifted to his parents' home; that about one month prior to the incident, PW-1 had moved from his home to a rented accommodation at Goyla Dairy. The witness stated that a couple of days prior to the date of the incident, his wife had called him on his mobile phone and had asked him to arrange some amount to pay the rent to the landlord, but he had expressed his inability to pay the same on account of paucity of funds. On 26.5.2013, PW-1 received a telephone call from the appellant's wife, Deepika, informing him that his wife had expired and asking him to come over. On reaching his home, PW-1 found the appellant present there. The dead body of Venus Noel lying there was shifted by the police officers to RTRM Hospital, Jaffarpur. PW-1 and the appellant were taken to the Police Station where they were detained for three days. On being released, he had gone to RTRM Hospital, identified the body of his wife vide identification memo Ex.PW1/A. After the postmortem was conducted on the dead body, it was handed over to the witness.

4. Since PW-1 had resiled from his previous statement, the trial court granted permission to the learned APP to cross-examine him. In his cross-examination, the witness stated that the reason for his leaving the rented accommodation, where he and his wife were earlier residing, was

the constant tension created by his wife and the appellant; that on 25.5.2013, he had made a call to his wife on her mobile phone, but he did not get any response; that he had called his wife on her mobile phone several times as he had to take her with him for getting photographs to make an ESI Card; that his deceased wife used to take tuition classes; that the mobile phone number of his wife was 9953746435 and his own mobile phone number was 9654482453.

5. Sh. Deepak Noel, son of the deceased appeared as PW-2 and deposed that on 26.5.2013, he had received a telephone call from the appellant's wife regarding the death of his mother and asking him to reach her residence at Goyla Dairy; on reaching the said address, he found his mother's dead body lying in a room on the first floor. PW-2 identified the dead body of his mother vide identification memo, Ex.PW2/A. He also proved Ex.PW2/B, the handing over memo of the dead body of his mother after the postmortem was conducted. The said witness was cross-examined by the learned APP on the ground that he was resiling from his previous statement made on 27.5.2013. In his cross-examination, PW-2 stated that he could not re-collect as to whether he had received a telephone call from the appellant on 26.5.2013. He denied the suggestion made that the appellant's wife did not call him on 26.5.2013 as she was out of station on account of a nursing course. In his cross-examination conducted by the defence counsel, PW-2 stated that his mother had never complained to him against any misbehaviour by the appellant; that on 25.5.2013, his mother had called him on his mobile phone at around 8.30 P.M. regarding non-payment of the rent by his father; that his mother had told him that the appellant had left the home

for the house of his in-laws at Jagatpuri on 25.5.2013 at 1.30 P.M. for taking treatment of his stomach ache; that he came to know about the death of his mother on 26.5.2013, at 12 Noon and reached her home at 3.00-3.30 P.M.

6. Sh. Rajender Singh (PW-4) was the tenant residing on the ground floor of the same premises where the deceased, Venus Noel was residing on the first floor. The testimony of the said witness is critical to the prosecution case as he has been described as the last seen witness in the instant case. PW-4 identified the appellant in the Court and stated that he was staying on the first floor of the premises along with his mother; that on 25.5.2013, he was present in his house and at about 9 A.M., he had seen the appellant with a packet of bread in his hand, coming from the market. Thereafter, he had seen the appellant on the same day, at around 11 A.M., going to the toilet situated on the ground floor and had lastly seen the appellant at around 1.30 P.M. coming down from the first floor stairs with a black bag.

7. PW-4 further deposed that on the next day, i.e., on 26.5.2013, at about 1.30 P.M., the appellant had come to his house and made inquiries about his mother, who he had stated was missing from 25.5.2013. He told the appellant that he had not seen his mother either on 25.5.2013 or on 26.5.2013 and on seeking his advice, he told him to call the police. The appellant left thereafter. On the same day at 3 P.M., PW-4 was woken up by his children, who informed him that Venus Noel had been murdered and the police was upstairs. On going upstairs, he was not permitted to enter the room where the dead body was lying, but he noticed a foul smell emanating from inside. After some time, the

decomposed body of Venus Noel was brought out and taken by the police in an ambulance. In his cross-examination, PW-4 stated that the appellant had shifted to Venus Noel's house about a month and a half before the incident; that prior to the appellant shifting in the tenanted house, only his parents were staying there, but after about 10 days of the appellant shifting there, his father (PW-1) had left the house; that the deceased used to take tuition classes in the afternoon between 3.30 P.M. to 6 P.M. and on 25.5.2013, when the children had gone to the first floor for the tuition classes, they had come down immediately and left for their respective homes. Lastly, the witness stated that his statement was recorded by the police after two days from the date of recovery of the dead body.

8. Retd. Captain Dariao Singh (PW-5), who is the owner of the premises where the deceased was staying with her husband as tenants on the first floor, deposed that two months prior to the date of the incident, the husband of the deceased (PW-1) had started residing separately. He also identified the appellant in Court and stated that he was staying with his mother in the tenanted room. Sh. Vijay Kumar (PW-6), another tenant under PW-5 occupying a shop on the ground floor of the premises in question, stated that by using his ID proof, PW-1 had obtained two mobile numbers bearing number 9654482453 and 8860369127.

9. Ms. Roseleen Romel, (PW-7), daughter of Venus Noel and PW-1, deposed that her parents were residing in the premises in question in the year 2013 and the mobile number that was being used by her mother, was obtained by using her ID proof. With the permission of the Court, the learned APP had put a leading question to her as to whether her

mother was using mobile number 9953746434, to which she had replied in the affirmative. It emerges from her cross-examination that the said witness was not on talking terms with her mother for two years before the incident. She stated that she had received a telephone call from her mother on 25.5.2013, at around 7 P.M., when she was at Lakshmi Nagar market. The said call was made from a landline number. Since the said number was not in her phone memory, the witness had answered the same but on discovering that her mother was on the other side, she had promptly disconnected the line.

10. The MLC on the body of the deceased was conducted by Dr. Nikhil Nishant, Casualty Medical Officer (PW-8), who proved the same as Ex.PW8/A. He deposed that on 26.5.2013 at about 8.42 P.M., the body of the deceased was brought by Constable Naveen, (PW-11) to the hospital and on examination, he had declared the deceased as brought dead.

11. The postmortem examination of the dead body was conducted by Dr. Parvinder, Jr. Specialist, Department of Forensic Medicine, RTRM Hospital, Jaffarpur, New Delhi (PW-9). He proved the postmortem report as Ex.PW9/A and stated that he had noticed the following injuries on the body of the deceased:-

“1. Ligature mark – ligature strangulation mark (pressure abrasion) present over thyroid, cartilage level completely encircling neck, transversely placed, grooved and prominent over front and nape of neck, 6 cm. below chin and 11 cm above sternal angle, 7 cm. from left ear lobule and 6 cm. from right ear lobule with width of 1.5 cm. over front of neck and 1 cm over other parts of neck. Total neck circumference is 33 cm.

2. *Neck Structures—On dissection layer by layer sub cutaneous tissue shows effusion of blood under the ligature mark. Tracheal and oesophageal mucosa congested. Tracheal lumen contains frothy bloody discharge. Thyroid fracture (thyroid cartilage body) in the middle part.*

3. *Articles/specimens preserved—clothings, blood sample (dried gauze piece) and viscera (reserved in saturated common salt solution). All sealed with the seal of RTRM Hospital and handed over to IO for analysis.”*

12. The doctor (PW-9) opined that the cause of death was due to “*asphyxia following ante mortem ligature strangulation and the time since death was approximately more than 36 hrs prior to preservation in the mortuary*”. He had also proved his subsequent opinion in respect of the weapon of offence, a yellow colour electric wire, marked as Ex.PW9/B, wherein he opined that “*the ligature mark mentioned in the post mortem report could be possible by the said electric wire like the one produced by IO for examination or some other material of similar shape and dimension*”. In his cross-examination, the witness clarified that the dead body was brought to the hospital by Constable Naveen, (PW-11) and after examination, the time since death was calculated on the basis of the decomposition changes present on the body of the deceased. However, he clarified that he could not tell the exact time when the body had been shifted to the mortuary on 26.5.2013.

13. Sh. Ravinder Kumar Kain (PW-26) the finger print expert, proved his report, Ex.PW26/A wherein, he had opined that the chance print Q2,

lifted from the juicer mixer found at the premises of the deceased, is identical to the specimen left thumb impression, mark S4, of the appellant.

14. Sh. Saurabh Aggarwal, the Nodal Officer, Vodafone Mobile Services Ltd., appeared as PW-28 and deposed that he had furnished the required computer generated details, i.e., CDRs/documents in respect of mobile numbers 9953746435, 9654482453 and 8860369127; that as per the records, mobile number 9953746435 was issued in the name of Shalini Noel, daughter of the deceased. The CDRs of the said mobile number for the period between 1.5.2015 to 31.5.2013 were proved by the witness as Ex.PW28/2. The CDRs of mobile numbers 9654482453 and 8860369127, both issued in the name of Vijay Kumar (PW-6) for the period 15.5.2013 to 15.6.2013, were proved as Ex.PW28/4 and Ex.PW28/6, respectively. PW-28 also proved the certificates issued under Section 65B of the Indian Evidence Act in respect of the mobile numbers 9953746435, 9654482453 and 8860369127 as ExPW28/7, Ex.PW28/8 and Ex.PW28/9, respectively.

15. This leaves the police witnesses, i.e., PW-10 to PW-25 and PW-27. We may note here that immediately after the charge-sheet was filed in the present case, the IO, Inspector Ashok Kumar had unfortunately expired on 20.11.2013 and in his absence, the testimonies of Constable Sombir (PW-12) and SI Vikas Yadav (PW-15) are of importance as they have narrated the manner in which the investigation was conducted. The remaining police witnesses are mostly formal in nature.

16. Constable Hardeep Singh (PW-10) had proved the scaled site plan as Ex.PW10/A. Constable Naveen Kumar (PW-11) and SI Vikas Yadav (PW-15) were the first to arrive at the house of the deceased alongwith the appellant. PW-11 had taken the dead body to the hospital for being preserved in the mortuary. PW-15 had recorded the statement of the appellant (Ex.PW15/A) and had proved the *rukka* (Ex.PW15/B). SI Sandeep Malik (PW-13) had collected the subsequent opinion in respect of the weapon of offence from the doctor (PW-9) and had handed it over to the IO. SI Khajan Singh (PW-17) led the Crime Team to the spot that included a finger prints expert and photographer. At his directions, photographs were taken and chance prints lifted. Constable Sukhbir Singh (PW-18) collected four *pullandas* from the Store Room Keeper for depositing the same in the office of the FSL. Constable Lodhi Ram (PW-19) also deposed that on the direction of the IO, he had collected two sealed *pullandas* from the Store Room Keeper and deposited the same in the office of the FSL. Similarly, Constable Arun (PW-21) deposed that on 17.6.2013, he was entrusted with one sealed parcel alongwith a request for an opinion for being handed over to the Department of Forensic Medicine, RTRM Hospital and again on 16.8.2016, he was entrusted with two sealed parcels for depositing the same in the FSL, but the same were not deposited due to an objection taken by the Director, FSL. The said sealed parcels were handed back by him to the Store Room Keeper with the objection letter.

17. Head Constable Bharat Lal (PW-20) was the earlier Store Room Keeper, who had produced the original registers containing entries of the

case material and their movement at different points in time. ASI Jagdish Raj (PW-25), who was the subsequent Store Room Keeper posted at PS Chhawla, had deposed that on 19.8.2013, two *pullandas* were sent through Constable Lodhi Ram (PW-19) to FSL, Rohini. He proved the copy of the Road Certificate, acknowledgment and relevant entries in the register as Ex.PW25/A, Ex.PW25/B and Ex.PW25/C, respectively. The said witness also proved DD No.24B regarding the objection raised by the Director, FSL Rohini in respect of the *pullandas* sent to them, copy of which is marked as Ex.PW25/D.

18. Constable Manish (PW-23), a member of the Crime Team who lifted four chance prints from the juicer mixer found at the residence of the deceased, proved his report as Ex.PW23/A. Head Constable Suresh (PW-24) took photographs at the scene of the crime and proved the said photographs as also the negatives as Ex.PW24/A-1 to Ex.PW24/A-18 and ExPW24/B-1(colly), respectively. The said witness also deposed that the appellant had led the police party to the house of his in-laws situated at Jagat Puri and got recovered a bag from a room on the first floor of the said house, which contained, amongst others, a polythene bag with Rs.12,690/- and a key ring having two keys, Ex.P9 (colly.). They were taken into possession by PW-12 vide seizure memo marked as Ex.PW12/F, duly signed by him at Point B and were subsequently deposited at the police station.

19. Constable Sombir, PW-12 visited the premises in question on 26.5.2013 along the IO, Inspector Ashok Kumar and met SI Vikas (PW-15) and Constable Naveen (PW-11) there. He deposed that the appellant

and his father were present at the spot and they saw the dead body of a lady lying on the floor in a room on the first floor. The Crime Team was called that inspected the place and took some photographs. PW-12 further deposed that on 28.5.2013, the IO had summoned the appellant and his father at the police station and made inquiries from them. During interrogation, the appellant had made a disclosure statement that was proved as Ex.PW12/C. The appellant had led the police party to his house at Jagat Puri, from where, he got recovered one broken lock, one screw driver, one plas (wire cutter/stripper) and one piece of wire (dori). The piece of wire (Ex.P6) was taken into possession vide seizure memo marked as Ex.PW12/D. The arrest memo of the appellant and his personal search memo were proved as Ex.PW12/A and Ex.PW12/B, respectively.

20. SI Vikas Yadav (PW-15) stated that DD No.29A was marked to him by the SHO for necessary action; that he and Constable Naveen Kumar (PW-11) had accompanied the appellant to the house of the deceased. He recorded the statement of the appellant (Ex.PW15/A) and alongwith Constable Surender (PW-14) seized the case material from the room of the deceased vide seizure memos marked Ex.PW14/A, Ex.PW14/B, Ex.PW14/C, Ex.PW14/D and Ex.PW14/E. This witness explained that since he had worked with Late Inspector Ashok Kumar and had seen him writing and signing in the course of his duty, he could identify his signatures on the form submitted in the hospital before the postmortem was conducted and the brief facts prepared by him (Ex.PW15/E and Ex.PW15/F). PW-15 deposed that on 16.8.2013, a bag

was received from the FSL, Rohini with an objection and on it being de-sealed, two keys were taken out. The said keys and bag were re-sealed. The seizure memo of the keys was proved by him as Ex.PW15/G.

21. After the prosecution witnesses were examined, the statement of the appellant was recorded under Section 313 Cr.P.C. wherein he pleaded innocence and stated that he had been falsely implicated in the case. He also stated that he was residing at his address (at East Delhi) and had gone to his mother's residence on receiving a call from his father that she was not picking up the phone. Only on arriving at her residence, did he come to know about the facts.

22. By the impugned judgment, the appellant has been convicted for culpable homicide amounting to murder under Section 302 IPC on the basis of the circumstantial evidence brought on record by the prosecution and has been awarded life imprisonment.

ARGUMENTS

23. Ms. Rakhi Dubey, learned counsel for the appellant has assailed the impugned judgment mainly on three counts. Firstly, that this is not a case where last seen together can be treated as a circumstantial evidence to nail down the appellant as PW-4 cannot be described as a last seen witness since he did not see the appellant together with his mother on 25.05.2013. Secondly, that the trial court has erred in calculating the time of death as before noon on 25.05.2013, which runs contrary to the post mortem report (Ex.PW9/A). Lastly, it was urged that the recovery of the

electric wire described as the weapon of offence, allegedly on the disclosure made by the appellant, is highly doubtful inasmuch as the crime had taken place on 25.05.2013 and on the said date, the police and the Crime Team had visited the scene of the crime and seized all the case material but no electric wire was recovered. Only after the post mortem was conducted on 27.05.2013 and the Doctor had opined that the death had taken place due to asphyxia following ante mortem ligature strangulation, that the appellant and his father were summoned to the police station on 28.5.2013 and as per the prosecution, the appellant had confessed to the crime and disclosed that he could get the stolen money and the key of the lock of the house of the deceased recovered from the home of his in-laws. After the said items were recovered from the house of his in-laws, the appellant had accompanied the police to his mother's house at Goyala Dairy from where he had allegedly got recovered, a plier, a screwdriver used for breaking open the lock on the iron box where the money was kept by the deceased and the weapon of offence, i.e., the electric wire. It has thus been argued that the subsequent recoveries at the instance of the appellant were planted recoveries, tailor made to fit the cause of death mentioned in the post mortem report and they are all the more suspect when no public witness was associated to the said recoveries.

24. We have given our thoughtful consideration to the arguments advanced by Ms. Rakhi Dubey, learned counsel for the appellant and Mr. Amit Gupta, learned APP, have carefully examined the evidence brought on record and perused the impugned judgment.

CIRCUMSTANTIAL EVIDENCE RELIED UPON BY THE TRIAL COURT:-

25. A perusal of the impugned judgment reveals that the trial court has primarily relied on the following circumstantial evidence to inculcate the appellant in the instant case:-

(i) That PW-4 had last seen the appellant going downstairs from the first floor where the deceased used to reside, with a black bag in his hand on 25.05.2013, at 1:30 PM and this time correlates with the time since death mentioned in the post mortem report (Ex.PW9/A), for arriving at the conclusion that the deceased was strangled before noon on 25.05.2013.

(ii) That once the prosecution had discharged its burden by demonstrating that the deceased was last seen in the company of the appellant on 25.05.2013 at 1:30 PM, the onus shifted on to the appellant to explain the circumstances in which he and the deceased had parted company but when his statement was recorded under Section 313 Cr.PC, he did not discharge the said onus having failed to explain the circumstances of last seen in the company of his mother on 25.05.2013, at 1:30 PM.

(iii) That in his subsequent opinion (Ex.PW9/B), the autopsy surgeon (PW-9) had confirmed that the death of the deceased due to asphyxia following ante mortem ligature strangulation could have been possible by the electric wire (Ex.P6) recovered from the place of the incident, on the disclosure statement of the appellant.

(iv) That as per the report of the finger print expert (PW-26), the appellant's left thumb impression was found on the mixer juicer (Ex.P7) recovered from the scene of the crime, which incriminating circumstance has not been explained by him.

(v) That the prosecution has satisfactorily proved the motive of the crime on the basis of recovery of currency notes to the tune of Rs.12,690/-, belonging to the deceased from the house of the in-laws of the appellant at Jagat Puri.

ANALYSIS:

26. We shall now proceed to examine the aforesaid five circumstances that have weighed with the trial court for holding the appellant guilty of the offence of murder of his mother:-

A. EVIDENCE OF LAST SEEN TOGETHER

27. We may note at the outset that there is no direct evidence in the instant case to connect the appellant with the offence in question and the case of the prosecution rests solely on circumstantial evidence. The law laid down in the case of circumstantial evidence is that the cumulative effect of the circumstances proved must be such as to negate the innocence of the accused and bring home his guilt beyond reasonable doubt. The tests required to be satisfied in a case that rests upon circumstantial evidence were succinctly spelt out by the Supreme Court

in Padala Veera Reddy vs. State of Andhra Pradesh and Ors. reported as **1989 (Suppl.) 2 SCC 706** as follows:-

“10. Before advertng to the arguments advanced by the learned Counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held 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. (See Gambhir v. State of Maharashtra (1982) 2 SCC 351)”

[Also refer: Prem Thakur vs. State of Punjab **1983 CrL.J. 155**, Sharad Birdhichand Sarda vs. State of Maharashtra **1984 4 SCC 116**, Ram Avtar vs. State (Delhi Admn.) **1985 CrL.J. 1865**, State of Tamil Nadu vs.

Rajendran 1999 (8) SCC 679 and Trimukh Maroti Kirkan vs. State of Maharashtra 2006 (10) SCC 681]

28. The evidence of last seen together is a piece of circumstantial evidence which can only be used as a link in the chain of circumstances but the chain must be complete and unbroken to the point that it inculcates only the accused and none other for the crime.

29. In the present case, the prosecution has relied on the testimony of Rajender Singh (PW-4), who was a tenant residing on the ground floor of the premises, where the deceased was residing on the first floor, as the last seen together witness. On perusing his testimony, it clearly emerges that on the fateful day, i.e., on 25.05.2013, he had not seen the appellant together with the deceased at any point in time. The said witness had first seen the appellant at 9.00 AM with a packet of bread in his hand coming from the market; thereafter, he had seen him at 11.00 AM, going to the toilet situated on the ground floor and lastly, he had seen him at 1:30 PM coming down the stairs from the first floor with a black bag in his hand.

30. For the last seen theory to come into play, the most vital aspect is that the accused and the deceased must have been seen last alive and the time gap between the point in time when they were seen last alive and when the deceased is found dead, should be so narrow that it rules out the possibility of any person besides the accused of being the author of the crime. In the instant case, PW-4 having not seen the appellant and the deceased together at any point in time on 25.05.2013, there is no question of invoking the last seen theory. Therefore, reliance of the trial court on the decisions of the Supreme Court in State of U.P. vs. Satish AIR 2005

SC 1000 and Ramreddy Rajesh Khanna Reddy and Anr. vs. State of A.P. (2006) 10 SCC 172 is found to be completely misplaced. That being the position, the question of invoking the last seen together theory as a circumstantial evidence against the appellant, does not arise.

B. TIME SINCE DEATH MENTIONED IN THE POST MORTEM REPORT

31. In the post mortem report prepared by the Doctor (PW-9) marked as Ex.PW9/A, the time since death has been recorded as “*approximately more than 36 hours prior to preservation of the dead body in the mortuary*”. No evidence has been brought on record to establish the time or even the tentative time when the dead body was deposited in the mortuary. The post mortem of the deceased was conducted by PW-9 on 27.05.2013, at 12:45 PM. If the period of 36 hours is reckoned backwards from the said time, then the death ought to have taken place in the intervening night of 25/26.05.2013. Going by the said calculation, we find force in the submission made by learned counsel for the appellant that the trial court has miscalculated the time of death. An erroneous assumption has been drawn in para 18 of the impugned judgment that as per the post mortem report and the deposition of the post mortem doctor, the time of death of the deceased was before noon of 25.05.2013.

C. DEDUCTIONS MADE FROM THE CDR OF THE DECEASED AND HER FAMILY

32. Learned counsel for the appellant has sought to rely on the deposition of PW-1, PW-2 and PW-7, all family members of Venus Noel to urge that she was alive till late evening on 25.5.2013. The husband of

the deceased (PW-1) claimed that he had made several calls to his wife on her phone on 25.05.2013 as he wanted to ask her to accompany him for getting photographs taken to prepare an ESI Card but she had not responded. However, the said statement does not stand corroborated by the CDR's of the mobile number used by the deceased (Ex.PW 28/2). On the contrary, the said CDR's reveal that the last call made by PW-1 to his wife from mobile number 9654482453, was on 23.05.2013 at 18:39:31 hours. The said witness was also using another mobile number, i.e., 8860369127. The CDR of the said mobile number mentions that the last call made to mobile number 9953746435, used by the deceased was on 21.05.2013, at 19:12:10 hours. There is no record of any incoming call received on the mobile number of the deceased after 12:11:50 hours on 25.05.2013.

33. Similarly, the deposition of Deepak Noel, son of the deceased (PW-2) to the effect that he had received a call from his mother on his mobile phone on 25.05.2013, at 8:30 PM relating to non-payment of rent of the tenanted premises by his father and that his mother had told him that the appellant had left her house on the same day at 1:30 PM for treatment of his stomach ache at Jagatpuri, is also not corroborated by the CDR of the mobile number being used by the deceased. Moreover, the details of the mobile number being used by PW-2 at that point of time are not known. In his testimony, the said witness had stated that he was using a mobile phone, which was in the name of his wife but he did not remember the number. Coming next to the testimony of the daughter of the deceased (PW-7), she had stated that she had received a call in the evening of 25.05.2013, from a landline number. When she picked up her

mobile phone and discovered that her mother was on the other end, she had immediately disconnected her phone.

34. It is noteworthy that no landline number has been mentioned by any of the family members of the deceased. Nor has any decisive investigation been conducted by the prosecution agency on this aspect. No suggestion has been made to the police witnesses, namely, PW-11 and PW-12, who had reached at the spot alongwith the accused on 26.05.2013 and to PW-14, who had reached at the spot later on, as to whether any landline was installed at the premises of the deceased. In the absence of any corroboration from an independent source, the testimonies of PW-1, PW-2 and PW-7 to the effect that they had spoken to the deceased on the phone on 25.5.2013, in the evening hours, are found to be weak in nature and ought to be discarded.

35. At the same time, a perusal of the CDR of the mobile phone that was being used by the deceased (Mobile No.9953746435) shows that the last outgoing call made from the said mobile number was on 25.05.2013, at 12:11:50 hours. Even though the prosecution has failed to undertake an investigation to establish the identity of the receiving party, fact remains that the deceased did make a call from her mobile phone in the noon of 25.05.2013. This evidence also negates the conclusion drawn by the trial court that the time of the death of the deceased was before noon of 25.05.2013.

36. The only deduction that can be safely drawn from the deposition of PW-4 is that he had last seen the appellant going down the stairs on 25.05.2013, at 1.30 PM. The CDR of the mobile phone used by the deceased shows that an outgoing call was made 45 minutes earlier, at

12.11 PM. The inevitable inference is that Venus Noel was alive at that time. The doctor has opined in the post mortem report that the death had taken place in the intervening night of 25/26.5.2013. Once it is safely concluded that the deceased was killed in the intervening night of 25/26.05.2013, then the question of the onus shifting to the appellant to explain the circumstances in which he and the deceased had parted company on 25.06.2013, does not arise.

D. EFFECT OF THE FINGER PRINT REPORT

37. Another circumstantial evidence that has weighed with the trial court for holding the appellant guilty for the murder of his mother is the Fingerprint Report (Ex.PW23/A), that confirms that one of the chance prints found on the mixer juicer recovered from the scene of the crime, matches with the appellant's left thumb impression.

38. It is nobody's case that the appellant was not residing with his mother in the last few days before her demise. This factual position is borne out from the deposition of the husband of the deceased (PW-1), who had stated that two months before the incident, the appellant had shifted to his parents home as his wife had left for Jhansi to undergo training in a nursing course. Similarly, PW-4, the tenant residing on the ground floor of the same premises, where the deceased was residing on the first floor and PW-5, the owner of the tenanted premises have also stated that the appellant was staying alongwith his mother on the first floor. That being the admitted position, it was but natural to find the fingerprints of the appellant on the furniture/equipments and other household goods lying in the premises of the deceased. Consequently, no significance can be attached to the fingerprints of the appellant found on

the mixer juicer and nor can the said piece of evidence be treated as an incriminating circumstance against him.

E. RECOVERIES MADE ON 26.05.2013 AND 28.05.2013

39. Coming lastly to the evidence in the shape of recoveries made in the present case, the following articles were recovered from the place of the crime on 26.05.2013:-

- (a) Broken lock (Make: Rambo Eight Levers Power) (Ex.PW14/A)
- (b) Slipper (Ex.PW14/B)
- (c) Mixer juicer (Ex.PW14/C)
- (d) Iron Box (Ex.PW14/D)
- (e) Mobile phone (Ex.PW14/E)

40. All the aforesaid articles were taken into possession by Constable Surender (PW-14) in the presence of the Crime Team, who had reached at the spot, inspected the place, taken photographs and lifted fingerprints. There is no mention made of any piece of electric wire, plier or screwdriver at the spot by any of the police witnesses present at the scene of the crime.

41. The case projected by the prosecution is that on the third day reckoned from the date of the crime, i.e., on 28.5.2013, on the disclosure statement of the appellant (Ex.PW12/C), he had got recovered the stolen money, two keys of the lock etc. from the house of his in-laws, at Jagatpuri. It is also the prosecution version that on the same day, the appellant had accompanied the police to the house of the deceased at Goyla Dairy and got recovered the plier and the screwdriver used for breaking open the lock of the iron box, where the deceased used to keep her money and the weapon of offence, i.e., the piece of electric wire.

42. Surprisingly, no effort was made by the prosecution to have a mechanical inspection conducted to connect the broken lock recovered from the scene of the crime on 26.05.2013, with the keys recovered on 28.05.2013, from the house of the in-laws of the appellant at Jagatpuri. The fact that these vital pieces of evidence, particularly the piece of electric wire allegedly used to strangle the deceased were recovered from the place of the incident after passage of two days and that too without associating any public witness with the said recoveries, casts a shadow on their credibility. The possibility of these articles having been planted by the police later on, cannot be ruled out.

43. Moreover, if the keys recovered from the house of his in-laws at Jagatpuri on 28.05.2013, were the very same keys that fitted the broken lock recovered from the house of the deceased two days earlier, on 26.05.2013, then it does not stand to reason that the appellant would have approached the police on 26.05.2013, saying that his mother was not opening the door. Instead, he would have simply used the keys in his possession to open the lock of the premises. If argued conversely that despite the keys of the house of the deceased being available with the appellant, he had deliberately not used them to open the door as he had already murdered his mother a day before and therefore elected to approach the police for assistance to create an alibi, then this version could have been corroborated only if the prosecution agency had made efforts to link the keys recovered from the house of his in-laws on 28.05.2013, with the broken lock recovered from the scene of the crime on 26.05.2013, by filing a Mechanical Inspection Report in respect of the

lock and the keys, which exercise, as noticed above, was never undertaken by them.

44. The aforesaid circumstance also throws a cloud on the subsequent recovery of the weapon of offence, i.e., the piece of an electric wire from the scene of the crime on 28.05.2013, after a gap of two days from the date of the crime. It is rather curious that when the police and the Crime Team had arrived at the scene on 26.05.2013 and seized several articles from the spot, the electric wire, plier and screwdriver lying around went unnoticed. Once the subsequent recoveries are found to be doubtful, we do not consider it safe to act upon them. We are also not inclined to accept the recovery of a paltry amount of Rs.12,690/-, allegedly belonging to the deceased, from the house of the appellant's in-laws at Jagatpuri on 28.05.2013, as a motive for him to have committed the murder of his mother.

45. In view of the aforesaid facts and circumstances, we are of the firm view that the prosecution has miserably failed to prove its case against the appellant. There are glaring loopholes and discrepancies at every step of the chain of circumstantial evidence sought to be woven together by the prosecution for this Court to arrive at a decisive conclusion that the appellant is guilty of culpable homicide amounting to murder. Resultantly, the present appeal is allowed. The conviction of the appellant under Section 302 IPC and the order of sentence are set aside. Unless he is required in any other case, the appellant is set free. Bail bonds submitted by the appellant are discharged. He shall however make compliances of the provision of Section 437-A Cr.PC at the earliest.

46. Trial court record is directed to be returned alongwith a certified copy of the judgment.

(HIMA KOHLI)
JUDGE

(MANOJ KUMAR OHRI)
JUDGE

APRIL 05, 2019
NA/rkb/ap

