

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 166 OF 2015

Golu Mustak Khan,
R/o Gol Pahadiya Mehadiwale Sayyad,
Janakganj Police Station, Gwalior,
Madhya Pradesh, Appellant
[Now at Yerawada Jail, Pune.] ... (Orig. Accused No.2)

V/s.

State of Maharashtra
(Through Hinjewadi Police Station) ... Respondent

WITH
CRIMINAL APPEAL NO.731 OF 2015

Dilip Ravi Donge
Age : 24 years R/o. Gol Pahadiya
Mehadiwale Sayyed, Janakganj Police Station,
Gwalior, Madhya Pradesh, Appellant
[Presently lodged at Yerwada Central Prison] ... (Orig. Accused No.4)

V/s.

State of Maharashtra
(Through Hinjewadi Police Station)
vide C.R No.93/13 ... Respondent

WITH
CRIMINAL APPEAL NO.895 OF 2015

Guddu @ Lalla Bashir Khan,
Age about 25 years,
R/o. Gol Pahadiya, Mehadiwala Sayyed,
Janakganj Police Station, Gwalior,
Madhya Pradesh.
(At present lodged in Nashik Road Central Prison, Nashik) Appellant
... (Orig. Accused No.3)

V/s.

The State of Maharashtra,
Through Police Inspector,
Hinjewadi Police Station, Pune ... Appellant

WITH
CRIMINAL APPEAL NO.952 OF 2015

Jagjitkaur Nirmalsingh,
 aged 34 years,
 Occupation Nil, residing at Flat No.1001,
 DSK Ranwara Society, Bawdhan, Pune.
 Presently lodged in Yerwada Central Prison, Appellant
 Pune. ... (Orig. Accused No.1)

V/s.

The State of Maharashtra,
 Through Sr. Inspector of Hinjewadi Police
 Station, Pune. ... Respondent

Mr. Satyavrat Joshi, for the Appellant in Apeal/166/2015.

Mr. Nitesh Mohite, Court appointed Advocate for Appellant in
 Apeal/895/2015.

Ms. Apeksha Vora for the Appellant in Apeal/731/2015.

Ms. PR Shinde - APP for the Respondent - State.

**CORAM : SMT. SADHANA S. JADHAV,
 N.J. JAMADAR, JJ.**

RESERVED ON : 11th DECEMBER 2020.

PRONOUNCED ON : 24th MARCH 2021.

JUDGMENT : Per Sadhana S. Jadhav, J.

1. The appellants herein take an exception to the Judgment and Order dated 9th September 2014 passed by the Additional Sessions Judge, Pune in Sessions Case No.479 of 2013 by which the appellants herein are convicted for the offences punishable under section 302 r/w 34 of IPC and 120-B of IPC and sentenced to undergo RI for life and fine of Rs.5,000/- each, in default to suffer RI for two years. Hence, this appeal.

2. Such of the facts necessary for the decision of this appeal are as under:-

(i) The appellant (accused no.1) in Appeal No.952 of 2015 is the sister of Paramjit Singh (deceased). That, Paramjit Singh was working as Senior Software Engineer with Tech-Mahindra Company and was residing on 10th Floor, Durvankur Building, DSK Ranwara Society, at Bawdhan at Pune. Accused No.1 Jagitkaur was staying with Paramjit Singh and was looking after the house.

(ii) On 25th January 2013, the Police of Hinjewadi Police Station received a phone call from Sahyadri Hospital, Kothrud and the police was informed that Paramjit Singh was brought to Sahyadri Hospital by Jagitkaur in an unconscious state on that day and was declared as dead before admission. On the basis of the said report, A.D. No.24 of 2013 was registered on 26th January 2013, the A.D. Inquiry was entrusted with P.W.1 Gurudatta More.

(iii) In A.D. Inquiry, the Inquest Panchanama (**Exh.20**) was conducted. While conducting the Inquest Panchanama, marks of abrasion were seen on both sides of the neck. Similarly, there were abrasions on the wrist, there were blackish blue marks on the back of the deceased. After conducting autopsy, the medical officer had opined

the “cause of death as asphyxia due to throttling”. The Investigating Officer Mr. Gurudatta More (PW.1) had recorded the statements of witnesses. It had transpired, that in the intervening night of 25th and 26th of January 2013 the deceased was in the exclusive company of accused no.1. She had not given any satisfactory explanation about the injuries noticed on the dead body of Paramjit and moreover, the post-mortem notes show that the cause of death was asphyxia due to throttling. Hence, he had lodged FIR against the accused no.1 on 20th February 2013, on the basis of which Crime No.93 of 2013 was registered at Hinjewadi Police Station for an offence punishable under section 302 of IPC.

(iv) In the course of investigation of Crime No.93 of 2013, it had transpired that the accused no.1 with the aid and assistance of three persons namely, Guddu (Appellant in Criminal Appeal No.895 of 2015), Golu (Appellant in Criminal Appeal No.166 of 2015) and Dilip Donge (Appellant in Criminal Appeal No.731 of 2015) were arrested and charge sheeted for the offences punishable under section 302 r/w 34 of IPC and section 120-B of IPC. The prosecution has examined in all 23 witnesses to bring home the guilt of the accused. The accused no.1 has examined herself as defence witness.

3. At the trial, the facts of the case as unfolded by the prosecution are that deceased Paramjit Singh was afflicted with bacillary migraine. He used to have vomiting, headache and sometimes he used to suffer from imbalance as testified by P.W.15 – Dr. Hemant Manjrekar who was attached to Dinanath Mangeshkar Hospital. According to P.W.15 - Paramjit Singh was admitted in Dinanath Mangeshkar Hospital on 23rd January 2013. He was discharged on the same day at about 1.00 p.m. He has candidly opined that there is no possibility that Paramjit Singh would have committed suicide by throttling his own neck. The original medical case papers of the deceased are produced by P.W. 15 before the Court and are exhibited as **Exhs.63, 63A and 263G**. That P.W.15 has identified accused no.1 in the Court as the sister of the deceased who had accompanied him on 23rd January 2013.

4. On 24th January 2013 Paramjit Singh was taken to Om Hospital by accused no.1 in an ambulance sent by P.W.14 - Dr. Ram Chavan. The said ambulance was driven by P.W.6 - Marne. According to P.W.14 - Dr. Chavan, Paramjit had arrived at the hospital at about 12.30 a.m. along with his sister. Paramjit was examined by P.W.14. The

medical history of Paramjit was told to the Doctor by accused no.1. P.W.14 had advised the patient to get admitted in the hospital. According to P.W.14, the sister of the patient had disclosed to him the unwillingness of the patient to get admitted as his regular treatment was with P.W.15-Dr. Manjrekar at Mangeshkar Hospital. P.W.14 had administered 'Emeset' injection to the patient due to which vomiting had stopped and there were no symptoms of giddiness or any side effects due to medicine 'Emeset'. Accused no.1 had requested P.W.14 to administer a sedative as well, so that he could have a deep sleep.

5. P.W.6 - Vijay Marne was working as a Driver on ambulance of Om hospital. According to him, in the intervening night of 24th January 2013 and 25th January 2013 at about 1.00 am P.W.6 was directed to get a patient from DSK Ranwara Society, Bawdhan. When he reached the site, he saw the patient and his sister walking towards the ambulance and then they were taken to Om hospital. According to P.W.6, the patient was not in a position to talk. He slept in the ambulance. When they were about to sit in the car, three boys had reached near the ambulance. They boarded the ambulance. On the request of P.W.6, accused no.1 had taken the seat next to him in the ambulance whereas the three boys had taken rear seat. P.W.6 was

informed by accused no.1 that those boys were taking care of her brother in Mangeshkar Hospital as well.

6. PW.6 - Marne had been summoned by the police to Yerwada Jail for identifying the three boys i.e. accused no.2 to accused no.4, he had identified accused no.2 - Golu. According to him, he has also identified another boy whom he identified in the Court as accused no.4. It is reiterated in the cross-examination that the boys had accompanied the patient and accused no.1 to the building.

7. The prosecution has examined P.W.5 - Yogesh Gaikwad, a driver who was working with Wings Travel Company and was driving a cab/taxi owned by Nitin Kharat. His cellphone number is 9552356034. According to him, on 25th January 2013 at about 6.30 a.m. he was informed by the company to reach a particular location at Bawdhan. The taxi was booked in the name of "Varsha" and the cellphone number of the said customer was 9405872061. He reached the said location, three boys accompanied by customer "Varsha" had boarded the taxi. Varsha had taken the front seat. As per the direction of "Varsha" the taxi was driven towards Mangeshkar Hospital. On the way

“Varsha” had stopped at IDBI ATM. She had withdrawn amount out of which some amount was given to a boy with fair complexion. Thereafter “Varsha” had directed P.W.5 to drop the boys near Mangeshkar Hospital and she had departed from their company. P.W.5 had dropped the boys near Mangeshkar hospital. One of the boys had made the payment. P.W.5 had tea along with the three boys after which the boys had left.

8. On 1st March 2013 P.W.5 had led the Police to all the locations from where he had picked the boys and accused no.1 and the place where they were dropped. At the Test Identification Parade P.W.5 had identified accused no.2 and accused no.3. They were also identified in the Court. He had also identified accused no.1 in the Court as the customer “Varsha”.

9. The prosecution has examined P.W.2 - Muktiraj Koirala and P.W.3 - Prem Soni who were working as security guard in DSK Ranwara Society. According to P.W.2, in the intervening night of 24th January 2013 and 25th January 2013 at about midnight he had guided P.W.6 - Marne to Building No.22 ‘Durwankur’ in Flat No.1001. He had seen

accused no.1 in the ambulance next to driver but had no occasion to see anyone else.

10. On the same day at about 7.00 am, P.W.3 who was working as watchmen informed P.W.2 that he was told by accused no.1 that her brother was not well and therefore, she had called him to the flat. P.W.2 along with another guard Dhanraj had been to Flat No.1001. P.W.3 was in the flat along with accused no.1 and a lady friend of accused no.1. Paramjit Singh had not responded to his call and was lying still on his bed. Since Paramjit was motionless he was wrapped in a bedsheet and was brought down by P.W.2 and P.W.3. Evidence of P.W.2 and P.W.3 is consistent.

11. P.W.16 - Mr. Pande who claims to be a friend of Paramjit had reached the spot and then Mr. Pande, the lady friend of accused no.1 and accused no.1 had taken Paramjit along with them in the Skoda Car of P.W.16.

12. The evidence of P.W.2 – Muktiraj Koirala and P.W.3 – Prem Soni, Security Guards were also corroborated by P.W.7 - Navesha who happens to be a friend of accused no.1. According to her, on 25th

January 2013 at about 7.00 am accused no.1 had telephonically informed her that Paramjit had fallen ill, he was vomiting and hence, needed to be taken to the hospital, she had requested P.W.7 to help her. P.W.7 had obliged and reached the flat of accused no.1 immediately. In the flat, she saw two security guards whereas accused no.1 was trying to call the ambulance. Accused no.1 had then called a male friend i.e. P.W.16 who had reached the spot within 30 minutes. The subsequent events as deposed by P.W.2 and P.W.3 are corroborated by P.W.7. The evidence of P.W.7 is corroborated by P.W. 16.

13. The autopsy on the dead body of deceased Paramjit singh was performed on 25th January 2013 between 4.00 p.m. to 5.00 pm. The postmortem notes are proved by P.W.11 - Vijay Jadhav. The postmortem findings are as under :-

“4] In the said report (Exh.51) in column no.17, I have given descriptions of external injuries found on the body of Paramjitsingh. They are -

- 1) Contused abrasion present over left ala of nose of size 1cm. x 1 cm. red in colour.
- 2) Four contused abrasion present over left cheek each of size 5 cm x 5 cm red in colour.
- 3) Nine contused abrasions present over left entero lateral aspect of neck in an area of 6 cm x 5 cm. of size varying from 5 cm x 5 cm to 2 cm x 5 cm red in colour.
- 4) Seven contused abrasions present over right enterolateral aspect of neck in an area of 6 cm x 5 cm of size varying

from 5 cm x 5 cm to 1 cm x 1 cm red in colour.

- 5) Therapeutic injection marks present over dorsums of both wrists.

Injuries no.1 to 4 are ante-mortem in nature and fresh. But injury no.5 is postmortem in nature.

- 5] According to me, injuries nos.1 to 4 must have been sustained by the deceased within 24 hours prior to postmortem examination.”

14. The doctors had opined that “the cause of death is Asphyxia due to throttling”. P.W.11 had testified before the Court as follows:-

“The throttling, in my view, was with hands with sufficient force. The external injuries no.1 and 2 found on the face may occur due to struggle or by striking on hard and blunt object. The external injuries at Sr.no.3 and 4 may occur due to pressing of neck with sufficient force by hands.”

The admissions in the cross examination are as follows :-

“If a person is tied by his hands and legs by a nylon rope tightly, in that event, such injuries or marks of imprints of nylon rope are bound to be there.”

15. P.W.4 – Indrajitkaur, resident of Agra happens to be the elder sister of deceased and accused no.1. According to her, on 25th January 2013 at about 7.00 am she was telephonically informed by accused no.1 that there was bleeding from the ears and nose of Paramjeetsingh and that she was taking him to Om Hospital which is

closeby. She asked her to pass on the said information to Kamaljit who happens to be the eldest sister amongst the four siblings. Accused no.1 had also insisted upon them to visit Pune immediately. Accordingly, they all reached Pune on 26th January 2013 at about 6.00 pm. When they were in transit, they were informed by accused no.1 about the demise of Paramjit. According to PW4, when they reached Pune accused no.1 had divulged to them that when Paramjit returned home on 24th January 2013 she had served him “khichadi”. That soon after consuming “khichadi” he had started vomiting, his health had started deteriorating so much that Paramjeet could not stand on his own foot. He was taken to Om hospital in an ambulance, they returned to the flat at 2.00 am, thereafter, Paramjit was restless. While he was watching television she had gone to bed and when she woke up at 6.00.a.m she saw that Paramjit was breathless, she could not get the ambulance despite several frantic calls and therefore she called upon P.W.16 and with the help of the watchmen and P.W.16 she could bring him to the ground floor and she took him to the hospital in the car of P.W.16 and at the hospital he was declared dead before admission.

16. On 27th January 2013, P.W.4 - Indrajitkaur saw the dead body of her brother for the first time. She saw some marks on both the

wrist, on his face and bruises on his neck. She saw a deep cut on his right thigh and red and blue spots on his lower legs. Upon enquiry accused no.1 had disclosed that said marks were due to insertion of needle used for administering medicine and saline in the hospital. PW4 claims to have seen 7 to 8 marks of assault on the back of Paramjit. She had taken photograph of the dead body on her cellphone as she was not satisfied with the explanation offered by accused no.1. According to her, the conduct of accused no.1 subsequent to the death of Paramjit showed that she had no remorse nor grief.

17. Accused no.1 had accompanied PW4 to her house. PW4 had heard accused no.1 talking to some unknown person about the sale of Flat No.1001, sale of the car of Paramjit Singh and the balance amount in the account of Paramjeet Singh. She had made certain future plan. That accused no.1 had made a frail attempt to delete the images of the dead body of Paramjeet Singh from the cellphone of P.W.4. That P.W.4 had passed on the photographs of dead body to Hinjewadi Police station along with the I-card of deceased, diary and medical case papers of the deceased. The same were seized by the police on 1st March 2013 i.e. after the arrest of accused no.1 on 27th February 2013.

18. That despite several calls from PSI More, accused no.1 was not willing to visit Pune. She was staying at Datiya with her eldest sister Kamaljit. P.W.4 had given the address of Kamaljit to P.W.1 PSI More. Upon which P.W.1 caused her arrest from Datiya and brought her to Pune. The supplementary statement of P.W.4 was recorded on 1st of March 2013. She was cross-examined as to whether the said disclosure was made to the police in her previous statement, the same is marked as an omission. P.W.1 - PSI More has failed to offer any plausible explanation for the inordinate delay in lodging FIR.

19. It appears that accused nos.2,3 and 4 were arrested consequent to disclosure made by accused no.1 in the course of investigation.

20. Accused no.2 - Golu Mustak Khan and Accused no.3 - Guddu alias Lalla Bashir Khan were arrested on 2nd March 2013 whereas Accused no.4 was arrested on 5th March 2013.

21. In the personal search of accused no.1 the Debit Cards of the deceased of IDBI and ICICI bank, Health Insurance Card were seized. Similarly, a receipt of ATM showing withdrawal of an amount of Rs.10,000/- on 25th January 2013 at 22:21:12 was seized along with

three cellphones. The investigating agencies had called for the Call Details Record of cellphone no.9405872061 from 1st March 2012 and the same is at **Exh.83** collectively. The said CDR is proved by P.W.21 - Ashish Kumar, the Junior Telephone Officer Working with BSNL. The papers of investigation show that the said cellphone number was used by Accused no.1.

22. Upon arrest of accused no.3 his cellphone was seized. His cellphone number was 8223088237. The CDR of the said number was also called for. It is proved by P.W.22 - Sachin Shinde, the Nodal Officer of Idea Cellular Ltd. The said record is marked at **Exh.94**. According to P.W.22 - Sachin Shinde, the said Mobile No.8223088237 was registered in the name of Guddu Khan resident of Tarai Road, Gwalior. The date of activation was 26th September 2012.

23. Upon perusal of CDR of both the numbers it is clear that the accused no.1 and accused no.3 were constantly in touch with each other ever since the date of activation. It is the specific case of the prosecution that the cellphone no.8223088237 was activated in the name of Guddu alias Lalla i.e. accused no.3 but the same was being used by Golu (Accused no.2). **Exh.105** shows that accused nos.2 and 3

were in Pune since 21st January 2013. The tower location shows that during the period 23rd January 2013 to 25th January 2013 the accused nos.2 and 3 were at Bawdhan i.e. the residence of accused no.1 and the deceased. The tower location of cell no.8223088237 is at Bawdhan in the early hours of 25th January 2013. It is pertinent to note that **Exh.105** is admitted by the accused u/s 294 of the Cr.PC at the time of trial on 27th May 2014. It is, therefore, clear that the accused no.2 and 3 have admitted their presence at Bawdhan between 24th and 25th of January 2013. Needless to say that the fact admitted need not be proved independently.

24. In the course of investigation, there is recovery of a nylon rope and a plastic bag at the instance of Golu Mustak Khan which is at **Exh.41** and is proved through PW8 - Dashrath Shankar Chandere and PW.12 - Laxman Phanse. The railway tickets from Gwalior to Pune dated 20th January 2013 and from Pune to Gwalior dated 26th January 2013 and 1st March 2013 respectively were seized from the wallet of accused Golu in their personal search.

25. PW.18 - Trupti Patil is Nayab Tahasildar who conducted Test Identification Parade on 8th May 2013 at Yerawada Central Prison,

Pune. According to her, she has followed the rules contemplated under Criminal Manual. PW.6 - Marne and PW.5 - Yogesh Gaikwad had identified accused nos.2, 3 and 4 in the Test Identification Parade. The said identification is not seriously challenged and PW.18 has proved the memorandum of Test Identification Parade which is at **Exh.112**.

26. PW19 - Nilesh Kharat is the owner of Maruti Eeco vehicle which was plied by Yogesh Gaikwad on 25th January 2013. According to him, Yogesh Gaikwad drives the said vehicle since 5th October 2012.

27. PW.20 - Pritesh Bhutada is employed as Supervisor with Wings Travel Company. He has testified to the effect that Maruti Eeco bearing Registration No.MH-12-FC-5721 is owned by PW19 and is plied by the company. The generated copy of call detail records maintained by the company show that on 25th January 2013 the company had received a phone call from mobile no.9405872061 with a request to send a taxi at 6.30 a.m to Durwankur, DSK Ranwara, Bawdhan, Pune. The accused had admitted the said call record, hence, it is marked at **Exh. 76**.

28. PW.23 - Parshram Patil was entrusted with the investigation of Crime No.93/2013 on 20th February 2013. According to him, he had

deputed the police to fetch accused no.1 from Datiya (Madhya Pradesh). On 21st February 2013 the accused no.1- Jagjitkaur was brought to Pune. On 27th February 2013 she was arrested. On 1st March 2013 the complicity of accused nos.2 to 4 in commission of the murder of deceased Paramjit has transpired in the course of investigation. On 5th March 2013, the accused no.4 was arrested. According to him, he had conducted the investigation in accordance with law. The evidence of investigating officer is not seriously challenged.

29. The accused no.1 has chosen to examine herself on oath. According to her, Paramjit was like a father to her, he was suffering from Migraine. She has testified that, on 24th January 2013, Paramjit returned home at about 9.30 pm. He was suffering from vomiting. At his request she had served “khichdi” to him, he also drank a glass of juice but again vomited. He expressed his desire to visit Dr. Manjrekar on the next day. While he was watching TV, he again suffered an attack of migraine. He dashed his head on the wall. She then took him to Om hospital. In the meanwhile, accused no.2 had called on Mobile No.9405872061 and informed about his arrival at Pune. Her brother had asked him to come to Om hospital. Paramjit had refused to get admitted at Om hospital as he was taking treatment from

Dr.Manjrekar. He was administered two injections. She had seen the accused nos.2 to 4 near ambulance. The health of Paramjit had improved. According to her, her cellphone no. is 9527410200 and cellphone no.9405872061 was commonly used by her and her brother. She had further deposed before the Court that after returning from Om Hospital, her brother had juice along with accused nos.2 to 4. She had retired to her room whereas accused nos.2 to 4 were talking to her brother in the hall. At the request of her brother, she had dropped accused nos.2 to 4 after paying Rs. 3,000 to 4,000/- which she had withdrawn from the ATM card of her brother. When she reached home, she saw that the door of the house was open. Her brother was lying motionless on the cot and had not responded to her call. She, therefore, called upon P.W.6 and P.W.17 and with their help had taken her brother to Sahyadri Hospital where he was declared dead before admission. It is admitted by her that she was talking to accused no.2 from 21st January 2013 to 27th January 2013. It is also admitted that her brother had made arrangement for her marriage and had also purchased gold ornaments for her. She had admitted that she had knowledge about the bank account of her brother and she had access to the Pass book and other financial transaction of her brother.

30. That, the deceased had died because of a severe attack of migraine. The learned counsel for the appellants submits that on the instruction of her brother, accused no.1 had paid some amount to accused no.2 to return to Gwalior. That, she has been falsely implicated. It is further submitted that it is a case based on circumstantial evidence and it is incumbent upon the prosecution to establish the complete chain of circumstances. That the accused no.1 has examined herself as defence witness and due weightage has to be given to her evidence on oath and needs to be considered on par with the evidence of prosecution witnesses. It is submitted by the learned counsel for the appellants that there is delay in lodging FIR, which shows that a false case is concocted against the accused persons. It is true that P.W.1 has not offered any explanation for the delay in registration of crime, however, that by itself would not be fatal to the prosecution.

31. The learned counsel for the appellants submits that the relations between the accused no.1 and her deceased brother were cordial and she had no motive to cause the death of her brother who was taking care of her. No poison was detected. The learned counsel

for the appellants further submits that accused no.1 has candidly stated that her brother was like a father to her.

32. The deceased was lastly seen in the company of the accused nos.1 to 4. That the accused nos.2 to 4 had joined the company of the accused no.1 at Om hospital and soon thereafter, Paramjit had met a homicidal death. That deceased was under sedation from 1.00 a.m onwards. That, at about 6.30 a.m, the accused nos.2 to 4 had left the house of the accused no.1 and the deceased and soon thereafter, the deceased had died. The cause of death was “asphyxia due to throttling”. The deceased was brought dead to the hospital and the information was given to the police by Sahyadri Hospital. That, there were bruises on the dead body of deceased Paramjit which were noticed and noted in the inquest panchanama as well as the post-mortem notes. There was no reason for accused no.1 to disclose to P.W.6 that accused no.2 to accused no.4 were looking after her brother while he was admitted in Mangeshkar Hospital. This would show that she had a guilty mind as P.W.6 was not concerned with the same.

33. The arrival of accused nos.2 and 3 from Gwalior to Pune is established by the seizure of railway tickets. They had arrived in

Pune on 20th January 2013 and had departed from Pune for Gwalior on 26th January 2013. The railway tickets were seized on 3rd March 2013 at the time of their arrest.

34. The evidence of P.W.2 Sachin clearly establishes that the cellphone no.8223088237 was registered in the name of accused no.3. The call details record further establishes that the accused no.1 was constantly in contact with accused no.2. The same is admitted by DW1 before the court.

35. The material adduced by the prosecution at the trial leaves no room for doubt but to hold that the chain of circumstances is so complete that there is reasonable ground to conclude that it is inconsistent with the innocence of the accused. The accused no.1 has examined herself on oath and has given several admissions as has been discussed above. The admission coupled with the false explanation offered by the accused would by itself be an additional link which would complete the chain of circumstances. At this stage, it would be appropriate to refer to the case of *Deonandan Misra Vs. State of Bihar*¹.

The Apex Court, in this case, has held thus :-

1 1955 AIR 801

“It is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain. We are, therefore, of the opinion that this is a case which satisfies the standards requisite for conviction on the basis of circumstantial evidence.”

36. The horrendous death of a brother at the hands of a sister is a stigma on the pure relationship between a brother and sister. It is believed that one does not choose a family and a bond between brother and sister is a Gift of God. The present case destabilises this belief and shocks the conscience of the Court.

37. The submission of the learned counsel that the accused no.1 had no motive to cause homicidal death of her brother and that a false case is foisted upon her cannot be taken into consideration.

38. That absence of motive by itself is not sufficient to exonerate an accused for the charges framed against him. Motive is an inner urge that may force a person from doing an act or refraining

from doing an act and an inference can be drawn on the basis of the act which is actually committed. The Black's Law Dictionary defines "motive" as under :-

"Motive. Something, esp. willful desire, that leads one to act. - Also termed ulterior intent.

39. The Apex Court, while deciding the case of Nanubhai Vastabhai Katariya vs. State of Gujarat² has placed reliance upon and considered the observations in the case of State of Uttar Pradesh through Central Bureau of Investigation Vs. Dr. Sanjay Singh and Anr.³, which reads thus :

"18. At the highest, the prosecution can only suggest from the circumstances what is or may be the motive for any particular act. However, motive is not a *sine quo non* for bringing the offence of murder or of any crime home to the accused. At the same time the absence of ascertained motive comes to nothing, if the crime is proved to have been committed by a same person but to eke out a case by proof of a motive alone – that too suspicion of motive apparently tending towards any possible crime, is not only a very unsatisfactory but also a dangerous process, because circumstances do not always lead to particular and definite inferences and the inferences themselves may sometimes be erroneous."

40. As against this, the learned APP has submitted that the transaction in which the deceased had died homicidal death would be

2. 1999 SCC Online Guj.235

3. AIR 1994 SCC 1701

within the special knowledge of accused no.1 alone since she had brought the deceased from Om hospital against medical advice. That, it is admitted by accused no.1 in her deposition that she was constantly in touch with the accused no.2 for almost three years prior to the death of her brother deceased Paramjit and more particularly between 20th January to 26th January 2013. Accused nos.2 and 3 had left Pune on 26th January 2013 i.e. soon after the incident. The identity of all the accused is established by the prosecution through P.W. Nos.2,3,5 and 6 and hence, according to the learned APP, the judgment of the trial Court calls for no interference.

41. The conduct of accused no.1 during the prelude to the death of her brother, her association with accused nos.2 to 4 in the intervening night of 24th and 25th coupled with the false explanation offered by her before the Court leads to the logical inference that the accused no.1 had drawn a master plan to eliminate her brother for the best reasons known to her alone, and she was aided and assisted by accused nos.2 and accused no.3 in executing the plan. As far as accused no.4 is concerned, the evidence against him is weak. The witnesses have claimed to have identified him in Test Identification Parade but the identity was not established. Moreover, there is no

evidence that he was in contact with accused no.1 to accused no.3 prior to the incident. His association with accused nos.2 and 3 also does not inspire confidence whereas the records show that accused no.2 was using the phone of accused no.3 to communicate with accused no.1. They had travelled from Gwalior to Pune and Pune to Gwalior together during that period. The complicity of accused no.4 in executing the plan sketched by accused no.1 is doubtful. He, therefore, deserves extension of benefit of doubt. All the circumstances cumulatively and individually establish the guilt of accused nos.1 to 3. Hence, we pass the following order.

ORDER

- (i) The Criminal Appeal No.166 of 2015, Criminal Appeal No.895 of 2015 and Criminal Appeal No.952 of 2015 are dismissed;
- (ii) The conviction and sentence of the appellants/accused no.1, accused no.2 and accused no.3 passed by the Additional Sessions Judge, Pune in Sessions Case No.479 of 2013 by judgment and order dated 9th September 2014 is hereby confirmed;
- (iii) Sentence of fine is maintained;

- (iii) Criminal Appeal No.731 of 2015 is allowed;
- (iv) The appellant /accused no.4 in Criminal Appeal No.731 of 2015 is hereby acquitted of all the charges levelled against him. Accused No.4 be released forthwith if not required in any other case;
- (v) Bail bonds of appellant – accused no.4 in Criminal Appeal No.731 of 2015 shall stand cancelled;
- (v) Appeals are disposed of in above terms;

(N.J. JAMADAR, J)

(SMT. SADHANA S. JADHAV, J)

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Pallavi M.
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