

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO.28/2020

Ramakant Gawas,
s/o. Anant Gawas,
aged 47 years, r/o. H.No.132/B,
Varchiwadi, Mante, Dodamarg,
Maharashtra and presently lodged in
Central Jail, Colvale, Bardez, Goa. Appellant.

Versus

1. S T A T E
(through Police Inspector,
Valpo Police Station, Goa)

2. Public Prosecutor,
High Court of Bombay,
Panaji, Goa. Respondents.

Mr. Pavithran A.V., Advocate appointed under the Legal Aid Scheme
for the Appellant.

Mr. Sagar Dhargalkar, Additional Public Prosecutor for the
Respondents-State.

***Coram: M.S. Sonak &
Smt. Bharati H. Dangre, JJ.***

Reserved on: 12th January 2021

Pronounced on: 15th January 2021

JUDGMENT: - (Per M.S. Sonak, J.)

Heard Mr. Pavithran, the learned Counsel for the Appellant

appointed under the Legal Aid Scheme for the Appellant, and Mr. Dhargalkar, the learned Additional Public Prosecutor for the State.

2. This Appeal questions the Judgment and Order dated 25th February 2020, made by the learned Additional Sessions Judge, Panaji in Sessions Case No.3/2015, convicting the Appellant for the offences punishable under Sections 498-A, 364, and 302 of the Indian Penal Code (IPC) and sentencing him to two years and Life Imprisonment, respectively. The sentences are, naturally, ordered to run concurrently.

3. The case of the Prosecution is that the Appellant (accused) physically and mentally tortured his wife Shevanti making demands for gold and dowry, thereby committing an offence under Section 498-A of the IPC. It is further the case of the Prosecution that Shevanti, along with her three children being unable to bear the physical and mental torture any further, left the matrimonial home and went to reside with her brother/mother. It is further the case of the Prosecution that on 6/10/2014, the accused made several calls to his wife, requiring her to meet him at Sanquelim. Accordingly, on the next day, *i.e.* 7/10/2014 at about 9.00 a.m., the said Shevanti proceeded to meet the accused at Sanquelim. It is the case of the Prosecution that the accused, thereafter kidnapped his wife from Sanquelim, took her to an isolated place at Navelim, and murdered her, thereby committing an offence under Sections 363 and 302 of

the IPC. It is also the case of the Prosecution that the accused attempted to destroy the evidence by hiding the dead body and thereby committed an offence under Section 201 of the IPC as well.

4. Accordingly, the charge was framed against the accused on 23/2/2015, to which he pleaded '*not guilty*' and claimed to be tried.

5. The Prosecution examined 26 witnesses and thereafter, the statement of the accused was recorded under Section 313 of the Code of Criminal Procedure (Cr.P.C.). Thereafter, the Prosecution applied for and was permitted to examine yet another witness PW.27 who was earlier not available on account of her pregnancy, and the statement of the accused was once again recorded under Section 313 of the Cr.P.C. Despite the opportunity, the accused neither examined himself nor any defence witnesses.

6. The learned Additional Sessions Judge, by the impugned Judgment and Order, has convicted and sentenced the accused as aforesaid. Hence, the present Appeal.

7. Mr. Pavithran, the learned Counsel for the accused, at the outset, pointed out that the learned Additional Sessions Judge has failed to appreciate and apply the principles for evaluation of circumstantial evidence in this matter. He pointed out that there is no enumeration of the circumstances or any consideration as to

whether the circumstances allegedly proved by the Prosecution were complete and clearly pointed to the guilt of the accused. He submitted that mere suspicion, howsoever strong, can never be a substitute for proof. He submitted that there is a large distance between '*might be*' and '*must be*' which the Prosecution, in the present case, has failed to cover. He, therefore, submits that the impugned Judgment and Order deserves to be set aside.

8. Mr. Pavithran submits that in the present case, there is absolutely no evidence on record to bring home the charge under section 498-A of the IPC. He points out that the accused and Shevanti were married for over 15 years and there was no complaint during this period about any demands for dowry or subjection of cruelty. He submits that the testimony of PW.4, PW.5, and PW.9, the children of the accused and Shevanti is completely tutored and no credence ought to have been placed upon the same. He submits that in absence of any independent evidence, a conviction under Section 498-A of the IPC is quite unsustainable.

9. Mr. Pavithran submits that there is also no evidence whatsoever to establish the charge under Section 363 of the IPC. He pointed out that it is the case of the Prosecution itself that the wife allegedly came to meet the accused of her own accord. In such circumstances, the ingredients of the offence under Section 363 were not made out and the conviction under Section 363 of the IPC is,

therefore, quite unsustainable.

10. Mr. Pavithran submits that the conviction under Section 302 of the IPC is also unsustainable. He points out that one of the basic ingredients of this offence is that the death of the victim must be homicidal. He submits that in this case, even the medical evidence on record does not establish that the death of Shevanti was homicidal. He refers to the evidence of PW16 *i.e.* the Doctor, who has deposed about the inability to say with certainty that the death of Shevanti was homicidal. Mr. Pavithran submits that in absence of the Prosecution establishing this vital circumstance, no conviction ought to have been recorded under Section 302 of the IPC. He relies on *Mohd. Zahid vs. State of T.N.*¹ in support of this proposition.

11. Mr. Pavithran submits that the last seen theory was not at all attracted in the present case, because, there is not a single witness who has deposed to seeing the accused and his wife Shevanti together at some time proximate to the death of said Shevanti. Mr. Pavithran points out that in fact, there is no evidence that the accused and Shevanti were seen together for a period of almost two months before Shevanti's demise, since, Shevanti had left the matrimonial home for two months preceding her unfortunate demise. Mr. Pavithran submits that this is an extremely vital missing link in the chain of circumstances which the learned Additional Sessions Judge ought not

¹ (1999) 6 SCC 120

to have ignored.

12. Mr. Pavithran submits that the so-called recovery of the dead body is a sham and not at all a recovery as contemplated under Section 27 of the Indian Evidence Act. He submits that there is evidence on record that there were no injuries whatsoever on the date of the arrest of the accused on 10/10/2014. He, however, pointed out that at least two injuries were noted by the Doctor who examined the accused on 11/10/2014. He points out that the accused, in his statement under Section 313 of the Cr.P.C., has complained about police tortures to extract a statement leading to the discovery of the dead body of Shevanti. He pointed out that there is no contemporaneous evidence to show that the mother and brother of Shevanti who were at the Police Station and accompanied the accused and the Pancha witnesses at the time when the accused allegedly pointed out to the dead body in the jungle at Navelim. He submits that there are serious discrepancies and contradictions in the testimony of the photographer, Pancha witnesses, and the Investigating Officer (IO) on the aspect of discovery. He points out that the two of the witnesses claim to have discovered the dead body in the jungle in pursuance of their search. He submits that in this state of evidence, the learned Additional Sessions Judge clearly erred in invoking the provisions of Section 27 of the Evidence Act and admitting portions of the statement allegedly made by the accused leading to the discovery of the dead body. He submits that if this

evidence is excluded, there, there is no evidence whatsoever to link the accused with the alleged crime.

13. Mr. Pavithran submits that the testimony concerning CDR and SDR does not inspire any confidence. He submits that the two cellphones were admittedly not in the name of the accused and there is no legal evidence on record to link the accused with the two cellphones. He submits that the cellphone allegedly used by Shevanti was never recovered and there is no evidence to link the said cellphone to Shevanti. He submits that the evidence-based on tower location is, by its very nature, not credible and, therefore, could not have been made the basis for conviction of the accused in this matter.

14. Mr. Pavithran submits that the learned Additional Sessions Judge has relied upon the statement allegedly made by the accused that he had murdered Shevanti by strangulation. Mr. Pavithran submits that apart from the issue of torture, such statements are clearly hit by the provisions of Sections 25 and 26 of the Indian Evidence Act and, therefore, were not even admissible in evidence.

15. Mr. Pavithran, on the issue of principles for the appreciation of circumstantial evidence, has relied on (i) *Subramaniam vs. State of Tamil Nadu and another*²; and (ii) *Satish Narankari vs. State of Rajasthan*³ and submitted that such principles have been ignored in

² (2009) 14 SCC 415

³ (2017) 8 SCC 497

the present matter.

16. Mr. Pavithran finally submitted that for all the aforesaid reasons, the impugned Judgment and Order made by the learned Additional Sessions Judge is required to be set aside and the accused set at liberty.

17. Mr. Dhargalkar, the learned Additional Public Prosecutor defends the impugned Judgment and Order based on the reasoning reflected therein. He pointed out several circumstances taken into consideration by the learned Additional Sessions Judge and submitted that such circumstances have been proved beyond a reasonable doubt by the Prosecution. He also submitted that the circumstances are complete and exclude every hypothesis other than on the guilt of the accused. He submits that the Prosecution has established the guilt of the accused beyond reasonable doubt and the contentions raised on behalf of the accused are not sufficient even to raise any reasonable doubt. He, therefore, submits that this appeal may be dismissed and the impugned Judgment and Order made by the learned Additional Sessions Judge, confirmed. He relies on (a) *Madhu alais Madhuranatha and another vs. State of Karnataka*⁴; (b) *A.N. Venkatesh and another vs. State of Karnataka*⁵; (c) *State of U.P. vs. Babu Ram*⁶ and

⁴ (2014) 12 SCC 419

⁵ AIR 2005 SC 3809

⁶ AIR 2000 SC 1735

(d) *State of Maharashtra vs. Bharat Fakira Dhiwar*⁷ in support of his submissions.

18. The rival contentions now fall for our determination.

19. The Prosecution case, in this matter, is entirely based upon circumstantial evidence. Therefore, as was quite correctly pointed out by Mr. Pavithran, this Court has to be alive to and is required to apply the principles for the appreciation of circumstantial evidence which, by now, are quite well settled.

20. In *In Sharad Birdhichand Sarda v. State of Maharashtra*⁸, the Hon'ble Supreme Court has laid down the parameters for arriving at an opinion concerning proof of a prosecution case based on the circumstantial evidence, stating: (SCC p. 185, paras 153-54)

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(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 where the following observations were made: [SCC p. 807, para

⁷ AIR 2002 SC 16

⁸ (1984) 4 SCC 116

19 : SCC (Cri) p. 1047]

‘19. ... 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.

154. These five golden principles, if we may say so, constitute the Panchsheel of the proof of a case based on circumstantial evidence.”

(emphasis in original)

21. The learned Additional Sessions Judge may not have enumerated the circumstances relied upon by her in one single paragraph of the impugned Judgment and Order. However, this is far from saying that the learned Additional Sessions Judge has not referred to the incriminating circumstances or applied the principles for evaluation of circumstantial evidence in this matter. We have perused and evaluated the evidence on record, as also perused and

evaluated the impugned Judgment and Order. From the same, we are quite satisfied that the Prosecution has succeeded in establishing, beyond a reasonable doubt, the following incriminating circumstances:

- (a) The death of Shevanti being homicidal;
- (b) The demand for gold and money by the accused and the cruelty perpetrated on the deceased and her children on account of her inability to satisfy such demands;
- (c) Phone calls made by the accused to the deceased on 6/10/2014;
- (d) The deceased Shevanti traveling by a public bus on 7/10/2014 at about 10.25 a.m. from Valpoi to Sanquelim;
- (e) Absence of the accused from his workplace on 7/10/2014;
- (f) Presence of the accused on 7/10/2014 at or around the location i.e. Navelim jungle area where the dead body of his wife was ultimately discovered;
- (g) Recovery of the dead body of Shevanti from a secluded spot in Navelim jungles based on the information given by the accused; and
- (h) Identification of the dead body as that of Shevanti, the wife of the accused based on forensic evidence.

22. According to us, there is more than ample evidence on the aspect of the accused perpetrating cruelty upon Shevanti and the children on account of the said Shevanti being unable to satisfy the demands for gold and cash, which the accused used to constantly make. This has been deposed to by the three sons of the accused i.e.

PW.4 Suryakant Gawas who was 18 years at the time of his deposition in the year 2016; PW.5 Surendra Gawas who was 14 years at the time of his deposition in the year 2016 and PW.9 Suhas Gawas who was 13 years at the time of his deposition in the year 2017. These witnesses have categorically deposed that the accused used to drink a lot and fight with their mother i.e. Shevanti on different pretexts. They have deposed that the accused used to tell Shevanti to bring gold ornaments like 3 golden chains, 3 finger rings, one mangalsutra, 2 gold bangles, and cash of Rs.35,000/- from her parents, and because she was unable to bring the same, he used to pick up quarrels with her and even assault her. The children have deposed that the accused used to assault them as well and he even threatened their mother that he would kill one of them. PW.4 deposed to his brother PW.5 sustained injuries on account of the accused assaulting him on his left ear.

23. PW.5 and PW.6 have also deposed to the demands which the accused used to make from their mother Shevanti and threats and assault by the accused on account of the inability of their mother Shevanti to met with such demands for gold and cash. The learned Additional Sessions Judge has certified that these witnesses, though minor on the date of their deposition, were quite competent witnesses. From the testimony of the said two witnesses, even we are satisfied that they were competent witnesses.

24. Besides, the mother of the deceased PW.1 Savitri and the brothers of the deceased PW.6 Umesh Gawas and PW.11 Sajjan have deposed to the deceased and her three sons leaving matrimonial home and coming to stay with them on account of the incessant demands for gold and cash by the accused and inability of the deceased to meet such demands. There is also ample evidence on record that the accused used to consume too much alcohol and threaten and assault the deceased and the three children.

25. No dent has been made to the testimony of the aforesaid witnesses. The testimony of such witnesses cannot be simply discarded because they happen to be the relatives of the deceased Shevanti. The children i.e. PW.4, PW.5, and PW.9 are the most natural witnesses as to what used to transpire in the matrimonial home and there is no material on record to suggest that these witnesses were tutored or that they had any reason to depose against their own father. The testimony of the children, who are eyewitnesses to the incident of assault and demands for gold and cash, inspires confidence and there is no reason to discard such evidence on record. The fact that no complaints may have been lodged to the Police is not some circumstance to disbelieve the clear and cogent testimonies of the aforesaid witnesses. Taking into consideration the financial and social status of the parties, there is nothing unnatural that no complaints were lodged and, instead, the deceased, to escape from the

cruelty to which she was subjected to by the accused, left the matrimonial home along with her children and went to live with her mother and brothers about two months before her unfortunate demise. According to us, the ingredients of the offence under Section 498-A of the IPC have been established by the Prosecution beyond reasonable doubt and, therefore, there is no good ground to interfere with the conviction of the Appellant under Section 498-A of the IPC.

26. In this case, the decomposed body of the deceased Shevanti was recovered on 16/10/2014 based on the statement of the accused as to the location of the dead body. Fotosingh Shetgaonkar (PW.2), an Engineer in the Office of Block Development Officer, Valpoi, Sattari, was one of the Pancha witnesses who has deposed quite clearly and cogently to the statement made by the accused that he had killed his wife and he would show the place where he committed the offence and the body of his wife could be found. No doubt, the portion of the statement about the accused killing his wife, is inadmissible in evidence taking into consideration the provisions of Sections 25 and 26 of the Evidence Act. Such portion of the statement of the accused which relates to the knowledge about where the dead body of his wife could be found, was certainly admissible in terms of Section 27 of the Evidence Act, provided the dead body was indeed discovered at the stated location.

27. The evidence of PW.2 bears out that in pursuance of the statement of the accused, the said witness, along with the Police party, proceeded to the site indicated by the accused. He has deposed that they went to the site in Gypsy Police jeep. The accused was sitting behind the driver seat and giving directions, to reach the spot. PW.2 has deposed that they reached at the Hathi junction and thereafter, proceeded towards Sanquelim. From Sanquelim they proceeded towards Kudnem Marcel road. Thereafter, on the instructions of the accused, Jeep stopped near one electricity pole at Navelim, Bicholim. The accused, along with others, then proceeded on foot towards the jungle. After walking about 100 meters, the accused took them towards some bushes, in which, the remains of the dead body, which was later identified as the dead body of Shevanti, were found. PW.2 has deposed that at this spot, the mother of the deceased identified the dead body as that of Shevanti, based on saree and the Malla which Shevanti was wearing. There is forensic evidence (DNA sampling) which establishes beyond doubt that the dead body was that of the deceased Shevanti.

28. Apart from the fact that there was no dent made to the clear and cogent testimony of PW.2, we find that this testimony is more sufficiently corroborated by the testimony of Vinod Manerkar (PW.3), the Photographer who also accompanied the Pancha witnesses, the accused and the Police party on 16/10/2014. PW.3 has

also deposed in sufficient details to the route taken by the Police party on the instructions of the accused and how the accused ultimately led the Pancha witnesses and the Police party to the spot where the dead body of Shevanti, the wife of the accused was discovered and recovered.

29. Such testimony is also corroborated by PW.26, the IO and, to some extent, by the testimony of PW.19 Vithoba Gawas, the brother of the deceased. Despite cross-examination, no dent has been made to the testimony of this witness.

30. According to us, there is no merit in the contention of Mr. Pavithran that the dead body had already been discovered by the relatives of the deceased in the course of their independent search in the jungles of Navelim. The testimony of PW.6, Umesh Gawas another brother of the deceased has to be read in its entirety. He has stated that after his sister went missing on 7/10/2014, they did search for her and has, thereafter, added that on 16/10/2014 her body was ultimately found at Sanquelim, Kudnem, Navelim jungle. PW.16, Vithoba Gawas is the other brother of the deceased and he has deposed that after about 7 days from the lodging of the missing complaint, his mother and brother Umesh (PW.6) were called to the Valpoi Police Station, from where they were taken to Navelim (Sanquelim) where the dead body of his sister was found. Thus, upon

a conjoint reading of the testimonies of PW.6 and PW.19, it is quite clear that the dead body of the deceased was not found by either PW.6, or any other relation of the deceased in the course of their independent search, but, rather, the dead body of the deceased was found on 16/10/2014 in pursuance of the statement made by the accused and upon the accused leading the Pancha witnesses and the Police party to the spot in Navelim jungle. At this spot, the mother of the deceased (PW.1) in presence of others, identified the dead body as that of her daughter Shevanti. Accordingly, it is not possible to accept Mr. Pavithran's contention that the dead body had already been discovered by the relatives of the deceased and, therefore, this was nothing but a case of discovery of a dead body that had already been discovered earlier.

31. The evidence on record also does not lead to any inference about the statement of the accused not being voluntary, or that the statement being coerced on account of the custodial torture. The examination of the accused on 10/10/2014 by Dr. Abhijit Wadkar (PW.22) was quite superfluous and it is possible that two simple injuries of abrasions on the foot and the neck were not noticed. However, Dr. Chetan Kerkar (PW.17), who examined the accused on the next day i.e. on 11/10/2014 in some details, noticed two simple injuries like an abrasion on the neck and the right lower leg. PW.17 has categorically deposed that these injuries were simple and were

found to be within 2 to 3 days before the date of examination. This means that the injuries relate to the period between the 7th and 9th of October, 2014. PW.17 has deposed that such injuries could have been caused if the victim was being strangled by the accused and the victim was trying to free herself. PW.17, to the suggestion put to him, has also stated that such injuries can be caused on account of torture in Police Custody. However, there is no dispute that the accused was taken in the Police Custody only on 10/10/2014, and since the injuries were caused 2 to 3 days before the date of examination i.e. 11/10/2014, such injuries relate to the period before 10/10/2014. In any case, based upon such trivial injuries, it is not possible to accept the case of the accused that he was tortured into making the statement, which ultimately led to the discovery of the dead body of the deceased Shevanti. There is nothing on record to indicate that any complaint was made by the accused when he was produced before the Court about torture in the Police Custody. Thus, we see no infirmity in the invocation of the provisions of Section 27 of the Evidence Act by the learned Additional Sessions Judge in the present case.

32. Apart from the legal position arising from the provisions of Section 27 of the Evidence Act, the conduct of the accused leading the Pancha witnesses and the Police Party to the spot where the dead body of his wife was ultimately found, is relevant in terms of Section

8 of the Evidence Act. In *A. N. Venkatesh and another* (supra), the Hon'ble Supreme Court has held that by virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance simpliciter that the accused pointed out to the police officer the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by the Hon'ble Supreme Court in *Prakash Chand vs. State*⁹.

33. Thus, the Prosecution, in this case, has established beyond a reasonable doubt the second and one of the most relevant circumstances pointing out to the guilt of the accused in this matter.

34. There is no dispute whatsoever that the body found at the spot indicated by the accused was that of the deceased Shevanti. Apart from the identification of the dead body by PW.1, the mother of the deceased based on the saree and malla, the Prosecution has undertaken forensic investigation based upon DNA sampling. The forensic evidence, without doubt, establishes that the dead body was indeed that of Shevanti, the deceased wife of the accused. In fact, no

⁹ AIR 1979 SC 400.

challenge was raised on this aspect, which aspect has been established by the Prosecution beyond a reasonable doubt.

35. The Prosecution has also established beyond a reasonable doubt that the two SIM cards bearing mobile numbers 8698071603 and 7875391148 belonged to and were registered in the name of the accused at the relevant time. Aditya Niphadkar (PW.23), the Nodal Officer for Vodafone Idea Limited has very clearly deposed to this fact and there is no dent to this part of the deposition despite cross-examination of this witness. Mr. Pavithran is not right in his submission that two phone numbers were registered in the names of some other customers and, therefore, no nexus is established between the said phone numbers and the accused or the deceased. PW.23 has clarified that the two numbers were in fact registered in the name of Ramakant Anant Gawas i.e. the accused herein. He has also clarified that if the numbers remain inactive for a period of 3 months or more, the company allots such numbers to some other customers and this is what happened in the present case when at a much later point of time one of the numbers came to be allotted to one Prakash Babu Yadav.

36. The Prosecution has established beyond a reasonable doubt that the accused was using SIM Card/mobile phone bearing number 8698071603 and had given another SIM Card/mobile phone bearing number 7875391148 to his wife i.e. the deceased Shevanti. The Call

Details Record (CDR) and the Subscriber Details Record (SDR) duly produced on record by PW.23, clearly bear out to phone calls made by the accused to the deceased on 6/10/2014. This finds corroboration in the evidence of PW.1 and PW. 28, the mother and the sister of the deceased respectively since, such calls were received by the deceased in their presence. PW.27, the sister of the deceased who was examined at a later stage, has in no uncertain terms, deposed that her sister i.e. the deceased Shevanti was using the mobile phone bearing number 7875391148 and it is on this mobile phone that the accused used to make calls to her from his mobile number 8698071603. Now, this oral evidence is more than sufficiently corroborated by the documentary evidence in the form of CDR and SDR produced by PW.23 on record. Such evidence was produced by PW.23, after complying with the provisions of Sections 65 and 65-B of the Evidence Act. This circumstance is, therefore, proved beyond a reasonable doubt by the Prosecution.

37. The contention that there is no evidence on record to establish that the death of the deceased Shevanti was homicidal, is also not correct. No doubt, PW.16 Dr. Andrade Fernandes, who performed the autopsy, candidly stated that no definite opinion as to the cause of death can be given because, at the time of the post mortem, the body was in a highly deposed state. However, PW.16 has stated that the probability of natural death, in this case, is very less.

But, at the same time, to say that the death was homicidal with certainty, may not be possible on account of the state of the dead body. Based upon the evidence of PW.16, it cannot be said that the Prosecution has failed to establish that the death of deceased Shevanti was not homicidal.

38. Ultimately, in such matters, a host of circumstances have to be collectively considered. There is absolutely no evidence on record to suggest that the deceased was either depressed or suicidal. There is no evidence of any accident or similar such mishap. Therefore, when the evidence on record conclusively establishes that the deceased, who was hale and hearty, leaves home and ultimately her dead body is found in a highly decomposed state in Navelim jungle, the inference that such death is homicidal, is quite legitimate and was correctly drawn by the learned Additional Sessions Judge in this matter. PW.16 has only deposed that he could not say with certainty that the death was homicidal only because of the state of decomposition of the dead body. At the same time, PW.16 has also deposed that the probability of natural death is very less. Therefore, if the evidence of PW.16 is considered along with other evidence on record, then there is nothing wrong in the findings recorded by the learned Additional Sessions Judge that this was indeed a case of homicidal death or unnatural death.

39. Quite recently, the Hon'ble Supreme Court in the case of *Rajesh Dhiman vs. State of Himachal Pradesh*¹⁰ has held that the expression '*reasonable doubt*' is a well-defined connotation. It refers to the degree of certainty required of a Court before it can make a legally valid determination of the guilt of an accused. These words are inbuilt measures to ensure that innocence is to be presumed unless the court finds no reasonable doubt of the guilt of the person charged. However, reasonable doubt does not mean that proof is so clear that no possibility of error exists. In other words, the evidence must only be so conclusive that all reasonable doubts are removed from the mind of an ordinary person. Hon'ble Supreme Court further held that if two reasonably probable and evenly balanced views of the evidence are possible, one must necessarily concede the existence of reasonable doubt. But, fanciful and remote possibilities must be left out of the account. To entitle an accused person to the benefit of a doubt arising from the possibility of a duality of views, the possible view in favour of the accused must be as nearly reasonably probable as that against him. Upon cumulative consideration of the evidence on record and on the application of this principle, we are not prepared to accept Mr. Pavithran's contention that the Prosecution has failed to prove beyond a reasonable doubt that the death of the deceased in the present case was homicidal.

40. Apart from all these circumstances, other circumstances also

¹⁰ (2020) 10 SCC 740

assist in completing the chain of evidence, so as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused. In fact, the evidence on record establishes that in all human probabilities the act for which the accused was charged, must have been committed by the accused.

41. For example, there is evidence that the accused on 6/10/2014 made several calls to the deceased and required her to come to Sanquelim. This aspect has been established by the Prosecution from the testimonies of PW.1 and PW.27 and the documentary evidence produced on record by the Nodal Officer – PW.23. The Prosecution has also succeeded in establishing beyond a reasonable doubt that on 7/10/2014, i.e. the date on which the murder took place, the accused did not attend his work at the cashew factory. The Prosecution has examined Anil Naik (PW.7), the manager of Sun Rise Cashew Industries where the accused was admittedly working. PW.7 has deposed that on 7/10/2014, the accused did not report for work and this fact is noted in the register of attendance which was also produced on record and marked as Exhibit 45.

42. Then there is evidence of Premanand Bagi (PW.8), a bus conductor, who has deposed that on 7/10/2014, a lady passenger inquired of him as to the route of the bus was to take. He has

deposed that this lady passenger boarded the bus by climbing from the front door and was seated at the first seat. After she was informed by PW.8 that the bus was proceeding to Mapusa via Sanquelim and would reach Sanquelim at about 11 am., PW.8 has deposed that this lady passenger was receiving phone calls on her mobile and was answering them at the time when she was seated in the bus. PW.8 has deposed that this lady passenger stood up when the bus reached near Sanquelim College and upon PW.8 inquiring of her, stated that she wished to get down at the Sanquelim Hospital. He has deposed that this lady passenger got down at Sanquelim Hospital. He has also deposed that she was wearing a light green saree and carrying a black colour umbrella and one plastic bag. PW.8 has deposed that later on, at the Police Station, he was shown a photograph of the lady and he identified from the photograph that this was the same lady passenger who had traveled on his bus on 7/10/2014 from Valpoi to Sanquelim Hospital.

43. The Nodal Officer, PW.23 has deposed that the tower location of the mobile bearing number 8698071603 on 7/10/2014 at 11.10.36 hours was at Gokulwadi, Sanquelim, Goa. He has deposed to the cell ID number of the tower. He has deposed that this mobile could have been within the range of 300 to 800 meters around the said tower. He has also deposed that an SMS was received on the mobile phone of the accused at 13.55.36 hours on 7/10/2014

and the tower location in respect of this SMS vis-a-vis the mobile phone number 8698071603 of the accused was in Village Navelim, Bicholim, Goa. Yet another CDR entry for the same mobile number was at 13.55.36 hours. It was an incoming SMS to the said mobile number and the tower location was Navelim, Bicholim, Goa. PW.23 has then deposed that the next CDR entry of the mobile bearing number 8698071603 was at 18.35.59 hours on 7/10/2014. It was a call of 51 seconds and the tower location was near BSNL exchange of village Matane, Taluka Dodamarg, Sindhudurg. Incidentally, village Matane is the village in which the accused admittedly resides and where the couple had their matrimonial home. Similarly, Navelim-Bicholim is the area in which the dead body of the deceased was ultimately found in a secluded spot in the jungle. All these circumstances, when taken cumulatively, point to the guilt of the accused. The facts, so established, are consistent with the hypothesis of the guilt of the accused. Apart from pointing out to certain trivial discrepancies, the accused has not succeeded in either demolishing the evidence on record or even creating any reasonable doubt or propounding some acceptable hypothesis.

44. *Mohd. Zahid* (supra), relied upon by Mr. Pavithran, turns on its own peculiar facts. In that case, the Doctor who conducted the post-mortem of a decomposed body, neither agreed with the statements found in the textbook nor was her opinion supported by

any other authoritative text. In fact, the Court found the statement of the Doctor to be self-contradictory and it is in these circumstances that the opinion of the Doctor was not accepted by the Court. On facts, there was serious doubt about the death being suicidal, accidental, or homicidal. This decision, therefore, can be of no assistance to the accused in the facts and circumstances as established in the present case.

45. *Subramaniam* (supra), was cited for the proposition that the circumstance of last seen together, though, strong circumstance, cannot by itself form the basis for conviction. There has to be some other evidence on record and in absence of any other evidence like violence on the deceased, it may be difficult to conclude that the husband and the husband alone was responsible for the charged crime. In the present case, the Prosecution may not have established the circumstance of last seen, however, the circumstances referred to above conclusively establish the guilt of the accused in the present case. Therefore, the decision relied upon is not relevant to the facts of the present case.

46. In *Satish Nirankari* (supra), the Hon'ble Supreme Court, after explaining the principles for evaluation of circumstantial evidence, found lurking doubts in the story of the Prosecution, coupled with several missing links in the chain of the circumstances.

It is in these circumstances that the conviction of the accused based on circumstantial evidence was set aside. No such position arises in the present case and, therefore, even this decision can be of no assistance to the accused.

47. Mr. Dhargalkar did submit that the accused in the present case failed to furnish an explanation concerning the incriminating circumstances associated with him. From the perusal of the statement under Section 313 of Cr.P.C. made by the accused, as also the answers given by him to the various incriminating circumstances which were put to him, it does appear that no explanation was furnished by the accused concerning the incriminating circumstances associated with him.

48. In *Madhu alias Madhuranatha and anr.* (supra), the Hon'ble Supreme Court, at paragraph 25, has held that it is obligatory on the part of the accused while being examined under Section 313 of Cr.P.C. to furnish some explanation concerning the incriminating circumstances associated with him, and the Court must take note of such explanation even in a case of circumstantial evidence, to decide whether or not the chain of circumstances is complete.

49. In *Sujit Biswas vs. State of Assam*¹¹, which was in fact relied upon by Mr. Pavithran, the Hon'ble Supreme Court has held that in

¹¹ (2013) 12 SCC 406

a case of circumstantial evidence, the answers given by the accused are required to be taken into consideration to decide whether or not the chain of circumstances is complete. An adverse inference can be drawn against the accused only and only if the incriminating materials stand fully established and the accused is not able to furnish any explanation for the same. However, it must be remembered that the accused has the right to remain silent as he cannot be forced to become a witness against himself.

50. In this matter, though, we do not propose to hold against the accused for his failure to explain several of the incriminating circumstances which are established by the Prosecution, it is necessary to at least record that there was a failure on the part of the accused to explain several of the incriminating circumstances which were fully established by the Prosecution. As such, this circumstance could also have been taken into consideration by the learned Additional Sessions Judge for completing the chain of circumstances that point out to the guilt of the accused in the present matter. However, we once again make it clear that we are not adverting to this aspect because we are satisfied that the evidence, as it stands, establishes the guilt of the accused beyond a reasonable doubt, even without adverting to the failure on the part of the accused to explain the fully established incriminating circumstances brought on record by the Prosecution. No discrepancies as such were pointed out on behalf of the accused in

the present matter. In any case, ordinarily, some discrepancies here and there are not sufficient to create some sort of doubt on the prosecution version. Ultimately, it is not any and every doubt that is sufficient to entitle an accused to its benefit.

51. In *HP Administration vs. Om Prakash*¹² the Hon'ble Apex Court, has explained the concept of proof beyond reasonable doubt and the circumstances in which a benefit of the doubt can be extended to the accused persons. The Hon'ble Apex Court has held that it is not beyond the ken of experienced, able, and astute lawyers to raise doubts and uncertainties in respect of the prosecution evidence either during the trial by cross-examination or by the marshaling of that evidence in the manner in which the emphasis is placed thereon. But what has to be borne in mind is that the penumbra of uncertainty in the evidence before a court is generally due to the nature and quality of that evidence. It may be the witnesses are lying or where they are honest and truthful; they are not certain. It is, therefore, difficult to expect a scientific or mathematical exactitude while dealing with such evidence or arriving at a true conclusion. Because of these difficulties corroboration is sought wherever possible, and the maxim that the accused should be given the benefit of doubt becomes pivotal in the Prosecution of offenders which in other words means that the Prosecution must prove its case against an accused beyond a reasonable doubt by a sufficiency of

¹² (1972) 1 SCC 249

credible evidence. The benefit of the doubt to which the accused is entitled is reasonable doubt – the doubt which rational thinking men will reasonably, honestly, and conscientiously entertain and not the doubt of a timid mind which fights shy – though unwittingly it may be – or is afraid of the logical consequences if that benefit was not given. Or as one great Judge said it is “*not the doubt of a vacillating mind that has no moral courage to decide but shelters itself in a vain and idle scepticism*”. It does not mean that the evidence must be so strong as to exclude even a remote possibility that the accused could not have committed the offence. If that were so the law would fail to protect society as in no case can such a possibility be excluded. It will give room for fanciful conjectures or untenable doubts and will result in deflecting the course of justice if not thwart it altogether. It is for this reason the phrase has been criticized. Lord Goddard, C.J., in *Rox v. Kritz* – [1950] 1 KB 82 said that when in explaining to the juries what the Prosecution has to establish a Judge begins to use the words “*reasonable doubt*” and try to explain what is reasonable doubt and what is not, he is much more likely to confuse the jury than if he tells them in plain language. ‘*It is the duty of the prosecution to satisfy you of the prisoner’s guilt*’. What in effect this approach amounts to is that the greatest possible care should be taken by the Court in convicting an accused who is presumed to be innocent till the contrary is clearly established which burden is always in the accusatory system, on the Prosecution. The

mere fact that there is only a remote possibility in favour of the accused is itself sufficient to establish the case beyond a reasonable doubt. This then is the approach.

52. Therefore, upon cumulative consideration of the material on record, we are quite satisfied that the Prosecution, in the present case, has established the charge against the accused beyond a reasonable doubt. Accordingly, there is no case made out to interfere with the impugned Judgment and Order.

53. This Appeal is, accordingly, dismissed. There shall be no order as to costs.

Smt. Bharati H. Dangre, J.

M.S. Sonak, J.

SANTOSH S MHAMAL

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