

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 13.02.2019
Judgment Pronounced On: 22.04.2019

CRL.A. 922/2001

STATE

.... Appellant

Through: Mr. Ravi Nayak, APP with SI
Pradeep Kumar, PS Model Town.

versus

MAHINDER SINGH

.... Respondent

Through: Mr. H.S. Dhawan, Advocate.

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

HON'BLE MS JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The State has instituted the present appeal under section 378(4) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C') against the impugned judgment and order dated 21.02.1998, in Session Case No. 39/96, arising out of FIR No.80/94 (hereinafter referred to as the 'subject FIR'), registered at Police Station –Model Town; whereby the Trial Court has acquitted the accused Mahinder Singh (hereinafter referred to as 'the respondent') of a charge framed against him under section 302 Indian Penal Code, 1860.

2. The case of the prosecution as elaborated by the learned Trial Court is briefly encapsulated as follow: -

“In brief, the case of the prosecution is that on 04.03.1994 at about 3.15 P.M, S.I Mahinder Singh (PW-18), while returning to the police station from patrolling via Gujaranwala town -1, saw one woman lying in a pool of blood opposite Punjab & Sind Bank, Gujaranwala town, near Model Town bus stand, and further saw the respondent with a knife (Ex. P6) in his right hand. Also, that the accused/respondent was chasing Gita (PW3), sister of the deceased on the ring road towards Chhatarsal stadium. S.I Mahinder Singh (PW18) overpowered the accused and recovered the blood-stained knife (Ex. P6) from the respondent’s hand and produced it before the investigation officer Inspector Balbir Singh (PW20). The I.O measured the sized of the knife(Ex.P6) vide memo prepared the sketch thereof (Ex.PW16/A) ; thereafter sealed and seizure the knife vide memo Ex.PW16/B .On receipt of the information about the occurrence of the incident, the information was passed on to the control room of the North-west District of police; whereby, information about the incident was registered by police station Model Town, vide DD No.42-B recorded at 3.15 P.M. Investigating office deputed ASI Surender Ojha (PW16) and constable Rambir (PW8) to guard the spot, and when to Indra Deep Hospital in Wazirpur Industrial Area, along with S.I Mahinder Singh (PW18), other staff member and the respondent/accused. But at Indradeep hospital Doctor Ajay Desh Pandey refused to admit the deceased; thereafter, the I.O sent a wireless message to police station of Model Town and called for a vehicle. Copy of the entry in this regard was made in wire-less log book (Ex. PW 15/A). At about 5 P.M, Head Constable Ram Niwas (PW12) arrived with the vehicle and Mrs. Lata and Ms. Gita (PW3) were taken to Hindu Rao hospital where Mrs. Lata, was declared ‘brought dead’.”

3. In order to establish the guilt of the respondent, the prosecution has examined 20 witnesses in all. The case of the prosecution rests primarily on the testimonies of PW3 and PW18, the sister of the deceased and S.I. who arrested the respondent, respectively. Subsequently thereto, the statement of the accused/respondent was recorded under section 313 Cr.P.C, wherein he denied the case of the

prosecution in toto and pleaded that he was arrested from his residence and has been falsely implicated in the present case. The respondent has led his defence and examined four witnesses in that behalf.

4. The prosecution in order to prove the case beyond reasonable doubt placed reliance upon the following circumstances: -

- a. The testimonies of Gita (PW3), sister of the deceased who was the eye witness and S.I Mahinder Singh (PW18) police officer who apprehended the accused/respondent with the knife (Ex. P6), from the place of the occurrence.

Gita (PW3), stated to be the eye witness and the person present along with her sister at the time of the occurrence of the incident, also took her injured sister Lata (hereinafter referred to as “the deceased”) to hospital. Ex.PW3/A, statement of Gita (PW3) was recorded by the Investigation Officer (hereinafter referred to as “I.O.”) Balbir Singh (PW20) at the Hindu Rao Hospital. The endorsement of the rukka (Ex.PW20/A) was prepared by I.O. who sent the same to the police station at 6.20 P.M and got the F.I.R no 80/94 under section 302 IPC registered on 04.03.1994 at 6.40 P.M at police station Model Town.

According to the statement recorded in the rukka (Ex.PW3/A) at the Hindu Rao Hospital, PW3 narrated the occurrence of the incident as follows: -

“when we both sisters while hawking on foot reached near Model Town lake from Mukherjee Nagar at about 2 P.M., my

Jija Mohinder met us there all of a sudden and said to my sister Lata, “ if you do not see me Tomorrow, 5-3-94, at bus route no. 912, Raja Garden, I shall kill you.” When I enquired from my Jija Mohinder as to why he had come to us, he gave me two slaps on my face. When my sister forbade him, he started beating severely my sister Lata also with kicks and slaps. When we both raised an alarm- Bachao Bachao 2-3 boys from the neighborhood came there. On seeing them my Jija Mohinder ran away. We both sisters with our wares reached Model Town-II bus stand, after hawking in Model Town, for going home and started waiting for the conveyance. In a little while my Jija Mohinder came to the bus stand at about 3 P.M. and immediately caught her by her braid and felled her on the ground and gave several blows with the chura, held in his right hand, on the abdomen, chest and right thigh of my sister Lata as a result of which blood started oozing out from the body of my sister. I raised an alarm-Bachao Bachao. But none of the several persons standing at the bus stand came to our help. When I started crying loudly, he rushed with the chura to attack me also.”

- b. The second circumstance, on which the prosecution has relied, was the CFSL report (Ex PW20/F). During the investigation the exhibits were sent to CFSL. As per the CFSL report (Ex PW20/F) blood of human origin and of ‘B’ group was detected on the stained gauge, which is the blood sample of the deceased Lata; the same group of blood ‘B’ being detected on the knife (Ex. P6), as well as, on the clothes of the accused.
- c. The other circumstance, the prosecution has relied upon, was the statement under section 161 Cr.P.C, Ex PW18/DA, of S.I. Mahinder Singh (PW18) who stated that the accused/respondent was chasing the girl, Gita (PW3) towards Chhatarsal Stadium.

In order to support and corroborate this statement the prosecution has examined the Investigating Officer, Inspector Balbir Singh (PW20). PW20 deposed that S. I Mahinder Singh (PW18) produced the accused/respondent and the knife (Ex P6) before him, and he prepared memos Ex.PW16/A and Ex.PW16/B. The I.O deposed that, he deputed the ASI Surender Ojha (PW16) and Home Guard constable Rambir (PW8) to guard the spot of the occurrence.

5. Broadly, the learned Trial Court has acquitted the accused/respondent on the following grounds: -

“17. PW3 Gita is the only eye witness in this case. The learned Defence Counsel has contended that Gita, sister of the deceased, is a planted witness. He has attacked her testimony on the following grounds:

- (i) She has not been able to tell correctly about the place of occurrence.*
- (ii) According to her she ran towards the police station, while according to PW18 Mohinder Singh she ran in the opposite direction towards Chhatarsal Stadium.*
- (iii) According to her she herself received injuries in the incident and was also medically examined but the I.O. denies it.*
- (iv) According to her, her clothes got blood stained with the blood of the deceased but these clothes were not seized. I.O. denies it.*
- (v) There is discrepancy about the recording of her statement.*
- (vi) The story of her taking the deceased to Indra Deep Hospital is false.*

PLACE OF OCCURRENCE

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She has stated (page 2, last 2 lines of the para continued from the previous page) that the incident took place in front of the

bus stop at a distance of about 5-6 steps from it. But according to the I.O. Inspector Balbir Singh(PW20) place of occurrence was not in front of the bus stand and it was at a distance of 50 yards from the bus stop towards Azad Pur (opening line of the cross examination at page1).

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Though she has stated in her cross examination that the occurrence took place in front of the bus stand at a distance of about 5-6 steps from it, yet the site plans Ex PW3/C and PW 6/A were not put to her. By stating 'in front of the bus stand' she could mean 'on the side of the bus stand' also.

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19. XXXXXXXX

However, in the statement u/s 161 Cr.P.C. Ex PW 18/DA of S.I. Mohinder Singh it is recorded that the accused was chasing the girl (PW 3 Gita) towards Chhatarsal Stadium. Admittedly, police station Model Town and Chhatarsal Stadium are in opposite direction from the place of occurrence. PW 18 S.I. Mohinder Singh has admitted this fact in his cross examination (at page 4). This fact has also been admitted by the I.O. Inspector Balbir (PW 20) in his cross examination. So, in view of the contradiction in the scaled site plan Ex PW 6/A and the statement u/s 161 Cr.P.C. of PW18 S.I. Mohinder Singh the prosecution itself does not seem to be sure of this fact.

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22. Let us see what the girl, PW3, who was chased, has to say. She has stated thus in her cross examination (page 2, para 1):

"When accused ran after me with knife in his hand I ran towards the police station Model Town."

23. She has further clarified at page 3, para 3:

"The place at which the accused was apprehended by the police man was at a distance of about 20-25 steps from the police station."

24. These statements of PW3 Gita show that she is pretty sure that she had run towards the police station and the accused was apprehended just near the police station.

25. In view of the contradiction in the prosecution case and the testimonies of PW3 Gita and PW18 S.I. Mohinder Singh on this point, it is very difficult to reconcile the situation. Testimonies of these two witnesses are inter-connected and supplementary to each other as both claim the presence of each other at the spot. If the credibility of one is doubtful the testimony of the other witnesses automatically becomes doubtful.

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Another material discrepancy pointed out by the Id. Defence Counsel in the testimony of PW3 Gita is her claim that she herself was injured in the incident and was medically examined. Gita has stated in her cross examination (page 4, para 2) that she had tried to rescue Lata deceased. She had also received a Chura blow on the fingers of her right hand and that blood had come out of this injury and that she was medically examined. This is not the prosecution case. There is no such mention in the Fard Byan Ex PW3/A. The I.O. Inspector Balbir Singh (PW20) has stated in his cross examination (page 9, para 2) that Gita did not receive any injury in the incident.

28. In her cross examination (at page 3, top line) she has stated that only she had put her in the scooter. She has further stated (at page 6, para 3) that her clothes got blood stained with the blood of Lata deceased. PW 18 S.I. Mohinder Singh has also stated in his cross examination (page 7, para 1, 11th line from top) that clothes of Gitawere blood stained. PW19 Constable Mohd. Yunus who was in the party of the S.H.O. has also stated that clothes of Gita were blood stained (page 3, third line from below of para continued from the previous page). I.O. (PW 20) has stated in his cross examination (page 6, 2nd line from below) that he does not remember if clothes of PW3 Gita blood stained. Admittedly clothes of PW3 Gita were not seized during the investigation. As per post mortem report Ex PW9/A there were as many as 25 stab and incised injuries on the body of the deceased. In these circumstances, if PW3 Gita had handled the deceased, her clothes must have got blood stained with the blood of the deceased. The seizure of such clothes would have lent support to the presence of PW 3 Gita at the spot. But the I.O. conveniently says that he does not remember if the clothes of Gita were blood stained.

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THE DISCREPANCY REGARDING THE RECORDING OF
THE STATEMENT OF PW3 GITA:

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30. At one place (page 2, last para) she has stated in her cross examination that she went to the police station at about 5/6 PM and lodged a report there. At another place (page 5, para1, cross examination) she has stated that she remained at the police station till about 8 PM when her father arrived there and the police recorded her statement Ex PW3/A after the arrival of her father. So, what is the time and place of recording of her statement – 5/6 PM at police station, around 6 PM at Hindu Rao Hospital or 8 PM at the police station? The F.I.R. Ex P2/A shows the time as 6-40 PM. The discrepancies mentioned above cast a serious doubt as to the time of the recording of the F.I.R. That is to say the F.I.R. was not recorded promptly. This circumstance reflects adversely on the prosecution case that statement of Gita Ex PW3/A was recorded at Hindu Rao Hospital around 6 PM and that the FIR was registered at 6- 40 PM. This would also make the presence of PW3 Gita at the time of occurrence doubtful.

THE STORY OF TAKING THE DECEASED TO INDRA DEEP
HOSPITAL:

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32. The evidence on the record is discrepant. PW16 ASI Surender Ojha, who according to the prosecution story reached the spot to enquire into D.D. No. 42-B, is silent about the place for which the I.O. left. He does not speak of the S.H.O. having come to know of the fact that the deceased had been taken to Indra Deep Hospital.

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However, the I.O Inspector Balbir Singh(PW20) has invented a new story regarding this information. According to him he received the information from the police post Wazirpur on wireless that the injured had been brought to Indra Deep Hospital (page 6, para 1, cross examination). There is no document to show that information was received from the police post Wazirpur. As per the case diary some un-known person informed the I.O. that the injured had been taken to Indra Deep Hospital. It is thus clear that there is no clear and cogent evidence to show that the deceased was taken to Indra Deep Hospital by PW3 Gita.

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Inspector Balbir Singh (PW20) has stated in his examination-in-chief(page1) that he received the wireless message regarding the occurrence at 3:15 PM and he rushed to the spot and S.I. Mohinder Singh, ASI Surender Ojha, Constable Bir Singh and Home Guard Constable Rambir Singh were already present there. In the cross examination (page 4, last para, 6th line from top) he has stated that he reached the spot at about 3:20 PM. That is to say, all these persons had reached the spot by 3:20 PM. If PW3 Gita had hired the scooter about half an hour after the apprehension of the accused, she would have been found present at the spot when all these police officials arrived there. Xxxxx

37. As already noticed according to PW3 Gita she had run towards the police station and the accused was apprehended just 20-25 steps from the police station. Thus the two important witnesses are telling a different story regarding the apprehension of the accused. This witness has denied that in his statement u/s 161 Cr.P.C. he had stated that he overpowered the accused by coming from the front side. He has been confronted with his statement Ex PW 18/DA, portion A to A, wherein it is so recorded. So, this witness has modulated his statement to suit the prosecution story that he chased the accused. xxxxxx

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If PW 3 Gita reached the police station at 5/6 PM and saw the accused there and remained there, then the story of her taking the deceased to Indra Deep hospital and the story of the I.O. taking the accused to Indra Deep hospital and then to Hindu Rao Hospital is falsified. It appears that the prosecution witnesses have tried to suppress the truth.

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RECOVERY OF THE KNIFE

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In view of these circumstances the fact of recovery of the chura from the hand of the accused at the spot is not acceptable. As to the sealing and seizure of the chura at the spot, the story is demolished by PW3 Gita. In her examination-

in-chief she has towed the line of the prosecution. But in the cross examination in one breath she has stated that the chura was in the hand of the accused when he was apprehended by the police man. In the next breath she has stated that later on they came to know that the accused had hidden the chura somewhere. In the next breath she again reiterates that the chura was recovered by the police man from the hand of the accused when he was apprehended (page 3, third para). If the chura had been recovered when the accused was apprehended where was the question of his hiding it? In her further cross examination (page 5, para 1) she has stated that when she went to the police station in the evening on the day of occurrence she saw the chura lying on the table of the Thanedar and it was in an un-sealed condition.”

6. After appreciating the evidence on record and for the reasons elaborated in the paragraphs extracted hereinabove, the learned Trial Court has acquitted the accused/respondent of the charge against him, while concluding as follows: -

“51. In my view in view of the other highly discrepant and un-worthy of reliance evidence on the record this circumstance alone cannot be regarded as conclusive evidence incriminating the accused.

52. To recapitulate, the testimony of PW3 Gita is highly discrepant and un-worthy of reliance which makes her presence at the time of occurrence doubtful; the story of the apprehension of the accused at the spot is doubtful; the investigation is tainted and an effort has been made to manipulate the records; the FIR appears to be ante-timed.”

7. Mr. Ravi Nayak, learned APP appearing on behalf of the State, stated that presence of the respondent at the place of occurrence was proved by the report of the CFSL (Ex.PW20/F) which mentioned that human blood of ‘B’ group of the deceased was detected on the knife (Ex. P6), as well as, on the shirt and jeans of the accused/respondent. Learned

APP, also argued that since PW3 was the real sister of the deceased, there can be no reason to consider her as a planted witness in relation to the place of occurrence of the incident. She was the sole eye witness to the occurrence of the incident and also took the deceased to the hospital.

8. *Per contra*, the learned counsel on behalf of the respondent submitted that, there is no infirmity in the impugned judgment and the same does not call for any interference; and further contended that there were major contradictions and discrepancies in the statements of the prosecution witnesses; and that therefore the prosecution has miserably failed to established a case against the respondent, beyond reasonable doubt.

Counsel relied upon the following circumstances in this behalf: -

- a. PW3 Gita, sister of the deceased, in the rukka (Ex.PW3/A), stated that the respondent kicked and slapped the deceased Lata; and thereafter 2-3 boys from the neighborhood gathered and tried to save the deceased; but none of these boys were examined as a prosecution witness.
- b. The discrepancies in the testimonies make the presence of PW3 and PW18 doubtful. During the cross examination PW3 deposed that, she ran towards the police station and the respondent ran after PW3 toward Police Station Model Town,

whereas S.I Mahinder Singh (PW 18) stated that PW3 and the respondent were running towards the Chhatarsal stadium, which is admittedly in opposite direction.

- c. ASI surrender Ojha (PW 16) and constable Rambir (PW 8) were deputed to guard the spot of the occurrence of the incident, whereas, as per DW1 deposed that they were present at GT Karnal Road, Delhi in connection with another case as evident from FIR no.81/94 and Ex. DW1/A.

9. We have heard the learned counsel appearing on behalf of both the parties and appreciated the oral and documentary evidence, as well as, the facts and circumstances of the present case. We find that there are many improvements and contradictions in the statements of the prosecution witnesses recorded at various stages of the present case, which are: -

- i. Inconsistencies and coincidences related to presence of PW 3 and PW18, eye witnesses at the time of occurrence of the incident. Insofar as the testimony of S.I Mahinder Singh (PW18), who arrested the respondent from the spot at the time the incident took place, is concerned, his presence was not explained. According to the prosecution story PW18

was on foot, not in a vehicle and no appropriate link was established by the prosecution in this behalf; therefore, the presence of PW18 is doubtful. PW3 stated that the Police Station was 5-6 steps away from the place of the occurrence of the incident, whereas the actual distance is evidently 1 K.M therefrom. There was no cogent and clinching evidence on record to establish the motive for the murder by the respondent, as well.

- ii. Inconsistencies in the depositions made on behalf of PW 3 and PW18. PW3 in her examination-in-chief stated that at the time of the occurrence of the incident, when she returned back to same spot, she came to know, that the respondent had hidden the knife; but as per PW18 the knife (Ex. P6) was in the right hand of the accused at the time of the incident, when PW18 apprehended the accused.
- iii. Major improvements and embellishments made by PW3 to provide corroboration to the facts and circumstances of the case, wherein she stated that injury was also suffered by PW3 herself, but there is no evidence led to show blood

stains on the clothes of PW3, who it was asseverated had taken the deceased to the hospital.

- iv. The only circumstantial evidence and material available against the accused/respondent was the report of the CFSL (Ex.PW20/F); the blood found on the knife (Ex.P6), as well as, on the clothes he was wearing at the time of occurrence of the incident, which matches the blood group of the deceased.

10. In this behalf the Hon'ble Apex Court in **Ramesh Chandra Sao v. State of Bihar, AIR 1999 SC 1574**, in relation to the recovery of blood stained article, held that the "Presence of the blood stains on floor of room of house and the shawls by themselves are not such circumstances to establish the guilt of the accused, grant of benefit of doubt proper".

11. The Hon'ble Apex Court, in **Sarbir Singh v. State of Punjab, 1993(1) Crimes 616 (SC)** while dealing with circumstantial evidence held that, in cases depending on circumstantial evidence it is true that the chain of events proved by the prosecution must show that within all human probability the offence has been committed by the accused, but the court is expected to consider the total possible effect of all the proved

facts along with the motive suggested by the prosecution which induced the accused to follow a particular path.

“6. It is said that men lie but circumstances do not. Under the circumstances prevailing in the society today, it not true in many cases. Sometimes the circumstances which are sought to be proved against the accused for purpose of establishing the charge are planted by the elements hostile to the accused who find out witnesses to fill up the gaps in the chain of circumstances. In countries having sophisticated modes of investigation, every trace left behind by the culprit can be followed and pursued immediately. Unfortunately, it is not available in many parts of this country. **That is why Courts have insisted (i) the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established; (ii) all the facts so established should be consistent only with the hypothesis of the guilt of the accused and should be such as to exclude every hypothesis but the one sought to be proved; (iii) the circumstances should be of a conclusive nature; and (iv) the chain of evidence should not have any reasonable ground for a conclusion consistent with the innocence of the accused.**

7. Relied in the case of *Reg v. Hodge, (1838) 2 Lewin 227*, it was said: "The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matter, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete." It has been impressed that suspicion and conjecture should not take place of legal proof. It is true that the chain of events proved by the prosecution must show that within all human probability the offence has been committed by the accused, but the Court is expected to consider the total cumulative effect of all the proved facts along with the motive suggested by the prosecution which induced the accused to follow a particular path. The existence of a motive is often an enlightening factor in a process of presumptive reasoning in cases depending on circumstantial evidence."

12. In a criminal trial, the Court is to ascertain the truth from the material before it. It is well-settled law that the burden of proof is on the prosecution to establish its case beyond reasonable doubt. During the

course of any investigation, minor discrepancies are inevitable, especially in cases of eye witnesses. This may be due to normal errors in observation, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence, on account of difference in perception due to the perspective of the incident depending upon the physical location of the eye witness, loss of memory and other variable factors. However, only where the omissions and contradictions in the testimonies create a serious doubt about the truthfulness of one witness and other witnesses, and there are material improvements while deposing in the Court, such evidence can be disregarded.

13. In the present case, the prosecution story is majorly based upon its reliance upon the testimony of Gita (PW3), the sister of the deceased, as well as, the sole eye witness to the murder, who it was urged was present at the time incident. Her testimony suffered from various discrepancies, which are as follow: -

- i. As per the rukka (Ex.PW-3/A), PW3, stated that the respondent stabbed her sister deceased Lata, and chased her with the knife (Ex.PW-16/B), when she ran towards the police station. However, according to statement of

S.I. Mahinder Singh (PW18), PW3 ran in the opposite direction towards Chhatarsal Stadium.

- ii. Gita (PW3), in her cross examination admitted that she also suffered from the injuries inflicted upon her from the knife by the respondent, but there was no record of the injuries suffered by PW3, neither were the blood stained clothes of PW3 taken on the record by the I.O Balbir Singh .
- iii. According to PW3, she was the first person, who took the deceased to the hospital, and consequentially it can be inferred that her clothes would be stained by the blood of the deceased, but the same were not seized by the I.O, which create a doubt about the presence of PW3 at the time of the occurrence.

14. Although PW3 claimed that the respondent had stabbed the deceased Lata, she has neither proved nor offered any cogent motive why the latter would do so. The testimony of Gita PW3, sister of the deceased demonstrates inconsistencies when appreciated in juxtaposition with the testimony of PW18 S.I Mahinder Singh; as well as, the facts and

circumstances of the case as per the prosecution version of the occurrence; and the evidence available on the record.

15. The law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion that can unerringly be drawn is the guilt of the accused, and no other hypothesis is possible. In a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The court must satisfy itself that various circumstances in the chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. When the important link goes, the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubt. The court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes; unconsciously it may happen to be a short step between moral certainty and legal proof. There is a long mental distance between “may be true” and “must be true” and the same divides conjectures from sure conclusions. The Court in mindful of caution by the settled principles of law and the decisions rendered by

this Court that in a given case like this, where the prosecution rests on the circumstantial evidence, the prosecution must place and prove all the necessary circumstances, which would constitute a complete chain without a snap establishing the hypothesis that except the accused, no one had committed the offence; which in the present case, the prosecution has failed to prove.

16. In the present case, on cumulative reading and appreciation of the entire depositions on record, we are of the considered view that from the appreciation of the evidence available on record, there are irreconcilable discrepancies in the testimonies of PW3 and PW 18. The testimonies of eye witnesses are contradictory in relation to the occurrence of the incident. Presence of both the eye witnesses is consequentially rendered doubtful.

17. In the view of the above, after duly considering the facts and circumstances, oral and documentary evidence available on the record, we are of the view that the prosecution has failed to prove its case against the respondent beyond reasonable doubt. This court therefore finds no reason to interfere with the impugned judgment. Resultantly, we uphold the same.

18. In these circumstances, the appeal being devoid of merit and is accordingly dismissed.

SIDDHARTH MRIDUL, J.

SANGITA DHINGRA SEHGAL, J.

APRIL 22, 2019

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