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

+ CRL.A. 69/2004

GURMEET SINGH @ LUCKY

..... Appellant

Through Mr. Mukesh Kalia, Advocate with
Mr. M.L. Yadav, Advocate.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through Ms. Aashaa Tiwari, APP for the State

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Reserved On: 18th February, 2020

Date of Decision: 28th February, 2020

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

MANMOHAN, J:

1. Present appeal has been filed by appellant-convict challenging the judgment dated 11th December, 2003 and the order on sentence dated 19th December, 2003 passed by Additional Sessions Judge, Delhi in Sessions Case No. 82/2003 arising out of FIR No. 120/2001 registered with Police Station Kirti Nagar, whereby he had been convicted under Sections 302/201 of the Indian Penal Code (hereinafter referred to as 'IPC') and sentenced to life imprisonment with a fine of Rs. 10,000/- for an offence punishable under Section 302 IPC and three years rigorous imprisonment with fine of Rs. 2,000/- for the offence punishable under Section 201 IPC.

CASE OF THE PROSECUTION

2. Briefly stated, the prosecution's case is that on 7th March, 2001, at about 4:20 am, police was informed through a PCR call that someone had thrown a body in Ghungroo wali Gali, Ramesh Nagar and this information was recorded in DD No. 30A (Ex. PW-5/A). Upon receiving this information, the investigating officer - Inspector Babu Lal (PW-16) reached the spot and found that the dead body of Bhupender Singh was lying outside the gate of House No. 97A, Single storey, Ramesh Nagar, New Delhi (house of the deceased) and the deceased had several injury marks on his body.

3. The investigating officer - Inspector Babu Lal (PW-16) examined the house of the deceased and he observed that the floor had been cleaned. Upon suspicion, he questioned the son of the deceased i.e. appellant-convict, who made a disclosure statement. Thereafter, certain articles were recovered and the appellant-convict was arrested vide memo Ex. PW-14/A at around 2 pm on 7th March, 2001. The Trial Court had framed charges under Section 302 and 201 IPC against the appellant-convict.

FINDING OF THE TRIAL COURT

4. The Trial Court after a full trial held the appellant-convict guilty. The conclusion of the Trial Court is reproduced hereinbelow:-

“41. To sum up, prosecution could bring the following circumstances against the accused :—

1. Accused used to reside in H. No. 97A Single Storey Ramesh Nagar, Delhi with his father, mother and younger sister.

2. There are two bedrooms in the house, one was used by the deceased and the other by the accused and other members of the family.

3. *In the bedrooms of the deceased blood spots were found on walls, doors and some portion of the floor.*
4. *Blood stained pair of shoes and handkerchief were recovered from the said room.*
5. *Deceased was an alcoholic who used to quarrel with his wife, members of the locality and used to borrow money for liquor and never returned the same, thereby eye-brows were raised against the deceased and his family members, which gave motive to the accused to commit ghastly crime.*
6. *Dead body of deceased was found lying outside the house with a trail of blood thereby suggesting that his dead body was dragged upto that spot.*
7. *A telephone call was given to PCR in order to pass off that someone had murdered the deceased and thrown his dead body there.*
8. *Accused made a disclosure statement and got recovered cot-arm and cable wire from sun-shed of the said house.*
9. *Cot-arm was having blood over it.*
10. *Accused got recovered clothes from central verge of Najafgarh Road which were stained with blood.*
11. *Autopsy surgeon opined that cot-arm could have been used in causing injury on the person of the deceased, including the fatal blow.*
12. *Autopsy report opined that death of deceased was caused on account of head injury.*
13. *Cable wire recovered at the instance of the accused could have been used to cause ligature mark present over the dead body, opines autopsy surgeon.*
14. *Blood sample and clothes of the deceased were seized.*
15. *Plaster was broken from walls, seized and sent to FSL.*
16. *Blood sample and clothes of the deceased were having blood of human origin and of AB Group.*
17. *Clothes recovered from central verge Najafgarh Road near Basaidarapur at the instance of the accused were having blood of human origin and of AB Group.*
18. *Cement plaster piece seized from wall of the deceased was having blood of human origin and of AB Group.*
20. *Cot arm was having blood over it of human origin.*

21. Cable wire recovered from sun-shed as well as seized from the bedroom of the deceased were of similar texture, design, diameter and markings etc.

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43. In order to cause disappearance of evidence of murder, the accused had cleaned floor of the room and had thrown the dead body of his father outside the house. It was so done by him intentionally in order to screen himself from the offence of murder. Telephone call was given to PCR to pass of that his father was murdered by someone and had thrown his dead body outside the house. All these instances are sufficient to conclude that the accused caused disappearance of evidence and sent wrong information to police control room in order to screen himself from punishment. Therefore, it is clear that he has also committed an offence of causing disappearance of evidence of murder.

44. The circumstances brought over the record are sufficient to announce facts in favour of the prosecution. Accused has failed to raise even an iota of doubt in the case, not to talk of explaining the circumstances brought over the record. Therefore, the accused is held guilty and convicted for offences punishable under section 302 and 201 of the Penal Code. “

ARGUMENTS ON BEHALF OF THE APPELLANT-CONVICT

5. Mr. Mukesh Kalia, learned counsel for the appellant-convict stated that in the present case there were two sets of recoveries i.e. one made from the place of incident and the other made from Najafgarh road. He contended that the first set of recoveries was doubtful inasmuch as the only independent witness to those recoveries namely Surjeet Singh (PW-2) had not supported the case of the prosecution. He pointed out that the alleged weapon of offence i.e. recovered wooden cot piece and the cable wire were not shown in the site plan made by the investigating officer (Ex. PW-16/D).

6. Learned counsel for the appellant-convict further contended that the second set of recoveries (from the Najafgarh road) was made from a public place which was accessible to all and further, no public person had been made a witness to the said recoveries. He pointed out that ASI Maharaj Singh (PW-14), who was a witness to the second set of recoveries, had stated in his cross-examination that from the place of incident he had directly gone to the police station. In view of the aforesaid, learned counsel for the appellant-convict stated that the recoveries in the present case were wholly unreliable and liable to be discarded. In any event, he contended that mere recovery of bloodstained articles would not be sufficient to conclude that the appellant-convict was the perpetrator of the crime. In support of his contention he relied upon the judgment of this Court in ***Kallo Passi vs. State, Crl.A 431/2001***.

7. Mr. Kalia emphasised that the prosecution had failed to establish that the injuries caused to the deceased were “*sufficient in the ordinary course of nature to cause death*” as neither the post-mortem report of the deceased nor the Doctor had deposed to that effect. He submitted that since the aforesaid fact (i.e. the nature of injuries) had not been established, the essential ingredient of Section 302 of IPC was not fulfilled and at best, the present case would fall under Section 304 Part I of IPC.

8. Learned counsel for the appellant-convict contended that there was no evidence on record to attribute any motive to the appellant-convict. He stated that the only evidence regarding an alleged motive was the disclosure statement of the appellant-convict but the same was not admissible in law and therefore, cannot be relied upon.

9. He pointed out that the mother of the appellant-convict as well as the younger sister were living in the same house as the appellant-convict yet neither of them had been examined by the prosecution.

10. Learned counsel for the appellant-convict lastly stated that there was no direct evidence in the present case and it was entirely based on circumstantial evidence, which the prosecution had failed to establish. Consequently, he prayed that the impugned judgment be set aside and the appellant-convict be acquitted.

ARGUMENTS ON BEHALF OF THE STATE

11. *Per contra*, Ms. Aashaa Tiwari, stated that as per the post mortem report of the deceased (Ex. PW-1/A), there were seven injuries on his body and the time since death was about one and a half days which comes out to be early morning of 7th March, 2001 and the doctor had opined “*Death due to head injury*”. The relevant portion of the Post-Mortem report is reproduced hereinbelow:-

“SCHEDULE OF OBSERVATION

A-GENERAL

1. Name Sardar Bhupinder Singh S/o Gurbux Singh Age 52 yrs Sex M
2. Address R/o 97A, Single Storey, Ramesh Nagar
3. Height 5'7" Weight -- Physique Well built

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7. Injuries (briefly but accurately describe all) (State whether injuries are ante-mortem with reasons):

1. One lacerated wound on right tibial side 12 cm. below right knee size 6 cm X 2 cm. muscle deep.
2. One lacerated wound on right ring finger dorsal aspect of distal phalanx on medial aspect of nail size 2 cm. x .5 cm into muscle deep.
3. Contusion on left forehead 4 cm. above left eyebrow size 2 cm x 1 cm.

4. Two contusions on left shoulder size 2 cm x .5 cm and second one .5 x .5 cm.

5. One stellate type (star shaped) wound seen on the left temporo-parietal region comprising of five lacerated wounds communicating with each other at one central point situated at 1 cm. above a left ear pinna and 15 cm. from left eyebrow.

1. 3.5 cm x 1 cm. x muscle deep
2. 2 cm x .5 cm. x muscle deep.
3. 2.5 cm x 1.5 cm. x muscle deep.
4. 2 cm. x .5 cm. x muscle deep.
5. 4 cm. x .5 cm. x muscle deep.

6. One triangle shape wound seen 2 cm. right to injury no.5 having three lacerated wounds communicating with each other at one central point.

1. 1.5 cm x .5 cm x skin deep
2. 1 cm x .5 cm. x skin deep
3. 1.5 cm. X .5 cm. skin deep

7. One transfer ligature mark abraded one seen on the neck crossing its front at the upper level of thyroid cartilage. On left side it is going backward horizontally for 14.5 cm. and on right side it is going backward horizontally for 6.5 cm. The maximum width .5 cm. It is deficient on posterior and right posterio lateral aspect of neck. Dissection under the ligature mark.

No corresponding bruise under the skin and subcutaneous space. Sternocleidomastoid muscle. Hyoid bone cricoid cartilage thyroid cartilage and tracheal rings are normal and intact. The jugular and carotid vessels are normal and intact.

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I. TIME SINCE DEAD: App. 1½ days

J. OPINION: Death due to Head Injury

Sd/-

Dr. M.M. NARNAWARE
CMO (N.F.S.C.)
Deptt. Of Mortuary
DDU Hospital, Hari Nagar.”

12. She contended that since the post mortem report was silent about the fact whether the head injury was sufficient to cause death in ordinary course of nature, the same would have to be determined from the facts of the present case. In support of her contention she relied upon the judgment of the Supreme Court in ***State of Rajasthan vs. Shera Ram alias Vishnu Dutta AIR 2012 SC 1.***

13. She emphasized that the subsequent opinion of the Doctor regarding the recovered weapon of offence had also opined that the injuries caused to the deceased were possible by the wooden cot piece and the cable wire. Consequently, according to her the head injury was sufficient to cause death in ordinary course of nature.

14. Learned APP for the State stated out that the reason why the recovered wooden piece of cot and the cable wire had not been shown in the Site Plan (Ex. PW-16/D) had been explained by the investigating officer - Inspector Babu Lal (PW-16) in his deposition wherein he had deposed that the recoveries had taken place after the site plan had been prepared. She emphasised that these articles had been shown in the scaled site plan (Ex. PW-11/A) which was prepared after the recovery. The relevant portion of the testimony of the investigating officer - Inspector Babu Lal (PW-16) is reproduced hereinbelow:-

“It is correct that in the scaled site plan at point F the cable wire and wooden piece of cot were recovered and that place has not been shown in site plan prepared by me. (Vol. I had prepared the site plan before seizing the exhibits but later on when the draftsman visited the spot I had pointed out the place from where cable wire and wooden piece were recovered). I had seized the wooden piece of cot and the cable after preparing site plan Ex.P.W.16/D. At the spot I had prepared first of all rukka. And then I recorded

statement about identification of dead body and then conducted inquest proceedings. Then I prepared memo about lifting of blood, control earth and blood sample of the dead body from where the dead body was lying. Thereafter I recorded disclosure statement of the accused. Thereafter I had lifted exhibits from the room and seized them.

In the disclosure statement of accused there is reference of cable and piece of cot. The site-plan was prepared earlier to that. It is correct that I might have omitted to point out the place from where the cable and piece of cot were recovered. It is incorrect that I concocted the story of cable and cot piece later on at P.S. It is incorrect that accused was falsely implicated in this case after fabricating the evidence.”

15. Learned APP for the State contended that the deceased was an alcoholic who used to quarrel with his wife as well as his family and other members of the locality and was in the habit of borrowing money for liquor without ever returning the same. She stated that in view of these facts, there was sufficient motive for the appellant-convict to commit the crime.

16. She stated that the prosecution had established all the circumstances in the present case and the impugned judgment was based on proper appreciation of the evidence.

COURT'S REASONING

THE LAW RELATING TO A CASE BASED ON CIRCUMSTANTIAL EVIDENCE ENUMERATED

17. The present case is entirely based upon circumstantial evidence as there is no eyewitness to the incident. The law relating to a case based on circumstantial evidence has been recently discussed by this Court in ***Amit Sehrawat @ Lamba vs. State, Crl.A. 242/2018 decided on 20th February,***

2020. The relevant portion of the said judgment is reproduced hereinbelow:-

*“21. Having heard the learned counsel for the parties and having perused the evidence on record, this Court is of the opinion that the present case is based on circumstantial evidence. Consequently, it is essential to outline the conditions that have to be fulfilled before such a case can be said to be fully established. The Supreme Court in **Sharad Birdhichand Sarda vs. State of Maharashtra, (1984) 4 SCC 116** after referring to its earlier decision in **Hanumant, Son of Govind Nargundkar vs. State of Madhya Pradesh, 1952 SCR 1091** stated the five golden principles, constituting the Panchsheel, of proof of a case based on circumstantial evidence as follows:-*

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

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the

innocence of the accused and must show that in all human probability the act must have been done by the accused.”

(emphasis supplied)”

18. Keeping in view the aforesaid, it is essential to discuss all the circumstances that are against the appellant-convict and in favour of the prosecution.

ITEMS RECOVERED FROM THE HOUSE OF THE DECEASED WERE FOUND CONTAINING HUMAN BLOOD. CONSEQUENTLY, IT IS PROVED THAT THE DECEASED WAS KILLED IN HIS HOUSE AND THEN HIS BODY WAS DRAGGED OUTSIDE.

19. The information regarding the present case had been received through a PCR call which was recorded vide DD No. 30A (Ex. PW-5/A). Thereafter, the investigating officer-Inspector Babu Lal (PW-16) had reached the spot. After he had examined the dead body lying outside the house of the deceased, Inspector Babu Lal (PW-16) had gone inside to inspect wherein he had observed that the floor of the room of the deceased had been recently cleaned. He had, however, observed bloodstains on the wall of the said room. The relevant portion of the testimony of the investigating officer-Inspector Babu Lal (PW-16) is reproduced hereinbelow:-

“On 7-3-2001 I was posted at P.S. Kirti Nagar as S.H.O. On that day after receiving D.D.No.30A by ASI Maharaj Singh I was also informed I went to place of incident 97A, Single Storey, Ramesh Nagar. I found one dead body of a Sikh male person whose name revealed later on Bhupinder Singh aged about 52 years was lying in front of door of H.No.97A. I inspected the place of incident. The blood was coming out of the dead body. No eye witness met me there..... I inspected the house of the deceased i.e. place of incident and I found the floor of the house clean, but I noticed blood on the walls and doors of the room of the house in which deceased used to sleep.

Accused met me there and I interrogated him and during interrogation he disclosed about the commission of the offence and I arrested accused present in the court.....The accused took us to the 'Chhajli' of his house and got recovered one blood stained cot piece (Sheru). The length of the cot piece was 3'3" and the same was sealed in pullanda with seal of BL and accused also got recovered cable wire of black colour. The length of wire was 11'11". On which Kent Cable was written. The cable wire was also sealed with the same seal and both these articles were taken into possession vide memo Ex.PW2/B and accused also signed the same at point 'A'. The accused took us into the house and got recovered his pant having blood stains under the almirah and the pant was sealed in a pullanda with the seal of BL and was seized vide memo Ex.PW2/C and accused also signed the same at point 'A'. After that accused took us to another room where the incident had allegedly committed and then I took blood stained plaster, blood stained floor and blood stained doors and cable wire fixed with T.V. From that wire the other wire was cut by accused and blood stained shoes and one handkerchief and these articles were sealed in pullandas with seal of BL and were seized vide memo Ex.PW2/D....."

(emphasis supplied)

20. It is pertinent to mention that the items recovered from the house of the deceased i.e. shoes, handkerchief, cement sample etc. were sent for FSL examination and they were found containing human blood. The 'bloodstained cemented concrete' even had the blood of the deceased i.e. blood group 'AB'. The relevant portions of the FSL reports (Ex. PW-15/A and Ex. PW-15/B) are reproduced hereinbelow:-

A. FSL Report Ex. PW-15/A

**"FORENSIC SCIENCE LABORATORY
GOVT. OF NCT OF DELHI**

Police Complex, Malviya Nagar, New Delhi- 110017

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DESCRIPTION OF ARTICLES CONTAINED IN PARCEL

xxx	xxx	xxx
Exhibit '2'	:	<u>Cemented concrete having dark brown stains described as "Blood stained earth".</u>
Exhibit '3'	:	<u>Cemented concrete described as "Sample earth".</u>
Exhibit '4'	:	<u>Pieces of cemented plaster described as "Blood stained plaster".</u>
Exhibit '5'	:	<u>Cotton wool swab having brown stains described as "Blood stained cotton".</u>
Exhibit '6'	:	<u>Cemented concrete pieces having brown stains described as "Blood stained floor".</u>
Exhibit '7a'	:	<u>Pair of brown shoes.</u>
Exhibit '7b'	:	<u>Pair of socks.</u>
Exhibit '8'	:	<u>One handkerchief having brownish stains.</u>
Exhibit '9'	:	<u>One wooden stick described as "Blood stained wooden cot piece".</u>
Exhibit '10'	:	<u>One pants described to be of accused.</u>
xxx	xxx	xxx

RESULTS OF ANALYSIS

1. Blood was detected on exhibits '1', '2', '4', '5', '6', '7a', '8', '9', '11a', '11b', '11c', '11d', '11f', '11g', '11h', '12a', '12b', '12c' and '13'.
2. Blood could not be detected on exhibits '3', '7b', '10' and '11e'.
3. Report of serological analysis in original is attached herewith.

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(DR. DHRUW SHARMA)
Senior Scientific Officer (Biology)
Forensic Science Laboratory, Delhi
Cum Ex Officio Chemical Examiner to the
Govt. of National Capital Territory of Delhi
(emphasis supplied)

B. FSL Report Ex. PW-15/B

*“FORENSIC SCIENCE LABORATORY
GOVT. OF NCT OF DELHI
Police Complex, Malviya Nagar, New Delhi- 110017*

BIOLOGY DIVISION

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Portion of exhibits as detailed in the main Biology Report have been examined using various serological techniques. The results obtained have been analysed as given below:

<i>Exhibits</i>	<i>Species of Origin</i>	<i>ABO Group/ Remarks</i>
xxx	xxx	xxx
<u>'2' Blood stained cemented concrete</u>	<u>Human</u>	<u>'AB' Group</u>
<u>'3' Control cemented concrete</u>	<u>No reaction</u>	<u>=</u>
<u>'4' Blood stained plaster</u>	<u>Human</u>	<u>No reaction</u>
<u>'5' Cotton wool swab</u>	<u>Human</u>	<u>No reaction</u>
<u>'6' Blood stained concrete</u>	<u>Human</u>	<u>No reaction</u>
<u>'7a' Pair of shoes</u>	<u>Human</u>	<u>No reaction</u>
<u>'8' Handkerchief</u>	<u>Human</u>	<u>Inconclusive</u>
<u>'9' Wooden stick</u>	<u>Human</u>	<u>No reaction</u>
xxx	xxx	xxx

(DR. DHRUW SHARMA)
Senior Scientific Officer (Biology)
Forensic Science Laboratory, Delhi
Cum- Ex Officio Chemical Examiner to the
Govt. of National Capital Territory of Delhi ”

(emphasis supplied)

21. In view of the aforesaid, it is proved that the deceased was killed in his house and then his body was dragged outside.

IT IS AN ADMITTED FACT THAT THE APPELLANT-CONVICT WAS RESIDING AT THE PLACE OF INCIDENT. HOWEVER, HE HAS FAILED TO THROW ANY LIGHT UPON FACTS WHICH WERE SPECIALLY WITHIN HIS KNOWLEDGE AND WHICH COULD NOT SUPPORT ANY THEORY OR HYPOTHESIS COMPATIBLE WITH HIS INNOCENCE.

CONSEQUENTLY, THIS COURT IS OF THE OPINION THAT THE APPELLANT-CONVICT'S FAILURE TO ADDUCE ANY EXPLANATION IS AN ADDITIONAL LINK WHICH FORMS A PART OF THE CHAIN OF EVENTS.

22. It is an admitted fact that the appellant-convict was residing in House No. 97A, Single storey, Ramesh Nagar, New Delhi (i.e. the place of incident). It is not the appellant-convict's case that he was not at home or was elsewhere when the incident had occurred.

23. Since it was proved that the appellant-convict was present at the scene of crime, it was for the appellant-convict to show how his father had died and how the dead body was found lying outside their house. However, the appellant-convict has failed to throw any light upon facts which were specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence. Consequently, this Court is of the opinion that the appellant-convict's failure to adduce any explanation is an additional link which forms a part of the chain of events.

DR. MM NARNAWARA (PW-1) HAD OPINED THAT INJURIES MENTIONED IN THE POST MORTEM REPORT OF THE DECEASED COULD BE POSSIBLE FROM THE WEAPONS RECOVERED AT THE INSTANCE OF THE APPELLANT-CONVICT NAMELY A BLOOD-STAINED WOODEN COT PIECE AND A CABLE WIRE.

24. Two weapons were recovered (vide seizure memo Ex. PW-2/B) at the instance of the appellant-convict namely a blood-stained wooden cot piece and a cable wire, as mentioned in the aforesaid testimony of the investigating officer-Inspector Babu Lal (PW-16). FSL examination had confirmed that human blood was present on the wooden cot piece. Both these weapons were sent for subsequent opinion to Dr. MM Narnawara

(PW-1) who had opined that injuries mentioned in the post mortem report of the deceased could be possible from these weapons. The relevant portion of the subsequent opinion (Ex. PW-1/B) of Dr. M.M. Narnawara (PW-1) is reproduced hereinbelow:-

“Received two sealed packets with B.L. Seal on 30/3/2001.

- 1. On opening one packet, one wooden-cot piece was found inside the packet. The injuries Serial No.1 to 6 could have been caused from this weapon.*
- 2. On opening second packet a cable wire (Black colour) was found inside the packet. The injury No.7 could have been caused from this ligature material.*

Both the items resealed with LKB seal and handed over to I.O.

Sd/-

*Dr. M.M. NARNAWARE
CMO (N.F.S.C.)
Deptt. Of Mortuary
DDU Hospital, Hari Nagar.”*

(emphasis supplied)

25. The cable wire recovered at the instance of the appellant-convict from the “chajjli”/ balcony, which was opined to have caused injury number seven to the deceased, was found to be similar to the cable wire that was recovered from the room of the deceased. The relevant portion of the FSL report (Ex. PW-15/C) is reproduced hereinbelow:-

*“FORENSIC SCIENCE LABORATORY
GOVT. OF NCT OF DELHI*

*POLICE COMPLEX, MALVIYA NAGAR, NEW DELHI- 110017
REPORT No. FSL 2001/B-1038/P-166/2001 Dated 19.11.2001*

<i>xxx</i>	<i>xxx</i>	<i>xxx</i>
<i>Exhibit 14</i>	<i>:</i>	<i>One black colour cable wire measuring approximately two meters in length having connecting plug at one end.</i>
<i>xxx</i>	<i>xxx</i>	<i>xxx</i>

Exhibit 15 : One black colour cable wire measuring approximately 3.5 meter in length.

RESULTS OF EXAMINATION

Examined the cable wires in Exhibit-14 and Exhibit-15 physically and under magnification. They were found to be similar in respect of colour, texture, design, diameter of cable, diameter of inner white plastic core, diameter of copper wires, design of the shield wires, markings on the cable and microscopic appearance.

Note: Exhibits sent to this division for examination have been sealed with the seal of "S.V.-FSL-DELHI".

(Dr. SWAROOP VEDANAND)

Senior Scientific Officer (Physics)

Forensic Science Laboratory, Delhi

Cum Ex Officio Chemical Examiner to the
Govt. of National Capital Territory of Delhi"

(emphasis supplied)

INSOFAR THE CONTENTION THAT THE INDEPENDENT WITNESS TO THE RECOVERY HAD TURNED HOSTILE IS CONCERNED, THIS COURT IS OF THE VIEW THAT THE SAME DOES NOT AFFECT THE CASE OF PROSECUTION AS THE OTHER POLICE WITNESS NAMELY ASI MAHARAJ SINGH (PW-14) HAD EXHIBITED THE RECOVERY MEMO REGARDING RECOVERED ARTICLES.

26. Insofar the contention that the independent witness to the recovery had turned hostile is concerned, this Court is of the view that the same does not affect the case of prosecution as the other police witness namely ASI Maharaj Singh (PW-14) had supported the case of the prosecution and exhibited the recovery memo regarding recovered articles. The Supreme Court in **Rameshbhai Mohanbhai Koli & Ors. Vs. State of Gujarat, (2011) 11 SCC 111** has held that even if *panch* witness turns hostile the evidence of person who effected the recovery would not stand vitiated. The relevant portion of the said judgment is reproduced hereinbelow:-

“24. Another important piece of evidence in the form of panchnama of the scene of offence is Ext. 384. The prosecution has relied upon the oral testimony of Vijaybhai Bhagvanjibhai Zariya, PW 35 (Ext. 383) and Babubhai Chakubhai Vania, PW 68 (Ext. 519). It is true that both the panchas have turned hostile and not supported the case of the prosecution, however, panchnama has been exhibited in the cross-examination of PW 35. As requested by the State counsel, we verified the said panchnama which is available in the paper book (vide p. 2081) which is an application form bearing No. 001351 of A-1 Rameshbhai Mohanbhai Vaghani with his residential address was found wherein he applied for a loan of Rs. 60,000 for the purpose of purchasing rickshaw and on the said form also bloodstains were found. In view of the same, the said form was recovered while preparing panchnama of the scene of offence. This document is one of the circumstances against A-1 about his presence at the time of occurrence at the place of incident. This evidence can be relied upon to show that A-1 was present at the place of offence at the relevant time.

25. In the same manner, though panchas of several other panchnamas in respect of recovery of handkerchief, seat of motorcycle and other articles with bloodstains have turned hostile and not supported the prosecution case, those panchnamas were exhibited during the examination of the investigating officer and for a limited purpose, therefore, they can be relied upon.

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Evidence of the investigating officer

32. An argument was advanced about reliance based on the evidence of investigating officer. This Court in State of U.P. v. Krishna Gopal [(1988) 4 SCC 302 : 1988 SCC (Cri) 928] has held that courts of law have to judge the evidence before them by applying the well-recognised test of basic human probabilities.

“3. ... prima facie public servants must be presumed to act honestly and conscientiously and their evidence has to be assessed on its intrinsic worth and cannot be discarded merely

on the ground that being public servants they are interested in the success of their case.” (Vide State of Kerala v. M.M. Mathew [(1978) 4 SCC 65 : 1978 SCC (Cri) 503 : 1978 SCC (Tax) 209] at SCC p. 68, para 3.)

33. In *Modan Singh v. State of Rajasthan* [(1978) 4 SCC 435 : 1979 SCC (Cri) 56] it was observed (at SCC p. 438, para 9) that where the evidence of the investigating officer who recovered the material objects is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses did not support the prosecution version. Similar view was expressed in *Mohd. Aslam v. State of Maharashtra*.”

34. In *Anter Singh v. State of Rajasthan* [(2004) 10 SCC 657 : 2005 SCC (Cri) 597] , it was further held that: (SCC p. 661, para 10)

“10. ... even if panch witnesses turn hostile, which happens very often in criminal cases, the evidence of the person who effected the recovery would not stand vitiated.”

(emphasis supplied)

INSPECTOR BABU LAL (PW-16) HAD EXPLAINED THE ABSENCE OF WOODEN COT PIECE AND CABLE WIRE IN THE UNSCALED SITE PLAN INASMUCH AS HE HAD DEPOSED THAT WOODEN COT PIECE AND CABLE WIRE HAD BEEN RECOVERED AFTER HE HAD PREPARED THE SAID SITE PLAN. THE RECOVERY OF THE WEAPONS (I.E. BLOOD-STAINED WOODEN COT PIECE AND A CABLE WIRE) USED IN THE COMMISSION OF THE CRIME AT THE INSTANCE OF APPELLANT-CONVICT IS ADMISSIBLE UNDER SECTION 27 OF THE EVIDENCE ACT AND IS AN IMPORTANT CIRCUMSTANCE AGAINST THE APPELLANT-CONVICT.

27. Further, this Court is in agreement with the learned APP that the investigating officer – Inspector Babu Lal (PW-16) had explained the absence of wooden cot piece and cable wire in the unscaled site plan (Ex. PW-16/D) inasmuch as he had deposed that wooden cot piece and cable

wire had been recovered after he had prepared the said site plan. The scaled site plan (Ex. PW-11/A) that was prepared subsequent to the recoveries shows the presence of these weapons i.e. wooden cot piece and cable wire.

28. Consequently, the recovery of the weapons (i.e. blood-stained wooden cot piece and a cable wire) used in the commission of the crime at the instance of appellant-convict is admissible under Section 27 of the Evidence Act and is an important circumstance against the appellant-convict.

THE ARTICLES THAT WERE RECOVERED FROM CENTRAL VERGE OF THE NAJAFGARH ROAD WERE NOT ORDINARILY VISIBLE TO THE PUBLIC AND THE PLACE OF RECOVERY WAS WITHIN THE EXCLUSIVE KNOWLEDGE OF THE APPELLANT-CONVICT. CONSEQUENTLY, THE SAID RECOVERY CANNOT BE DISCARDED ON THE GROUND THAT IT WAS MADE FROM A PUBLIC PLACE. THE CONTENTION THAT THE RECOVERY IS UNRELIABLE BECAUSE THERE WAS NO PUBLIC WITNESS TO THE SAME IS UNTENABLE IN LAW. FURTHER, THE RECOVERED CLOTHES WERE FOUND TO HAVE BLOOD OF THE DECEASED BEING BLOOD GROUP 'AB'.

29. The appellant-convict had also contended that since ASI Maharaj Singh (PW-14) had stated in his cross-examination that from the place of incident, he had directly gone to the police station, the recovery from central verge of Najafgarh Road would be inadmissible. However, it is relevant to point out that ASI Maharaj Singh (PW-14) had specifically denied a suggestion that 'the appellant-convict had not got recovered clothes from Najafgarh Road'. The relevant portion of the testimony of ASI Maharaj Singh (PW-14) is reproduced hereinbelow:-

".....Then accused led the police party to Najafgarh Road opposite Basai Dara Pur and from central verge of the road accused got recovered 'one Potli' containing four shirts, two pieces of bed sheet, the bed sheet of which 'Potli' was made.

All clothes were blood stained and same were sealed with seal of BL and seized vide memo Ex.PW14/C. Then accused was brought to P.S.....

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xxxx

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.....It is also incorrect to suggest that accused had not got recovered four shirts two pieces of bed sheet and one from the Najafgarh road. It is also incorrect to suggest that I was not alongwith the SHO in this case and only joined the proceedings with him in the PS.....”

(emphasis supplied)

30. Keeping in view the aforesaid as well as the entire testimony of ASI Maharaj Singh (PW-14), this Court is of the opinion that the statement made by ASI Maharaj Singh (PW-14) in his cross examination was a minor discrepancy as he had supported the case of the prosecution including the recovery made at the instance of appellant-convict from the central verge of Najafgarh road.

31. In fact, as held by the Trial Court, after the recovery of weapons, the appellant-convict had led the police team to central verge of Najafgarh road and got a bundle of clothes recovered vide seizure memo Ex. PW-14/C. The investigating officer (PW-16) had deposed that the said articles were concealed under a tree. The relevant portion of his testimony on this aspect is reproduced hereinbelow:-

“.....After that accused led us to Najafgarh Rod, Central Verge opposite Yateen Motors, Basai Dara Pur and got recovered one pullanda of clothes which was concealed by him under the tree of Kaner. The pullanda was opened and it was found to contain one piece of bed sheet having blood stains of orange colour designdar, one piece of another bed sheet blood stains of black and yellow colour, one shirt having blood stains of black and white checkdar and one shirt of blue check having blood stains, one shirt of blue check having blood stains, one underwear and

one piece of cloth of blue colour blood stained. All these clothes were put in a gunny bag and were sealed with seal of BL and were seized vide memo Ex.PW14/C.....”

(emphasis supplied)

32. Consequently, the articles that were recovered from central verge of the Najafgarh road were not ordinarily visible to the public and the place of recovery was within the exclusive knowledge of the appellant-convict. Accordingly, the said recovery cannot be discarded on the ground that it was made from a public place, as sought to be contended by the learned counsel for the appellant-convict. The Supreme Court in ***State of Himachal Pradesh vs. Jeet Singh, AIR 1999 SC 1293*** has held as under:-

“26. There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is “open or accessible to others”. It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others, it would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For example, if the article is buried in the main roadside or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances. Until such article is disinterred, its hidden state would remain unhampered. The person who hid it alone knows where it is until he discloses that fact to any other person. Hence, the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others.

27. It is now well settled that the discovery of fact referred to in Section 27 of the Evidence Act is not the object recovered but the fact embraces the place from which the object is recovered and the knowledge of the accused as to it (Pulukuri

Kottaya [Pulukuri Kottaya v. Emperor, AIR 1947 PC 67 : 74 IA 65]). The said ratio has received unreserved approval of this Court in successive decisions.....”

(emphasis supplied)

33. The other contention of the appellant-convict that the second set of recovery is unreliable because there was no public witness to the same is untenable in law. The Supreme Court in a catena of judgments has held that recovery of evidence does not become doubtful merely on account of non-joining of public witnesses. The Supreme Court in ***State, Govt. of NCT of Delhi Vs. Sunil and Another, (2001) 1 SCC 652*** has held that in absence of any evidence to the contrary, testimony of police witnesses ought to be believed. The relevant portion of the said judgment is reproduced hereinbelow:-

“21. We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during the British period and policemen also knew about it. Its hangover persisted during post-independent years but it is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records

of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.”

(emphasis supplied)

34. The bundle of clothes recovered from central verge of Najafgarh road were sent for FSL examination and the clothes were found to have blood of the deceased being blood group ‘AB’. The relevant portions of the FSL reports (Ex. PW-15/A and Ex. PW-15/B) on this aspect are reproduced hereinbelow:-

A. FSL Report Ex. PW-15/A

**“FORENSIC SCIENCE LABORATORY
GOVT. OF NCT OF DELHI**

Police Complex, Malviya Nagar, New Delhi- 110017

xxx xxx xxx xxx

DESCRIPTION OF ARTICLES CONTAINED IN PARCEL

xxx xxx xxx xxx

Exhibit ‘11a’ : One dari having brownish stains.
Exhibit ‘11b’ : One cut/torn cloth piece (Bed sheet).
Exhibit ‘11c’ : One cloth (curtain).
Exhibit ‘11d’ : One black-white shirt having brown stains.
Exhibit ‘11e’ : One bluish shirt.
Exhibit ‘11f’ : One bluish shirt having brown stains.
Exhibit ‘11g’ : Blue cloth piece having brownish stains.
Exhibit ‘11h’ : One brown underwear having dirty stains.

xxx xxx xxx xxx

RESULTS OF ANALYSIS

1. Blood was detected on exhibits ‘1’, ‘2’, ‘4’, ‘5’, ‘6’, ‘7a’, ‘8’, ‘9’, ‘11a’, ‘11b’, ‘11c’, ‘11d’, ‘11f’, ‘11g’, ‘11h’, ‘12a’, ‘12b’, ‘12c’ and ‘13’.

2. Blood could not be detected on exhibits '3', '7b', '10' and '11e'.
 3. Report of serological analysis in original is attached herewith."

xxx

xxx

xxx

xxx

(DR. DHRUW SHARMA)

Senior Scientific Officer (Biology)

Forensic Science Laboratory, Delhi

Cum Ex Officio Chemical Examiner to the

Govt. of National Capital Territory of Delhi"

(emphasis supplied)

B. FSL Report Ex. PW-15/B

"FORENSIC SCIENCE LABORATORY
 GOVT. OF NCT OF DELHI

POLICE COMPLEX, MALVIYA NAGAR, NEW DELHI- 110017
BIOLOGY DIVISION

xxx

xxx

xxx

xxx

Portion of exhibits as detailed in the main Biology Report have been examined using various serological techniques. The results obtained have been analysed as given below:

Exhibits	Species of Origin	ABO Group/ Remarks
xxx	xxx	xxx
<u>'11a' Dari</u>	<u>Human</u>	<u>'AB' Group</u>
<u>'11b' Cloth piece</u>	<u>Human</u>	<u>'AB' Group</u>
<u>'11c' Curtain</u>	<u>Human</u>	<u>'AB' Group</u>
<u>'11d' Shirt</u>	<u>Human</u>	<u>'AB' Group</u>
<u>'11f' Shirt</u>	<u>Human</u>	<u>'AB' Group</u>
<u>'11g' Cloth Piece</u>	<u>Human</u>	<u>'AB' Group</u>
<u>'11h' Underwear</u>	<u>Human</u>	<u>'AB' Group</u>
Xxx	xxx	xxx

(DR. DHRUW SHARMA)

Senior Scientific Officer (Biology)

Forensic Science Laboratory, Delhi

Cum- Ex Officio Chemical Examiner to the

Govt. of National Capital Territory of Delhi"

(emphasis supplied)

THIS COURT IS IN AGREEMENT WITH THE CONTENTION OF THE LEARNED APP THAT IN VIEW OF THE MONEY BORROWING AND DRINKING HABIT OF THE DECEASED, THE APPELLANT-CONVICT HAD SUFFICIENT MOTIVE TO COMMIT THE CRIME.

35. It is settled law that motive is not a *sine qua non* for the conviction of an accused person, yet it is a relevant factor in a case based upon circumstantial evidence. In the present case, the appellant-convict had admitted in his statement recorded under Section 313 Cr. P.C. that his deceased-father was an “*alcoholic who used to fight everyday with everyone in the mohallah and sometimes with outsiders*”.

36. Consequently, this Court is in agreement with the contention of the learned APP that in view of the money borrowing and drinking habit of the deceased, his son i.e. the appellant-convict had sufficient motive to commit the crime.

KEEPING IN VIEW THE FOLLOWING CIRCUMSTANCES, ESPECIALLY THE MEDICAL AND SCIENTIFIC EVIDENCE, WHICH IS OF CONCLUSIVE NATURE, THIS COURT IS OF THE VIEW THAT THE CHAIN OF EVENTS IS COMPLETE.

37. Considering the aforesaid findings, the following circumstances have been proved and they form a complete chain of events:-

A. The appellant-convict had admitted that he used to reside at the place of incident i.e. House No. 97A, Single storey, Ramesh Nagar, New Delhi along with his family members which included his deceased-father.

B. The appellant-convict had admitted that his deceased-father “*was an alcoholic who used to fight everyday with everyone in the mohallah and sometimes with outsiders*”. This proves that appellant-

convict had motive.

C. On 7th March, 2001 i.e. the date of the incident, at about 4:20 am a PCR call was received and the caller had informed that someone had thrown a body outside House No. 97A, Single storey, Ramesh Nagar, New Delhi (house of the deceased) and DD No. 30A regarding the said information was recorded.

D. Upon receiving the information vide DD No. 30 A, the investigating officer – Inspector Babu Lal (PW-16) had reached the place of incident and examined the spot. He had noticed bloodstains on the walls of the room of the deceased and other bloodstained articles were recovered from the same room. This proves that the incident had taken place inside the room of the deceased and thereafter, the body had been dragged outside.

E. Though the appellant-convict was at home when the incident had occurred, yet he failed to adduce any explanation as to how his father had died. Consequently, Section 106 of the Evidence Act is attracted to the present case.

F. Appellant-convict was arrested on 7th March, 2001 vide arrest memo Ex. PW-14/A and the weapons of offence namely a bloodstained wooden cot piece and a cable wire were recovered at the instance of the appellant-convict vide seizure memo Ex. PW-2/B.

G. Other materials (plaster sample from the room of the deceased, shoes, handkerchief etc.) were also seized from the place of incident and they were also found to be bloodstained.

H. Thereafter, a bundle of clothes (bedsheet, curtain, shirt etc.), which were concealed under a tree near the central verge of Najafgarh road, were also recovered at the instance of the appellant-convict vide seizure memo Ex. PW-14/C. These clothes were found to have blood of the deceased i.e. blood group 'AB'.

I. On 8th March, 2001, post-mortem of the deceased was conducted.

J. As per the subsequent medical opinion (Ex.PW-1/B), injuries mentioned in the post-mortem report of the deceased were possible by the recovered weapons of offence i.e. bloodstained wooden cot piece and a cable wire.

K. FSL report (Ex.PW-15/A) confirmed that human blood was present on the recovered bloodstained wooden cot piece.

L. FSL report (Ex. PW-15/C) confirmed that the cable wire recovered at the instance of the appellant-convict from the "chajjali"/balcony was similar to the cable wire recovered from the room of the deceased.

M. The investigating officer had observed that the floor of the room of the deceased (where the incident had taken place) was cleaned and the body was dragged outside, where it was lying on a *dari*/cloth piece.

38. Keeping in view the abovementioned circumstances, especially the medical and scientific evidence, which is of conclusive nature, this Court is of the view that the chain of events is complete and the circumstances against the appellant-convict are fully established.

HOWEVER, THIS COURT IS OF THE VIEW THAT THE PROSECUTION HAS FAILED TO BRING ANY EVIDENCE ON RECORD TO ATTRACT THIRD CLAUSE OF SECTION 300 OF THE IPC AND THE INJURIES SUFFERED BY THE DECEASED HAVE NOT BEEN PROVED TO BE “SUFFICIENT IN THE ORDINARY COURSE OF NATURE TO CAUSE DEATH”. CONSEQUENTLY, THE APPELLANT-CONVICT HAD CAUSED INJURIES TO HIS FATHER AND RESULTANTLY COMMITTED AN OFFENCE PUNISHABLE UNDER SECTION 304 PART I OF IPC.

39. However, neither the post mortem report, nor the death report or the doctor who had conducted the post mortem i.e. Dr. MM Narnawara (PW-1) had specifically stated that any of the injuries suffered by the deceased were “sufficient in the ordinary course of nature to cause death”. Section 300 of IPC reads as under:-

“Section 300 Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

Secondly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

Thirdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

Fourthly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

(emphasis supplied)

40. After examining the post mortem report and statement of witnesses, it cannot be said that the injuries suffered by the deceased were such that they

would have certainly resulted in death of the victim. The Supreme Court in ***State of Rajasthan vs. Shera Ram alias Vishnu Dutta*** (supra) has held that whether an injury was sufficient to cause death or not is a question of fact and the same has to be determined by the Court in light of evidence adduced by the prosecution and other facts of the case. The relevant portion of the said judgment is reproduced hereinbelow:-

“34. In the present case also, there is no documentary or oral evidence to prove the fact that the injuries caused by the respondent to the deceased were sufficient in the ordinary course of nature to cause death. This, however, cannot be stated as an absolute proposition of law and the question whether the particular injury was sufficient in the ordinary course of nature to cause death or not is a question of fact which will have to be determined in light of the facts, circumstances and evidence produced in a given case. (Ref. Halsbury’s Laws of India, 5(2), Criminal Law II.).

35. There could be cases where injuries caused upon the body of the deceased per se can irresistibly lead to the conclusion that the injuries were sufficient to cause death in the ordinary course of nature, while there may be other cases where it is required to be proved by documentary and oral evidence. Resultantly, it will always depend on the facts of each case. Thus, in such cases, it may neither be permissible nor possible to state any absolute principle of law universally applicable to all such cases.”

(emphasis supplied)

41. The Supreme Court in ***Laxman Kalu Nikalje Vs. State of Maharashtra, AIR 1968 SC 1390*** has held as under:-

“11. That section requires that the bodily injury must be intended and the bodily injury intended to be caused must be sufficient in the ordinary course of nature to cause death. This clause is in two parts; the first part is a subjective one which indicates that the injury must be an intentional one

and not an accidental one; the second part is objective in that looking at the injury intended to be caused, the court must be satisfied that it was sufficient in the ordinary course of nature to cause death. We think that the first part is complied with, because the injury which was intended to be caused was the one which was found on the person of Ramrao. But the second part in our opinion is not fulfilled, because but for the fact that the injury caused the severing of artery, death might not have ensued. In other words, looking at the matter objectively, the injury which Laxman intended to cause did not include specifically the cutting of the artery but to wound Ramrao in the neighbourhood of the clavicle. Therefore, we are of opinion that the thirdly of Section 300 does not cover the case. Inasmuch as death has been caused, the matter must still come within at least culpable homicide not amounting to murder. There again, Section 299 is in three parts. The first part takes in the doing of an act with the intention of causing death. As we have shown above, Laxman did not intend causing death and the first part of Section 299 does not apply. The second part deals with the intention of causing such bodily injury as is likely to cause death. Here again, the intention must be to cause the precise injury likely to cause death and that also, as we have shown above, was not the intention of Laxman. The matter therefore comes within the third part. The act which was done was done with the knowledge that Laxman was likely by such act to cause the death of Ramrao. The case falls within the third part of Section 299 and will be punishable under the second part of Section 304 of the Indian Penal Code as culpable homicide not amounting to murder. We accordingly alter the conviction of Laxman from Section 302 to Section 304 of the Indian Penal Code and in lieu of the sentence of imprisonment for life imposed on him, we impose a sentence of rigorous imprisonment for 7 years. With this modification, the appeal shall stand dismissed.”

(emphasis supplied)

42. In view of the aforesaid, this Court is of the view that the prosecution has failed to bring any evidence on record to attract third clause of Section 300 of the IPC and the injuries suffered by the deceased have not been proved to be “*sufficient in the ordinary course of nature to cause death*”.

43. Consequently, the prosecution has successfully proved beyond reasonable doubt that the appellant-convict had caused injuries to his father–Bhupender Singh only and resultantly committed an offence punishable under Section 304 Part I of IPC.

44. Further, the fact that the room of the deceased had been cleaned and the body was dragged outside the house proves that the appellant-convict had tried to cause disappearance of evidence in order to protect himself from punishment. Consequently, he is also guilty of the offence punishable under Section 201 IPC.

CONCLUSION

45. In view of the aforesaid, present appeal is partly allowed. The conviction and order on sentence under Section 302 IPC is altered and appellant-convict is convicted under Section 304 Part I of the IPC.

46. Keeping in view the fact that the appellant was about nineteen years on the date of the offence and he had been incarcerated for more than five years, the appellant is sentenced to imprisonment for seven years with a fine of Rs. 10,000/-.

47. The conviction and order on sentence of the appellant-convict under Section 201 IPC is confirmed and he shall be entitled to the benefit under Section 428 Cr.P.C. The impugned judgment of the Trial Court and order on sentence stand modified accordingly.

48. The bail bond of the appellant-convict is cancelled and he is directed to surrender within four weeks before the concerned Jail Superintendent.
49. Trial court record be sent back.
50. Copy of the judgment be sent to the concerned Jail Superintendent.

MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

FEBRUARY 28, 2020

js/rn

